Approved for tabling
SNA
4/7/19.

REPUBLIC OF KENYA

HARAMBEE

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION 2019

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

REPORT ON THE INQUIRY INTO THE WAVE OF STUDENTS' UNREST IN SECONDARY SCHOOL IN KENYA IN TERM II, 2018

Directorate of Committee Services
Clerk's Chambers
National Assembly
NAIROBI

JULY, 2019

CHAIRMAN'S FOREWARD

Education and training is critical in promoting political, social and economic development of any country.[1] Thus, the Human capital investment in the form of education is a major tool for sustainable development.

It is against this backdrop that the Government is committed to the provision of quality education to learners. To date, Kenya has made significant strides in access to education following the implementation of Free Primary Education in 2003 and free day Secondary Education in 2008. The enrolment in primary school increased from 6.1 million in 2002 [2]to 10.3 million in 2016.[3] The enrolment in secondary school increased from 934,149 in 20054 to 2.7 million in 2016[5].

In spite of the milestones achieved in the Education Sector, cases of student unrest in Kenya have become an unfortunate phenomenon witnessed in the country annually, mostly during the second term. In July 2018, the country experienced another unprecedented wave of arson (63 cases), walkout (23 cases), sit-ins (8), breakdowns (14 cases) in public secondary schools. The students' unrest pose a serious threat to the educational system and to the nation at large. They result in destruction of property, loss of learning time, and psychological effects to staff and students. All these translate to low achievement in learning outcomes hence affecting the quality of education provided.

In view of the July 2018 wave of unrest the committee resolved to conduct an inquiry to establish the underlying causes of students unrest and the necessary measures that can be implemented to stem out the culture of unrest in secondary schools. To achieve the objectives' the committee invited a number of stakeholders to make submissions regarding the unrest. They include Cabinet Secretary Ministry of Education, Cabinet Secretary Ministry of Interior, Teachers Service Commission, Kenya National Union of Teachers, National Parents Association and Chairperson Kenya Secondary School Heads Association whose observations and recommendations are key in this report.

SIGNED____________ **DATE** 27/06/2019

HON. JULIUS MELLY, MP

CHAIRPERSON – COMMITTEE ON EDUCATION AND RESEARCH

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[1] Basic education sector analysis report, Japan International Cooperation Agency (Jica) International Development Center Of Japan Inc. (Idcj), 2012

[2] Kenya national Bureau of Statistics, Economic Survey, 2005

[3] Kenya national Bureau of Statistics, Economic Survey, 2017

[4] Ibid 3

[5] Ibid 4

1.4 Committee Membership

The Committee comprises of the following Members: -

1. Hon. Julius Melly, MP - Chairperson
2. Hon. Amos Kimunya, EGH, MP - Vice-Chairperson
3. Hon. Moses Malulu Injendi, MP
4. Hon. Geoffrey Makokha Odanga, MP
5. Hon. (Dr.) Pamela Ochieng, MP
6. Hon. (Eng.) Nzambia Thuddeus Kithua, MP
7. Hon. (Prof.) Zadoc Abel Ogutu, MP
8. Hon. Catherine Wambilyanga, MP
9. Hon. Eric Muchangi Njiru, MP
10. Hon. Eve Obara, MBS, MP
11. Hon. Jackson Lekumontare, MP
12. Hon. Jerusha Mongina Momanyi,
13. Hon. John Oroo Oyioka, MP
14. Hon. Joseph Kipkosgei Tonui, MP
15. Hon. Lilian Cheptoo Tomitom, MP
16. Hon. Omboko Milemba, MP
17. Hon. Peter Lochakapong, MP
18. Hon. Wilson Sossion, MP
19. Hon. Wilson Kipngetich Kogo, MP

1.5 Committee Secretariat

The Committee secretariat comprise the following officers:

1. Mr. Daniel Mutunga - Principal Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Eric Kanyi - Fiscal Analyst
4. Ms. Annceta Gacheri - Research Officer
5. Ms. Emma Esendi - Legal Counsel
6. Mr. Nimrod Ochieng - Audio Officer
7. Ms. Catherine Mukunyi - Serjeant At Arms
8. Ms. Winnie Kizia - Media Relations Office

CHAPTER THREE

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 SUBMISSION BY THE CABINET SECRETARY MINISTRY OF EDUCATION ON SCHOOLS UNREST IN SECONDARY SCHOOLS

The Cabinet Secretary for The Ministry of Education Ms. Amina Mohamed appeared before the Committee in regard to student unrest witnessed in various secondary schools in the country during term II 2018, and informed the Committee as follows:

Introduction

The ship of progress of any country floats on the hard work and dedication of its young generation and their innovative thoughts. Hence, Kenya's strategy of Vision 2030 and the Sustainable Development Goals (SDGs) require that the student community plays its vital role in the society. Their recognized great force is essential for achieving the country's development agenda. In this regard, education and training is vital for the achievement of the objectives of the country's strategies. However, the growing secondary school unrest and indiscipline among students is a matter of great concern to The Ministry of Education. This is because, in recent years, cases of unrest have assumed alarming proportions.

Such students' unrest pose a serious threat to the educational system and to the nation at large. They result in destruction of property, loss of learning time, and psychological effects to staff and students. All these translate to low achievement in learning outcomes hence affecting the quality of education provided. It is therefore necessary to determine measures to control student unrest in schools.

In total, 107 schools out of 8900 public and 1800 private secondary schools were affected by various forms of unrest in 2018. In 2017, there were 123 cases. In 2016, the number of schools affected was 483 schools. A breakdown of reported cases of schools' unrests in 2018 is shown in table 1 below:

The Ministry of Education has taken steps guided by existing legal instruments to address students' unrest. The Basic Education Act No. 14 of 2013 and Regulations thereunder provide guidelines for cases of students' unrest, their management and administration.

Table 1: Breakdown and nature of Schools' Unrest in 2018. Source: Ministry of Education

S/NO	Region	Arson	Walk- outs	Sit ins	Breakages	Total
1	Central	1	4	2	1	8
2	Coast	4	1	0	0	5
3	Eastern	22	9	5	4	40
4	Nairobi	2	1	0	0	3
5	North Eastern	0	0	0	0	0
6	Nyanza	17	0	1	5	23
7	Rift valley	12	7	1	5	25
8	Western	4	1	0	1	6
	Total	62	23	8	14	107

(i) Actions initiated against the students arrested culprits include:

(ii) Arraignment in court

(iii) Suspension of students involved by Boards of management in accordance with the Basic Education Regulations, 2015

(iv) Closure of affected schools for investigation and cost assessment in accordance with Regulations 3 and 36 of the Basic Education Regulations

(v) Conditional re-admission of the affected students

(vi) Guidance and counselling

(vii) Basic Education Regulations Articles 33-39, stipulate how deal with mass indiscipline in schools.

(f) Properties destroyed

The main properties destroyed through arson were dormitories and food stores whereas other properties destroyed include window-panes, furniture, and students' personal effects as shown in table 3 below.

Table 3: Property destroyed in various schools through arson attack

Properties lost under different categories	**Numbers of Schools**
Dormitories & students' personal properties destroyed through arson	58 schools
Other properties burnt (store, staffrooms)	6 schools
Physical facilities (Window panes, furniture)	7 schools
Totals	**71 schools**

Source: Ministry of Education

Schools are working with the Ministry of Public Works to assess damage. On 13th July, 2018, the Cabinet Secretary asked school administrators to follow the proper assessment processes to determine the extent of damage and cost implications to those involved. The Ministry is working with regional and county officials to implement this directive.

(g) Measures to address school unrests

(i) Long term Measures

The Ministry has implemented and continues to implement recommendations of Taskforce Reports commissioned by the Ministry and has put in place a multi-agency standing committee to review and continuously advice on the implementation process.

(ii) Short-term measures

The immediate actions taken by the Ministry include:

(i) Extensive pre- monitoring of national examinations

(ii) Instruction to schools to double the number of teachers on duty especially at night in boarding schools;

There were other incidences like attack on teachers and fellow students but did not lead to temporary closure of school. Generally there were tensions in some of the schools but whose exact number could not established.

Possible causes of student unrest

From the findings of Kenya Secondary Schools Heads Association the causes of the unrests can be categorized as follows: Social economic reasons, Political reasons, Institutional reasons, Legislative reasons and copycat issues as the media highlights the cases.

1. Social Economic and Religious Issues:

These include:

(i) Drug and substance abuse by learners

(ii) Poor moral values in the society

(iii) Violent methods of conflict resolutions in the society

(iv) Different ideologies in faith which conflicts with the school administration setup.

2. The Political issues include:

Methods used by politicians to resolve dispute is learnt and implemented in the schools since the majority of the leaners are active players out there.

3. The Institutional factors

These factors include:

(i) Failure to adjust to change in management

(ii) Incitement by external and internal forces

(iii) Inadequate facilities both boarding and learning

(iv) Fear of internal examination as a result of pressure from home and sponsors

(v) Inadequate capacity building prior to appointment of the Heads of Institution.

(vi) Understaffing in schools which has led to some subjects not being well handled and certain services not given to students.

(vii) Every teacher to be equipped with guidance and counseling skills

(viii) Lack of capacity in handling security issues in schools.

4. The Legislative challenges include:

Need to review the Basic Education of 2013 together with the Regulations in order to address the gaps in discipline issues.
Develop regulation to operationalize the Children Acts as used in school.
Students arrested made in regard to planning student unrest of various schools in Kenya

Kenya Secondary Schools Heads Association reported a total of 186 students had been arrested by 2nd August 2018 in connection to planning student unrest in Kenya as shown in table 6 below:

Full time chaplains were to be employed by Ministry of Education, while Teachers Service Commission was to employ full time guidance and counseling teachers. To date, this has not been done, and proper professional guidance and counseling services are lacking.

4. Free Secondary Day Education (FSDE)

The capitation to schools has been set at a maximum for boarding schools and not all schools have adequate funds for infrastructure development .The Dr. Kilemi Mwiria's Report of 2014 needs to be reviewed. This report put at a maximum the number of non – teaching staff per school without considering size of land and population of students. Instead, it considered only the number of streams. This compromises on provision of security services in schools.

There have been delays in disbursement of Free Secondary Day Education funds especially in term II, when there are many activities. This is also the longest term. The delays leads to failure to provide services and payment of salaries to the non-teaching staff and Board of Management teachers. Many of whom end up inciting students or they fail to effectively deliver, which may then trigger the unrests.

5. Appointments of school administrators

Appointments of school administrators without training prior to appointments lead to varied implementation of policies.

Status of implementation of the recommendation of previous task forces on school unrests

19. The Kirima Commission (1994) and Claire Omollo Committee (2016)

These reports were not made public hence the implementation of the recommendations was not done. Schools did not get an opportunity to study them.

20. The Wangai task force (2001) recommended amongst others;

Establishment of functional guidance and counseling departments in schools. The departments were established; however the teaching load cannot allow the guidance and counseling services to be effectively provided in schools.

Abolishment of mock Exams. This has been complied with. The schools no longer expose students to mock exams. Students tend to fear internal Exams used for indexing and not the National or the mock Exams. There are also too many continuous assessment tests and midyear Exams that stress the students.

Involvement of students in school affairs and participation in appointments of their own leaders. Schools have implemented this by allowing students to democratically elect their leaders.

Addressing policy gaps in profiling indiscipline cases across schools. This has not been effectively done and there is need to put in place a system to profile, track and share information on cases of student indiscipline across schools. This area is still wanting.

in term II without having to split this tranche into two between the two financial years.

(iv) Review the Education Act to take care of the number of board members to be reduced to nine or less, discipline procedures be reviewed to make the students take Responsibility for their actions.

(v) Indexing of candidates to be changed instead of using merit. Adaption of the first come first served indexing process as to regard to admission.

(vi) Provide training for School Principals on leadership which entails values, vision and influence to avoid emphasis on management and administration.

(vii) Prior to any appointment, the members of the Board of Management be trained before appointment. Kenya Education Management Institute be equipped to offer such training.

(viii) Post training of teachers in the areas of teaching before employment. There is need to fast-track the establishment of the Kenya School of Teaching.

(ix) Use of NEMIS system in upgrading to be able to profile students. This can be used in tracking cases of indiscipline among students. This will curb the transfer of students with criminal behaviors.

(x) Employ full time Guidance and Counseling teachers, chaplains and imams.

(xi) Decongest the overcrowded dormitories in boarding schools by ensuring Free Secondary Day Education funds released have a component of infrastructure fund for all schools to benefit, with top up for schools with low population.

(xii) Reconsideration of criteria of registering boarding schools by establishing the minimum number of students a school should have before the school is given boarding status.

(xiii) Minimize the introduction of many policies by The Ministry of Education and Schools, Administration some of which are radical, to avoid them being met with stiff resistance however well intended they could be.

(xiv) There is need to relook at the assessment framework to reduce pressure on learners to pass exams, including the demand for grades on teachers and Principals as this leads to loss of focus and put emphasis on producing a holistic learner.

(xv) Establish a common Code of Ethics for Students to avoid each school coming with different approaches in dealing with similar cases of indiscipline. A common code will make students understand what is universally acceptable of them in all our learning institutions.

(xvi) In the new curriculum, the lower secondary be undertaken in day schools so that there will be only three (3) years in boarding schools. This will allow parents/guardians to spend more time with their children.

empowerment and sector relations; child protection and welfare; chaplaincy; counselling and life skills coaching.

The National Parents Association underscored the various factors that could be contributing to student unrest and their various recommendations as shown in table 7 below:

Factors that could be contributing to student unrest and their various recommendations

1. **Resistance to justifiable transfer of teachers and school managers.**

Delocalization is paramount to growth of education in the country and must be implemented. Unfortunately it is resisted by certain stakeholders and has consequently resulted in unrest.

Recommendations

Awareness is vital among parents and students on the importance of transfer of school staff. This will avert incidents of unrest. Parents should desist from participating in such resistance.

The Board of Management should manage smooth transition following transfers. There is need for newly transferred teachers to first establish good relationships with students, as they engage them in learning.

The government should ensure delocalization is done early and not in second term when exam pressure is beginning to build.

The government should put measures to protect the Teachers Service Commission in the process of delocalization of school staff. . NPA should be funded to undertake a national awareness and early warning campaign.

2. **Professional guidance and counselling**

There is a causal link between lack of effective guidance and counseling services and unrest in secondary schools. It is underutilized and attributed to learners with disciplinary cases. Even where there are teacher designate-counselors, they are time-constrained to offer adequate counseling services to the students as they are expected to continue performing their regular classroom instruction duties. The need for professional guidance and counseling as well as mentorship services for students cannot be over-emphasized.

Recommendations

There is need for parents to take an active role in guiding and counseling of children. Parents should not solely leave the practice of guidance and counselling to teachers.

The school management should create awareness of the need of guidance and counseling and desist from the notion that guidance and counseling is for undisciplined learners.

The government should provide funds towards guidance and counselling programs in schools. The Ministry should allocate full time professional counsellors to all schools. Where possible the NPA should be funded so as to train local representatives or

6. **Long second term**

Creation of a longer second term creates places undue pressure on learners because they are in school longer than the other school terms and are subjected to a greater workload.

The longer second term subjects learners to more work load.

Recommendations

Parents should be actively engaged in determining school term dates.

The school Board of Management should create an enabling and comfortable environment for the learners

The Ministry should provide more funds to schools to enable them facilitate a conducive environment for learners during the longer term.

7. **Disconnect between parents, teachers and learners**

The lack of a proper relationship among parents, teachers and learners creates a gap whereby learners fear addressing their problems effectively and requesting much needed support.

Recommendations

Parents should ensure that they are in constant communication with the learners and teachers.

The school management should create an enabling environment to foster relationships between teachers and learners

The Ministry should enhance policies to ensure a good working relationship between teachers and learners is upheld.

National Parents Association should be supported financially to organize forums where learners, parents and teachers openly engage and interact so as to foster respect and trust among them.

8. **Monotony of the school program**

The school programme is repetitive and monotonous with limited flexibility.

Recommendations

The Ministry of Education should explore ways of making the school programme flexible, innovative and interesting for learners.

9. **Deprivation of time for sleep and co- curriculum activities**

Lack of co-curricular activities and enough time for sleep and play adversely affects the physical and mental health of the learner.

Recommendations

Parents should liaise with NPA to advocate for more staffing of teachers in schools.

The Ministry should increase the allocation of teachers in schools

Recommendations

Parents should not expose learners to violence at home. In partnership with NPA, they should speak against any form of violent displays in all platforms. They should counsel children on any violence they witness.

The schools' Boards of Management should work with the schools' administration to ensure that school rules are followed and regulations to curb violence in schools.

The Ministry must ensure that the set out policies to curb violence in schools are be implemented. Any violence actuated on a minor should be severely punished.

14. Increased permissiveness and laissez- faire approach in the society.

Society embraces personal choice and liberty in most settings today. This has influenced parenting methods and leadership styles in institutions and weakened deterrence of misconduct.

Recommendations

Parents should actively instill discipline, train and equip learners with the necessary life skills for survival in the society.

The Ministry of Education actively promote good behavior within the Education sector, reward its staff for good conduct and guide them accordingly.

The Ministry of Education should ensure that schools and institutions act within the law. For instance, the Kenya Children's Assembly which a programme of government has the effect is to dilute the values and principles of discipline instruction in proper learning.

15. Weak enforcement of policies

The government does not regularly and satisfactorily supervise basic education institutions.

Schools that are left to operate without supervision easily deviate from accepted standards and would suffer student unrest easily.

Recommendations

As principal beneficiaries to the provision of education, parents should be the first line of oversight of institutions. The NPA should actively evaluate on the report of the schools and call for action where necessary,

The Ministry of Education quality and standards assurance field officers should frequently visit schools for quality assurance and provide guidance as appropriate.

The government should fund and facilitate the NPA to effectively execute its mandate. The Ministry should also increase the number of its quality assurance officers.

16. Substance and drugs abuse

Drug and substance abuse is very high in the Kenyan society. Drugs such as alcohol and various substances are easily accessible to learners. The direct physical and psychological effect of these drugs including the attendant withdrawal symptoms is behavior that would result in unrest.

19. Undue strictness

Overly strict treatment at home and at school is a cause of unrest in schools. Lack of opportunity for expression and abuse from parents may cause rebellion and mass misconduct. The learners become rebellious as a way of seeking freedom

Parents should administer discipline with moderation and justification.

The Board of Management should administer discipline with moderation and justification.

Newly promoted/ posted staff should be prudent when introducing new rules or procedures. Education field officer and the government in general should enforce policies and guidelines on discipline.

20. Unfair/unjust sharing of responsibilities

Schools administration tend to practice unjust sharing or responsibilities amongst teachers in school. This leads to discontent among the school staff and therefore teachers fail to focus on teaching and molding students.

Parents should actively engage the institution on matters of fairness at the workplace.

The Government should keenly analyse work procedures in schools and ensure fair trade practices are practiced.

21. Unlawful Procurement business with institutions

Some institutions fail to adhere to procurement laws and allow teachers to do business with the institutions they work in. This is against procurement law as it amounts to conflict of interest, and creates discontent among the staff who feel left out and/or subjected to unfair competition. Discontented school staff would cause unrest whenever they find an opportunity.

The Ministry of Education should work with sector players and ensure strict compliance with procurement laws and guidelines.

22. Lack of proper training in management for school managers

The Teachers Service Commission should ensure that institution heads are properly trained as managers and duly vetted. Mismanagement is itself a direct cause of unrest.

Recommendations

The Teachers Service Commission and Teacher Training institutions to ensure that management training is duly offered to all teachers and should be a prerequisite to promotion of teachers to managerial positions.

Institution Managers and Boards of Management should undergo management training.

The Government should ensure that ensure that management training is duly offered and is a prerequisite to promotion of teachers to managerial positions. It should also offer technical assistance through public officers available at the nearest government headquarters.

CHAPTER FOUR

4.0 COMMITTEE FINDINGS

The Committee findings on the main causes of the student unrests in secondary schools brings to attention many concerns that require interventions by all education stakeholders at the school level, societal level and the Ministry of Education.

The Committee findings on the causes of strikes are as follows:

1. Limited professional guidance and counselling

There is a causal link between lack of effective guidance and counseling services and unrest in secondary schools. Guidance and counselling is underutilized and attributed to learners with disciplinary cases. Even where there are teacher designate-counselors, they are time-constrained to offer adequate counseling services to the students as they are expected to continue performing their regular classroom instruction duties. The need for professional guidance and counseling as well as mentorship services for students cannot be over-emphasized.

2. Increased permissiveness and laissez- faire approach in the society

Society embraces personal choice and liberty in most settings today. This has influenced parenting methods and leadership styles in institutions and weakened deterrence of misconduct. Alarmist media coverage of school unrest propagates the vice and encourages other learners to follow in the same suite as a way of expressing sympathy and peer approval.

3. Failure to address indiscipline in transferred learners

Transferred learners are not accorded the necessary professional help after being transferred to other schools due to indiscipline and a lack of a clear framework of support.

4. Examination stress and promise of leakage

Examination stress caused by the numerous exams in schools and the unlawful expectation or promise of leakage would culminate in school unrest.

5. Long second term

Creation of a longer second term creates places undue pressure on learners because they are in school longer than the other school terms and are subjected to a greater workload. The longer second term subjects learners to more work load.

6. Lack/Poor Communication between parents, teachers and learners

Lack of a proper relationship among parents, teachers and learners creates a gap whereby learners find it hard to communicate their problems effectively and requesting much needed support.

7. Monotony of the school program

The school programme is repetitive and monotonous with limited flexibility. Such programs creates boredom amongst the learners who may resort to find alternative ways of breaking the boredom.

16. Over strictness

Overly strict treatment at home and at school is a cause of unrest in schools. Lack of opportunity for expression and abuse from parents may cause rebellion and mass misconduct. The learners become rebellious as a way of seeking freedom.

17. Unfair/unjust sharing of responsibilities

Schools administrations tend to practice unjust sharing or responsibilities amongst teachers in school. This leads to discontent among the staff of the school and instead of teachers focusing on teaching and on how they will help the learners they seek out ways of seeking favours. If they are denied they will find ways of causing unrest.

18. Unlawful Procurement business with institutions

Some institutions fail to adhere to procurement laws and allow teachers to do business with the institutions they work in. This is against procurement law, but more importantly, it creates discontent among the staff who feel left out and/or subjected to unfair competition. The "aggrieved" teachers would cause unrest whenever they find an opportunity.

19. Lack of proper training in management for school managers

The Teachers Service Commission has more to do in ensuring that institution heads are properly trained as managers and duly vetted. Mismanagement is itself a direct cause of unrest

20. Lack of adherence to set term of service by members of Board of Management

Many Board members serve for so long a duration that they can even be termed as "life members". Normally such members hold an undue sense of entitlement or ownership of the school that they can engineer unrest if a new Principal whom they do not like is posted to their school.

21. Unjust enrichment from school income generating activities

There should be a clear policy on creation and utilization of monies raised from various income generating activities. Some Principals are reported to collude with education officers to swindle money that has been raised by schools from various avenues such as hiring of premises, buses, farming, bakery, etc. this is bound to cause discontent and trigger unrest.

10. The Basic education Act 2013 should be reviewed to co-opt Government administration officials such as County Commissioners and Chiefs in Board of Management membership to give them an opportunity to share security intelligence from time to time to the Board.

11. School Heads should pursue dialogue (through regular *barazas*, suggestion boxes) as an appropriate approach in handling issues affecting schools and involve students and teachers in decision making.

Teaching and School Leadership

12. The Teachers Service Commission should establish a framework where a teacher can rise based on performance without becoming Principal if they are not interested so that they spend a little more time on molding students

13. Consequently, all new school leaders must undergo preparatory training for effective school leadership in addition to regular capacity building programmes for school principals, deputy principals, and Boards of Management. There is need to first track the establishment of the Kenya School of teaching.

Guidance and counselling

14. The Ministry of Education and the Teachers Service Commission should expeditiously facilitate all schools to establish efficient and effective guidance and counseling programmes in all schools. The objective of the Guidance and counselling department should be to help students with issues ranging from stress, religious conflicts, low self-esteem, addictions, broken families, and poor academic grades among others.

15. School administration should organize termly seminars to sensitize parents on their role in the upbringing on their children. Every school should establish a comprehensive Parent Participation Plan published at the start of each term. These will strongly provide opportunities for involvement of parents in their children development and learning.

Management of internal examinations

16. Teachers should ensure that the syllabus is cleared within stipulated time as scheduled by Kenya Institute of Curriculum Development. This will help build confidence amongst the learners and candidates panicking and restlessness during exam period especially in second term.

Children Act, 2012

17. The Ministry of Labour should develop regulations to operationalize the Children's Act in schools.

Non-teaching staff

29. The Ministry of Education should review the salaries and wages of Non-teaching staff develop their structured code of regulations.
30. The Ministry of Education should develop clear guidelines on staffing norms for use by schools when authorizing employment of non-teaching staff in all public schools.

Role of Models

31. Every School should establish mentorship programes to inculcate student's confidence, self-esteem and skills that they need to be successful in school and in life. These would also contribute to strong and healthy communities.
32. Under the mentorship programme schools should regularly invite renowned motivational speakers vetted by the Ministry of Education to address specific areas like negative effects of secular music, drug awareness campaign, effects of pornography, peace campaigns etc.
33. Every school should allocate every teacher approximately 15 or 20 students (mentees) who should be accountable to the teacher on their class work, extra-curricular activities and character.

The National Intelligence Service

34. The National Intelligence Service should take an active role in gathering, collecting security intelligence information from schools on students activities/security and sharing the same with the School administration and advise on preventive measures to avert students unrests.
35. There should be close working relationship between school administration and the officers of the Ministry of Interior and Coordination of National Government in overseeing security in schools.

Approved for tabling.

REPUBLIC OF KENYA

SNA
18/6/19

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON THE INQUIRY INTO THE PROPOSED KENYA AIRWAYS' PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2019

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VII—Joint Recommendations to the Committee from The Ministry of Transport, The Office of the Attorney General and Department of Justice and The National Treasury

LIST OF ABBREVIATIONS AND ACRONYMS

AFD	Agence Française de Développement.
ANS	Air Navigation Service.
ASK	Available Seat Kilometre.
CAPEX	Capital Expenditure.
CASK	Cost per Available Seat Kilometre.
CBA	Collective Bargaining Agreement.
CEO	Chief Executive Officer.
DTB	Diamond Trust Bank.
ET	Ethiopian Airlines.
IATA	International Air Travel Association
ICAO	International Civil Aviation Organization.
I&M	I & M Bank.
KAA	Kenya Airports Authority.
KAAO	Kenya Association of Air Operators.
KALPA	Kenya Airline Pilots Association.
KAWU	Kenya Aviation Workers Union.
KCB	Kenya Commercial Bank.
KQ	Kenya Airways PLC.
KRA	Kenya Revenue Authority.
NBK	National Bank of Kenya.
NIC	National Industrial Credit Bank.
OPEX	Operating Expenses
PIC	Public Investments Committee.
PIIP	Privately Initiated Investment Proposal.
PPP	Public Private Partnership.
SAATM	Single African Air Transport Market.
USA	United States of America.

LIST OF STATUTES

State Corporations Act, Cap. 446

Kenya Airports Authority Act, 1991.

East African Community Customs Management Act, 2004.

Civil Aviation Act, 2013.

Public Private Partnerships Act, 2013.

Value Added Tax Act, 2013.

Excise Duty Act, 2015.

Companies Act, 2015.

Public Procurement and Asset Disposal Act, 2015.

Miscellaneous Fees and Levies Act, 2016

Public Service Commission Act, 2017.

LIST OF REGULATIONS

D.P.

LIST OF CASES

ELRC Case Number 68 of 2019 Kenya Airports Authority vs Kenya Aviation Workers Union

Constitutional Petition Number 57 of 2019

CHAIRPERSON'S FOREWORD

The Departmental Committee on Transport, Public Works and Housing is established and mandated under Standing Order No. 216 to;

(a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and*

(g) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

Pursuant to its general power of inquiry, and in response to the concerns raised by the general public, the Committee resolved to inquire into the Kenya Airways' (KQ) Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority (KAA) with a view of presenting to a report to the House under the following terms of reference;

1. Policy issues;
2. Human resource issues;
3. Legal compliance; and
4. General issues of concern to the people.

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The Committee wrote to key stakeholders in the transport subsector and placed an advert in the local dailies on Friday, March 29, 2019 inviting them to submit their views on the Proposal. Thereafter, the Committee held several meetings where it met with the stakeholders to consider the submissions received as incorporated in this report. Memoranda were received from members of the public and key stakeholders in the aviation sector through the Office of the Clerk of the National Assembly. The Committee further held meetings with Officials from the State Department of Transport, Kenya Airways, Kenya Airports Authority, Kenya Civil Aviation Authority (KCAA), the Kenya Aviation Workers Union (KAWU), the Kenya Airline Pilots Association (KALPA) and the Kenya Association of Air Operators (KAAO), the National Treasury and the Officer of the Attorney General, among others.

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

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The Committee appreciates the assistance provided by the Office of the Speaker and of the Clerk of the National Assembly that enabled it to conduct its inquiry.

I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations on the inquiry.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Transport, Public Works and Housing, it is my pleasant privilege and honor to present to this House the Report of the Committee for adoption.

HON. DAVID PKOSING, MP
CHAIRPERSON
COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

1.0 PREFACE

Committee Mandate

1. The Departmental Committee on Transport, Public Works and Housing is established under **Standing Order 216** whose mandate pursuant to the Standing Order 216(5) is as follows—

    (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;

    (b) Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;

    (c) Study and review all legislation referred to it;

    (d) Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;

    (e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;

    (f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);

    (fa) examine treaties, agreements and conventions;

    (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

    (h) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and

    (i) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

    a) Transport;
    b) Roads;
    c) Public works;

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d) Construction and maintenance of roads, rails and buildings;
e) Air and seaports; and
f) Housing.

3. In executing this mandate, the Committee oversees various State Departments, namely:

i. The State Department of Transport;
ii. The State Department of Infrastructure;
iii. The State Department of Housing and Urban Development;
iv. The State Department of Public Works; and
v. The State Department of Shipping and Maritime Affairs.

Membership of the Committee

4. The Committee was constituted by the House on Thursday, 14th December, 2017 comprising of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Ol Kalou
13.	Hon. Johnson Manya Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central

18.	Hon. Savula Ayub Angatia	ANC	Lugari
19.	Hon. Vincent Kemosi Mogaka	Ford K	West Mugirango

Committee Secretariat

5. The following officers facilitate the Committee in its activities -

1. Ms. Chelagat Tungo Aaron	**Clerk Assistant I**
2. Mr. Ahmed Salim Abdalla	**Clerk Assistant III**
3. Ms. Mercy Wanyonyi	**Legal Counsel I**
4. Mr. Walala Ronald	**Legal Counsel I**
5. Mr. James Muguna	**Research Officer III**
6. Mr. Abdinasir Moge Yusuf	**Fiscal Analyst I**
7. Mr. Collins Mahamba	**Audio Officer**
8. Ms. Zainabu Wario	**Sergeant at Arms**

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CHAPTER TWO

2.0 BACKGROUND

6. The Kenya Airways PLC (KQ) submitted a Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority (KAA) in a document dated 3rd October, 2018 dubbed "*Project Simba Public Private Partnership (PPP) for Jomo Kenyatta International Airport (JKIA)*". **Annex I**
7. In the PIIP document, KQ noted that the Proposal was informed by the fact that the aviation sector is critical to the development of the Kenyan economy. According to KQ estimations, the aviation industry contributed USD 3.2 billion and supported 620,000 jobs in 2014 alone. KQ further noted that despite the strategic importance of the aviation sector, the sector faced numerous challenges in the past which have limited its potential to compete internationally for business customers and tourist traffic.
8. KQ noted that it is in light of this challenging background that it proposes a takeover of the Jomo Kenyatta International Airport (JKIA) operations and management through a 30-year concession agreement. The objective of the proposal was given as ensuring efficiency of both JKIA and KQ operations through central management and leveraging on possible synergies to support JKIA's desire for becoming a regional hub and positively impacting the aviation sector's contribution to the economy.
9. The expected outcome from the implementation of the PIIP is given as the growth of the Country's Gross Domestic Product (GDP), development in different segments of the economy, job creation within airline-related industries, increased support for export of goods and services, and transfer of Capital Expenditure (CAPEX) and Operating Expenses (OPEX) risks from the public sector to the PPP partner. KQ further noted that their proposal is in line with practices of other countries which use aviation sector and in particular national airlines and flagship airports as a catalyst for economic growth as seen in Ethiopia, the United Arab Emirates and Qatar. In summary, the PIIP highlights the following areas—

<u>KAA Inefficiencies</u>

10. According to Kenya Airways, some of the inefficiencies proposed to be resolved by the PIIP include JKIA failing to compete and losing its role as the international hub for Kenya. KQ noted that—

    (a) Nairobi airport is operating in a competitive environment dominated by the increasing role of neighbouring Addis Ababa and Gulf airports.

(b) Over the last few years Doha and Dubai have become world-class airports with best-in-class infrastructure to serve millions of passengers per year as a result of massive investment by the respective countries in the airports assets both in terms of the airport capacity and quality of infrastructure to serve passengers.

(c) JKIA is losing its status to competition and it may soon become a hub for East Africa region only and if no significant changes are made its role might be then taken over by Addis Ababa, followed by the new airport, to be constructed in Ethiopia, which will mainly serve its national carrier, Ethiopian Airlines (ET).

(d) JKIA has been under-invested over the years and requires significant CAPEX to improve the quality of services provided both to passengers and airlines which operate to and from Nairobi. The assets requiring upgrade include: runway, aircraft parking and aprons; terminals and commercial areas.

(e) Lack of investments within the next 5 years will result in a drastic reduction of JKIA's capacity from the current 7.2 Million passengers to approximately 5 Million passengers per year (30% drop in traffic). The PIIP and realization of its planned CAPEX investments will spur traffic growth (up to 11 million passengers in 2022, 16 million in 2030 and 34 million in 2050).

(f) Significant upgrade of JKIA infrastructure and need for growth of the capacity requires significant investments within the concession period. JKIA generates significant profit to Kenya Airports Authority (KAA). It is, however, consumed and eroded through losses generated every year by local airports and airstrips. JKIA's profitability is 45% compared to KAA's 24%. The gap is a consequence of losses incurred by 17 financially unviable airports and airstrips.

(g) the current setup does not allow efficient accumulation of funds sufficient for development of the hub in Nairobi and making it a prime aviation asset in Kenya.

(h) the slower growth or decline of passengers at JKIA will negatively impact size of revenues and profits of local domestic airlines and airports. Although this would mean temporary problems with financing local airports in the short run, it will definitely support their financial sustainability in the long-term perspective.

11. KQ further noted that the PIP seeks to resolve the inefficiency of KAA's improper balance of revenue sources. In this regard, it notes that

(a) Modern, world-class airports earn their profits mainly from passenger-related sources and it is for this reason that some of the international airports do not charge traditional landing fees in order to attract as many customers as possible.

(b) However, JKIA is highly-dependent on aeronautical revenues from Airport Passenger Service Charge (APSC), landing fees, air bridge and fuel concessions which constitute around 80% of its total revenues. JKIA is not utilizing its potential to generate revenue from commercial areas and other non-aeronautical fees charged from companies operating at the airport. According to best-practices, KAA should build its own profit centres acquiring margin from serving end-customers. As such, utilization of the non-aeronautical revenues shall bring additional income which can significantly support financing the CAPEX investments required to grow the airport's capacity and improvement of its service quality.

12. Additionally, KQ stated that it has the potential to increase the efficiency of JKIA operations through introduction of world-class standards.

Transaction Structure

13. KQ noted that it considered various options to address the inefficiencies identified. The PIIP proposes the concession of JKIA to Kenya Airways, accompanied by sectoral reforms to allow Kenya's aviation to shift from a defensive strategy to a strategy focused on gaining market share. According to KQ, the most efficient way of using national assets to work for the long-term benefit of the Country, and to this end the overriding objective that led to its proposal under the PIIP, was to ensure KQ's control over the operations of JKIA to enable it to make unhindered investments in the airport.

14. KQ therefore proposes to form a Special Purpose Vehicle (SPV) specifically dedicated to operating, managing and developing JKIA for a period of 30 years. KQ and the SPV are to fall under one management structure while other Kenyan aerodromes are to continue operations under KAA.

15. The concession to be granted to the SPV mandates it to operate, maintain and develop JKIA; operate and control JKIA assets, all revenue sources and operating costs; ensure

compliance with local, regional and international standards and norms; and collect charges for the use of JKIA by various users. It is structured in line with the provisions of section 61(1)(d) of the Public Private Partnerships Act, 2013 which allows for such a framework. The SPV is to operate, maintain, rehabilitate and upgrade existing JKIA infrastructure and facilities and charge user fees while paying concession fees to KAA.

Key Transaction elements

16. In the PIIP, KQ proposes that current JKIA-related liabilities remain in KAA. It notes that the adequacy of the concession fee will ensure that KAA is able to repay existing loans and interests.

17. As regards JKIA staff, KQ proposes to engage KAA, the Government, the employees, the union to ensure that an acceptable solution is arrived at in relation to the employees. As an initial proposal, KQ commits to second all the current JKIA staff to the SPV on the same terms for a period of 12 months. After the secondment period, the KQ is to give the employees the option of being transferred to the SPV upon which the employees will receive the transfer proposal. Potential employees not transferred to the SPV after secondment period will be reallocated by KAA to other airports and airstrips. Responsibility for any employee related costs is to be defined by parties in the process of negotiations.

18. As per the proposal, the SPV will be 100% owned by KQ but will allow for potential minority investments by other parties in the future. KQ commits not to lose control over the SPV during the whole concession duration.

19. For the management of the SPV, KQ is to rely on current JKIA management, staff and an external Airport Advisor to implement world-class solutions and best practices in running the airport. Some of the its pre-selected Airport Advisors include TAV Airports, the leading airport operator in Turkey, Groupe ADP ,an international airport operator based in Paris, Schiphol Amsterdam Airport, Egis Group, a French engineering and consulting group and Flamingo International ,a Dubai based global duty free and travel retail operator.

20. KQ further commits to pay a regular concession fee for disposing the defined assets. Concession fee will consist both of a fixed component (to cover KAA liabilities) and a variable one based on the revenue generated by JKIA in the last, audited financial year (revenue-sharing mechanism). KQ noted that the proposed project is self-financing and

does not require additional Viability Gap Funding (VGF), such funding only potentially becoming necessary to support KAA with financing any deficit with regard to the operations of the other local airports and airstrips.

21. KQ also commits to minimum CAPEX investments in runway, parking, aprons and terminals. The minimum investment requirements are subject to negotiations and agreement with KAA. KQ further assumes a capital structure for the project of 80: 20 of debt to equity ratio. Attached to the PIIP is a financial model estimating the expected profitability of the Project and calculating the value of concession fee to be paid to KAA on annual basis.

22. For the successful implementation of the PIIP, KQ notes that it will require various regulatory amendments and tax exemptions, the PIIP defines regulatory amendments necessary to execute the Project as well as other changes and tax exemptions which will significantly support achievement of Project objectives. These included amendments to—

  i. Section 2, 8, 12, 17A, 17B, 17C and 19 of the KAA Act to exclude charges that will be collected by the SPV from the funds that must be remitted to KAA; to exclude JKIA from the administration, management and control of KAA and exclude JKIA property from the exclusive administration, control and management by KAA; to enable KAA delegate its powers to administer, control, operate and maintain JKIA to the SPV; to expressly allow KAA to enter into concession agreements with any person to operate, administer, control and manage one or more aerodromes; to exclude the remitting of charges collected from JKIA to the KAA Fund and direct the collections to the SPV and to release all JKIA assets from any existing security in favour of KAA lenders and exclude them from automatically being charged during the period of the concession.

  ii. Paragraph 2 of the Kenya Airports Authority Concession Order to exempt tariffs collected from JKIA from being remitted to the KAA and direct the tariffs to the SPV.

  iii. Section 3 and 6A of the Air Passenger Service Charge Act to allow for the collection of the charge by the SPV or its payment into a Fund created for the benefit of the SPV, to ring-fence the APSC collected at JKIA from other airports and to make it mandatory for the Commissioner to pay the APSC collected from passengers at JKIA directly to the SPV or a Fund established for the benefit of the SPV.

iv. revoke the Air Passenger Service Charge Act (Apportionment) Order and gazettement of a new order for the SPV to benefit APSC.

v. Section 639 (1) of the Companies Act and the Income Tax Act to enable KQ offset its tax losses from the profits of the SPV.

vi. Section 5 of the First Schedule to the Value Added Tax Act to zero-rate the value added tax on all taxable supplies made to and by the SPV and KQ.

vii. Section 5 Part A of the Second Schedule to the Excise Duty Act to exempt all excisable goods imported by the SPV and KQ from excise duty; and

viii. Section 59 of the Public Private Partnerships Act to provide for circumstances where a special dispensation may be given for the use of vehicles other than a limited liability company and allow for the registration of the SPV as a limited liability company.

23. KQ further proposes a number of key investment requirements including, in the first instance, rehabilitation of Taxiways and Parking Aprons to reduce the time an aircraft remains on the runway and as a consequence increase the capacity of the airport; remodeling of Terminal 1B, C, D to increase the capacity of the terminal by 3 million passengers annually; and upgrading of the Category 1 runway to Category 2 thus increasing the capacity of the airport. As a second priority, KQ proposes to commence Phase I of Terminal 2 construction which is expected to result in a capacity of approximately 10 million passengers annually when completed and thereafter Phase II construction which is expected to result in a capacity of around 20 million passengers.

24. Additionally KQ stated that it will consider investing in private jets and VIP terminals to satisfy the market needs and enlarge the functionalities of JKIA.

2.1 Oversight role of the National Assembly and jurisdiction of the Departmental Committee of Transport Public Works and Housing, to undertake inquiry

25. Article 95 of the Constitution mandates the National Assembly amongst others to oversight state organs and deliberate issues of concern to the people.

26. The Departmental Committee on Transport, Public Works and Housing is established pursuant Standing Order 216 and mandated amongst others to, "*investigate, inquire into and report on all matters relating to the mandate, management, activities and estimates of the assigned Ministries and departments*".

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27. During a meeting held by the Committee, Members deliberated on reports concerning a proposed take-over of JKIA operations by KQ or a merger of KQ and KAA in response to various media reports and concerns raised by members of the public. In light of the alarm and confusion caused by the reporting, the Committee resolved to inquire into the alleged proposed takeover between KQ and KAA with a view of securing the interests of the public over the running of JKIA, Kenya's principal international airport.

2.2 Speaker's Ruling on the mandate of the Committee vis-à-vis that of the Public Investments Committee

28. In response to a Point of Order raised by the Leader of the Majority Party on alleged conflict of mandate between the Public Investments Committee (PIC) and Departmental Committees, the Speaker of the National Assembly issued a Communication on Tuesday, 21st March, 2019. **Annex II**

29. In the Communication which touched on the place of a progress report tabled by PIC on *The Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ)*, the Speaker noted that the Chairpersons of PIC and the Departmental Committee on Transport, Public Works and Housing had separately written to him on February 20, 2019 and February 21, 2019, respectively, claiming exclusive jurisdiction of their respective Committees to examine the proposed merger between the two institutions.

30. The Speaker noted that his office responded to the Chairperson of the Departmental Committee on Transport, Public Works and Housing and proceeded to broadly outline the thrust of the response including the question of whether the proposed commercial arrangement between KAA and KQ regarding the management of the Jomo Kenyatta International Airport is a matter falling under the mandate of the Public Investments Committee or the relevant Departmental Committee.

31. The Speaker guided Members that Parliament's involvement in the conclusion of the Kenya Airways proposal could not be overlooked, irrespective of the nature of the commercial arrangement. In addition, the Speaker noted that consideration of the matter fell into two categories. On one hand, on account of KAA being a state corporation wholly owned by the Government, PIC was at liberty to procedurally invoke the provisions of Standing Order 206(6)(c) and examine whether the affairs of the public investments made or being made by the KAA, are in accordance to sound financial or

business principles and prudent commercial practices. On the other hand, the Speaker noted that, in view of the provisions of Standing Order 216(5), the Departmental Committee on Transport, Public Works and Housing is mandated to inquire into the policy aspects of the commercial arrangement between KAA and KQ.

32. In allowing the two inquiries to proceed alongside each other, the Speaker confined the activities of PIC to the financial and expenditure aspects of the reservations of the Auditor General on the proposed transaction as well as omissions and/or commissions on the part of the KAA and the Departmental Committee on Transport, Public Works and Housing, to matters of *policy, human resource, compliance with due process of law and generally addressing any issues of concern to the people as contemplated under Article 95 of the Constitution*. In conclusion the Speaker called on both Committees Members to uphold high standards, be mindful of the strategic interests of the nation and the welfare of the present and future generations.

2.3 The Inquiry and terms of reference

33. The Committee, pursuant to the Communication from the Speaker issued on Tuesday, 21st March, 2019 and the resolution made during its meeting held on Tuesday, 26th March, 2019 proceeded to conduct an inquiry on Kenya Airways' (KQ) Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority (KAA) with the following Terms of Reference (ToR's) –

  i. the policy,
  ii. human resource,
  iii. legal compliance and
  iv. issues of concern to the people as contemplated under Article 95 of the Constitution,

2.4 Method of Work

34. In conducting the Inquiry, the Committee undertook a number of activities including requesting for and receiving written submissions, conducting research and analysis on various aspects of the inquiry as defined by the terms of reference, conducting meetings with various stakeholders and receiving oral submissions among others.

2.4.1 Meetings of the Committee

35. The Committee held its first meeting with regard to the Inquiry on Tuesday, 26th March, 2019 where it adopted a work plan, identified relevant stakeholders for engagement with

the Committee and prepared a framework for meetings with the identified stakeholders. The Committee held eight (8) meetings with stakeholders and thereafter proceeded for a working retreat to consider the submissions by the stakeholders and the public and to further draft, consider and approve its Report. The Report of the Committee contains a number of recommendations based on the Terms of Reference adopted by the Committee. The Minutes of the meetings of the Committee are annexed as **Annex III.**

2.4.2 Stakeholder Meetings and Public Participation

36. The Committee, through the Office of the Clerk of the National Assembly formally invited the Cabinet Secretary and Principal Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works; the Chairperson and Chief Executive Officer of Kenya Airways; the Chairperson and Chief Executive Officer of Kenya Airports Authority; the Kenya Civil Aviation Authority (KCAA); the Kenya Aviation Workers Union (KAWU); the Kenya Airline Pilots Association (KALPA); and the Kenya Association of Air Operators (KAAO) to appear and make submissions with regard to the Inquiry. The letters are annexed as **Annex IV.**

37. In addition, the Committee invited interested members of the public to make representations addressing the ToRs of the Inquiry vide an advert in the dailies of Friday, March 29, 2019. The advertisement is annexed as **Annex V.**

    In response to the invitations and advertisement, the stakeholders duly appeared before the Committee and made both oral and written submissions. The Committee received fifty two (52) written submissions from the Public. The written submissions are annexed as **Annex VI**

2.5.3 Report lay out

38. The report is divided into chapters which cover the various aspects of the inquiry's terms of reference.

CHAPTER THREE

3.0 POLICY ISSUES

3.1 Submissions Received

Stakeholders made submissions on policy issues as follows—

Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

39. The Cabinet Secretary (CS) for Transport, Infrastructure, Housing, Urban Development and Public Works submitted that the Cabinet, during its meeting held on 29^{th} May, 2018 considered a Memorandum he jointly submitted with the CS for the National Treasury and Planning aimed at consolidating Kenya's aviation assets, **Annex VII.**

The meeting resolved to grant policy approval for KQ and KAA to negotiate and agree on a framework to restore Nairobi as the civil aviation hub of choice in Africa. The meeting further required a substantive Memorandum to be submitted to Cabinet for consideration and approval upon conclusion of the proposed framework and directed the two CSs and the Attorney General to take appropriate action.

40. The Cabinet Secretary further submitted that the Cabinet Memorandum and the White Paper on "*Strategy for Continuous and Sustainable operations of Kenya Airways PLC*" sought to restore Nairobi to its place as the civil aviation hub of choice in Africa and enhance Kenya's economic competitive edge. The CS noted that Kenya has failed to adapt to the rapidly evolving global aviation landscape leading to the current turbulence experienced by KQ as well as loss of business by Jomo Kenyatta International Airport (JKIA) to other competing hubs. This market situation, in his view, has therefore created a need for a comprehensive restructuring of the entire aviation sector.

41. The CS noted that KQ has over time been pushed out of the market by competitive airlines which are very strongly protected by their own Governments. Within a period of nine (9) years, Ethiopian Airlines (ET) has grown from half the size of KQ to three times the size of KQ.

42. The CS further submitted that Kenya's aviation model does not facilitate the growth of both KQ and local airports, especially JKIA. This evidences an urgent need to find a solution that will establish KQ as one of the biggest African carriers and JKIA as a leading international aviation hub. It was his view that KQ and JKIA should be treated as national assets and the proposed restructuring be viewed in geopolitical rather than financial terms. In

light of this, the two parties opted to engage in a Concession Agreement framework under the PPP Act, 2013 in order to enjoy the advantage of executing the project rapidly and efficiently.

Kenya Airways

43. The KQ CEO, Mr. Sebastian Mikosz, accompanied by KQ Chairperson, Mr. Michael Joseph, appeared before the Committee. The CEO informed the Committee that the next few years will determine which airlines dominate the African skies and which airline will be regional carriers feeding passengers to the main hubs. He further noted that the Kenyan market is among the most interesting in Africa owing to significant number of companies with headquarters in Kenya and a liberalized market with a large number of premium leisure tourists.

44. However, the CEO noted that the conditions surrounding KQ and JKIA are alarming. It was his submission that Kenyan aviation has lost its market share over the last couple of years to its competitors, especially the Ethiopian Airlines (ET) which has gradually grown and currently has 153 destinations and a fleet of 100 aircrafts and 59 on order, compared to KQ which has 53 routes and a fleet of 40 aircrafts with none on order.

45. The CEO further submitted that the Kenyan aviation sector is facing a steady decline, characterized by the turbulence experienced by the national carrier as well as job loss of business at JKIA to other competing hubs. He noted that the key reasons for this situation include different mandate of Kenya aviation and competition, liberalization of aviation market in Africa and Kenya, aviation asset(s) not being integrated and opposing interests between the national airline and the local airport hub. According to KQ, if no positive changes are made to consolidate the Country's aviation assets, whole market growth will be consumed by foreign airlines.

46. The CEO noted the important contribution of airlines to the GDP of a country and that majority of African and Middle Eastern carriers have opted to use their airlines and airports as instruments of economic development and geopolitical presence, rather than as instrument to maximize the benefits and dividends for airline shareholders. In this regard, it was his submission that KQ currently competes with airlines whose mandate is to grow the economy rather than focus on profit. These airlines are strongly protected by their Government and operate in an integrated model with the airport hub making it easy to lower their ticket prices.

47. The CEO enumerated the benefits of growing a Country's aviation market as job creation, stimulation of economic growth, increased competitiveness of the economy,

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improved connectivity, skills development for Kenya and the region, growth of the tourism industry, establishment and sustenance of Nairobi as a Financial Centre and as a hub for, support for exports of horticultural produce and other goods and imports, among others.

48. As an alternative option, KQ proposed the creation of an aviation holding company wholly owned by the Government of Kenya with KQ and an Airports SPV as its fully owned subsidiaries. To this end, KQ would have to be nationalized with an appropriate guarantee being issued to KQ shareholders to allow for its delisting. In its proposal, KQ noted that the Aviation Holding Company would ensure synchronization of goals and growth plans in the best interest of Kenya. Additionally, KQ noted that the proposed Airports SPV would accommodate selected, strategic airports in Kenya and allow it to build strong hub and sub-hubs while Kenya Airports Authority would remain a parastatal outside the Holding Company and support the development of remaining aerodromes through an Airports and Airstrips Development Fund. The proposed structure is as shown in Figure 1 below.

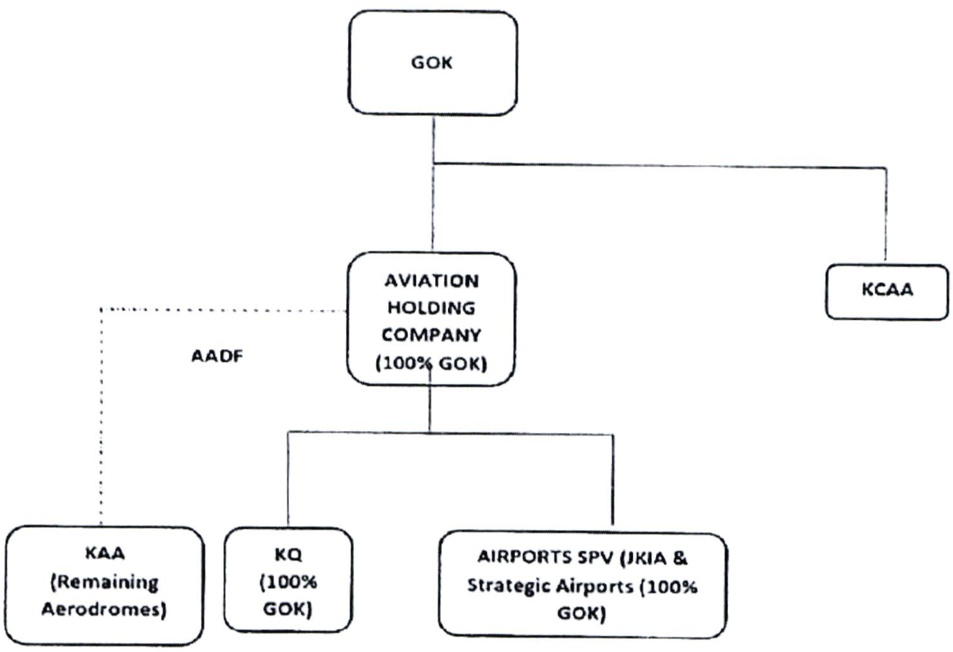

Figure 1.

49. For the proposed structure to work, KQ noted that apart from its nationalization and delisting, the companies in the proposed structure would have to benefit from exemptions from the State Corporations Act, the Public Procurement and Asset Disposal Act, the Public Finance Management Act and the Public Service Commission Act to enable them run as

commercial enterprises with minimal bureaucracy. In addition, it was their view that the entities under the Holding Company would have to benefit from concessional rates of taxation and exemption from a number of taxes to lower their costs and improve their liquidity.

Kenya Airports Authority

50. The Chief Executive Officer of Kenya Airports Authority, Mr. Jonny Andersen, appeared before the Committee accompanied by the KAA Chairperson, Mr. Isaac Awuonda. The CEO noted that the rationale for the PIIP is the implementation of a Government Policy to consolidate key aviation assets and realize significant operational efficiencies and synergies, restore the aviation sector's regional and international competitiveness, protect JKIA's regional hub status, improve diversification and utilization of JKIA resources and support KQ's turnaround programme. He further noted that as a key partner for JKIA, KQ's success is aligned to the success of KAA.

51. According to the CEO, the Kenyan aviation sector should be restructured due to the fact that despite East Africa's national airports registering capacity growth measured by Available Seat Kilometers (ASK) of nearly 41% between 2013 and 2017, JKIA's market share has declined steadily from a high of 47% to 34%. In contrast, the market share of Bole International Airport, Ethiopia has grown from 34% to 44% over the same period.

52. It was the CEO's further submission that KQ accounts for over 40% of KAA's business and revenues. He demonstrated the level of the symbiotic relationship between KAA and KQ by noting that as at 31st March, 2019, KQ owed KAA more than Kshs 5.54 billion in relation to unpaid Air Passenger Service Charge, landing fees, rent and other charges.

53. Noting the strategic contribution of the aviation sector to the Country's economic development, the need to protect JKIA's regional competitive position and KAA's commercial interests, the CEO submitted that KAA supports an engagement with KQ geared towards optimizing the Country's aviation assets.

54. As an alternative option and based on strategic and efficiency considerations, KAA proposed a Holding Company Structure under which the country's main aviation assets will be brought under one roof with the separate entities operating as subsidiaries to leverage on the balance sheet value of the assets and to optimize on their performance. In their proposal, the Kenya Aviation Holding Company Limited (KAHCL) would be fully owned by the Government and initially have four separate subsidiaries, KQ, JKIA Company, Kenya

Airports Company and Kenya Aviation Academy Limited. In their opinion, the structure will allow KAA to focus on improving the financial and operational performance of the facilities under its mandate without being subsidized by JKIA as is currently the case. In addition, it was their view that the Holding Company will also consider establishing other aviation subsidiaries in the future, including a Maintenance Repairs and Operations (MRO) Centre for Africa.

55. With regard to the role of the Kenya Airports Company Limited under the proposed structure, KAA submitted that the company mandated to run the other aerodromes would not be cannibalized and left without resources as the Holding Company will be under obligation to fund all entities in the structure. For purposes of harnessing economies of scale and creating a regional centre of excellence in aviation training, KAA proposed the establishment of the Kenya Aviation Academy Limited as a subsidiary to the KAHC bringing together the KQ Pride Centre, the East African School of Aviation run by KCAA and the KAA Training Academy.

56. The proposed structure, benchmarked with jurisdictions such as South Africa, Egypt, Morocco, Ethiopia and Rwanda, is represented in Figure 2 below.

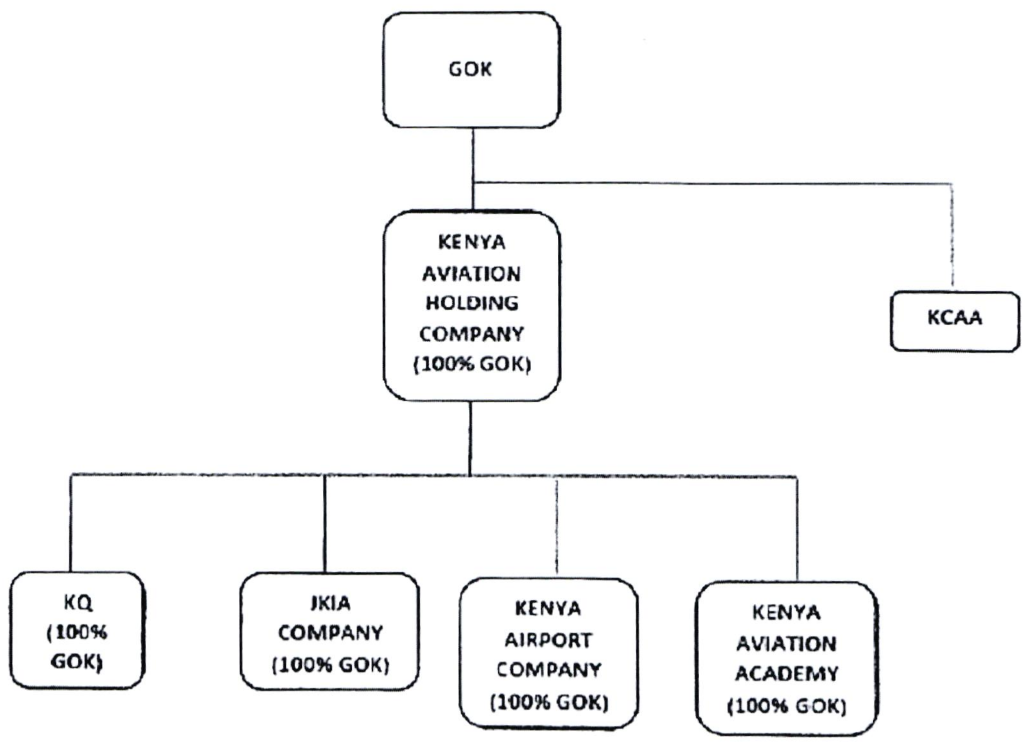

Figure 2.

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Kenya Civil Aviation Authority

57. The Director General of KCAA, Capt. Gilbert Kibe, appeared before the Committee. He submitted that the concession of JKIA to Kenya Airways would result in re-allocation of resources to strengthen airline business operations but compromise safety and security of the operations of the SPV with less resources allocated to the Air Navigation Service Provider (ANSP) and aerodrome operations. The loss of revenue by KAA would negatively impact on the development of the other airports in Kenya and slow the growth of domestic aviation.

58. He further submitted that the PIIP does not clearly define the aviation assets and non-aviation assets it intends to cover. According to KCAA, all assets at the airports are aviation assets including land and as such clarity is required on the assets that would be vested in the SPV. Additionally, he submitted that the PIIP is not clear with regard to the specific KCAA functions the SPV is to take over at JKIA. He noted that other services are also offered at JKIA such as Area Control Centre Service, Meteorological Services and Search and Rescue which all serve the entire airspace and not just JKIA. Further, Air Navigation Services facilities and equipment are interconnected and interdependent hence opening up provision of services by more than one provider would be difficult to implement.

59. It was KCAA's further submission that with regard to restructuring security at JKIA, the PIIP proposal to create an autonomous body reporting to the Cabinet Secretary Immigration in charge of security and border control would result in a conflict of interest thus compromising security at JKIA.

60. With regards to the SPV model, KCAA submitted that the model as proposed in the PIIP is profit oriented while ANS are provided on the basis of cost recovery as per the Chicago Convention leading to an apparent conflict in objectives.

61. The Director General further submitted that, the organization of air navigation services in Kenya is guided by ICAO requirements with the key objective being safety and security rather than commercial activities. In this regard, he noted that the PIIP proposal to exempt KQ from payment of ANS charges would directly impact safety as investment in critical infrastructure would not be realized in the planned time frames in the KCAA Strategic Plan.

62. The Director General also submitted on the regulatory issues that would affect the proposed SPV. He noted that Certificates it issues under ICAO guidelines are not transferrable hence the implementation of the PIIP would instantly result to the loss of the certificate for the provision of ANS at JKIA and that this would have an impact on international aircraft operations before the SPV obtains certificate.

63. The Director General additionally noted that airspace is a national asset touching on the sovereignty of the State to regulate and manage and secure its use and therefore the SPV as a private entity should not be entrusted with such a key fundamental State right. He submitted that there is no precedent globally where an airline has been merged with an ANSP as it would result in conflict of interest.

64. The Director General noted that KCAA is currently funded using ANS charges and the Air APSC yet in the PIIP, the APSC is proposed to fund the SPV. Diverting the APSC would have serious implications on KCAA oversight capacity as the resultant under funding would make it difficult for it to attract and retain qualified and competent technical personnel, hence making it unable to meet and comply with ICAO Standards and Recommended Practices (SARPs). Lack of qualified personnel would create the possibility of a Serious Safety Concern (SSC) on the part of ICAO and result in grounding of all international flights.

65. In terms of options, KCAA recommended the establishment of a Government Holding Company to own several agencies including a national airline such as KQ, KAA, ground handling service providers and catering as is the case in Ethiopia, UAE and Qatar. Each agency under the Holding Company would operate independently but generate synergies with the other agencies. It was KCAA's view that the agency providing ANS should not be included under the Holding Company to avoid a conflict of interest due to the strong links of ANS to State sovereignty and security of the airspace and the serious implication to a State if the services are interrupted or not operated as per the international regulations. The Director General noted that in the UAE, Singapore and Qatar, ANS is part of the Ministry responsible for Transport, while in South Africa, Nigeria and Rwanda ANS are provided by autonomous State agencies. In KCAA's view, their proposed Holding Company model with a separate ANS provider will ensure a balanced growth in the aviation sector. The proposed structure, benchmarked with jurisdictions such as Singapore and the United Arab Emirates is as shown in Figure 3 below.

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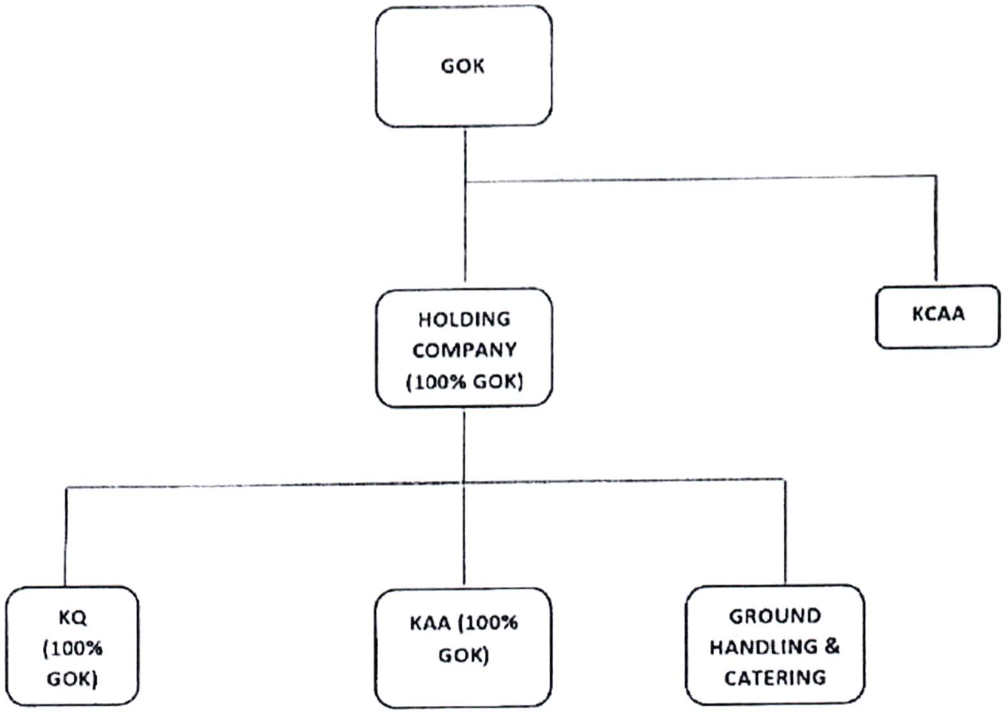

Figure 3.

Kenya Aviation Workers Union

66. The KAWU Secretary General, Mr. Moss Ndiema, appeared before the Committee together with several KAWU officials. He submitted that KAWU was opposed to the PIIP because KQ is a private company operating as the nation's flag carrier while KAA is wholly owned by the government. Further, he noted that the proposed PIIP model had no inbuilt risk sharing element making it resemble a take-over rather that a Public Private Partnership. In addition, he submitted that the PIIP would possibly lead to a viability gap funding affecting the other airports which is contrary to the PPP Act, 2013 and the KAA Act, 1991.

67. With regards to revenue, the Secretary General further submitted that JKIA generates over 90% of KAA's revenue and that by ceding the business unit that generates the largest share of their revenue to KQ, KAA would remain a shell of its former self since it would not only be against public interest but also a poor and misinformed business decision. Further, KAA would not be able to execute its mandate of expanding and growing more aerodromes and airports in Kenya due to lack of sufficient funding.

68. KAWU noted that KPMG, an audit and consulting firm contracted by KAA as its transaction advisor on the PIIP, had observed that it had not received detailed financial information from KQ to ascertain whether it would be able to fund the PIIP. Further, it was observed that KQ's five year plan does not cover the concessionary period it proposes to run JKIA and that such rescheduling would detrimentally impact on KQ's cash flow, consequently impacting on their ability to fund the PIIP; that KQ was in breach of certain financial covenants as at June, 2018 and had received waivers from lenders covering the period up to 31st December, 2018; and that KQ had not provided the detailed SPV organization structure that is essential in determining the fate of majority of KAA employees, the selection criteria used and clarity on the policies and procedures that will apply to the SPV.

69. KAWU submitted that KPMG had noted that despite KQ having restructured their debt in 2017, it had continued to experience difficulties in restructuring its debts and that its non-equity participating lenders had not been apprised of the PIIP which would adversely affect KQ's existing loan arrangements.

70. KAWU further submitted that KPMG had concluded that KQ lacks the credentials and the competence to run an airport like JKIA and that without JKIA revenues, KAA would require funding for the other aerodromes and its liabilities such as environmental remediation and pension deficit funding.

71. It was the view of KAWU that, the take-over of JKIA was not the only option available to turn around KQ. KAWU noted that in February, 2017 KQ contracted Seabury Group to advise it on a viable turn-around strategy. Seabury recommended the conversion of debts owed to local banks and the Government to equity, the negotiation of productivity based Collective Bargaining Agreements (CBAs), engaging the Government to waive taxes on imported aircraft materials used for aircraft maintenance and jet fuel to save Kshs. 7 Billion annually; and the enactment of a law to ensure all Government employees and contractors use KQ for their travel. KQ only implemented the recommendation to convert debt to equity.

72. In addition, KAWU was of the view that the sale-lease-back of the aircraft owned by KQ would allow it to raise Kshs. 50 to 70 Billion. It recommended the formation of a Kenya Aviation Holding Group (KAHG) to replicate the operating models of other airlines like the Ethiopian Airline Group, Rwandair, Royal Air Morac and Egypt Air. To this end KQ would have to be delisted and fully owned by the Government. The proposed KAHG

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would then incorporate KQ, KAA, KCAA, catering, Ground handling, Cargo and other air operators that would facilitate robust concessions. The proposed structure is as shown in Figure 4 below.

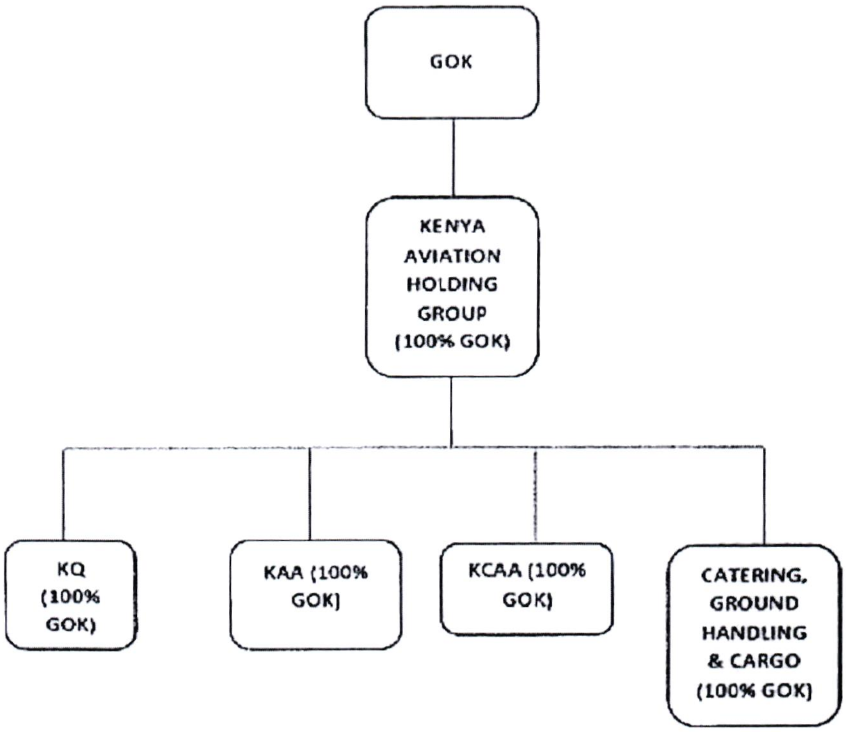

Figure 4.

Kenya Airline Pilots Association

73. The Kenya Airlines Pilots Association (KALPA) General Secretary and CEO, Capt. Muriithi Nyagah, appeared before the Committee accompanied by other KALPA officials. He noted that KALPA had not had access to the PIIP and was not able to comment in detail. He noted that KQ was established as a fully owned Government entity with the objective of being Kenya's main flag carrier, thus giving visibility to the country. This was a significant step in enhancing and promoting tourism, a key sector in the economy. When it was privatized the Government's intention was to improve its efficiency and get value for money. In KALPA's view, KQ remains an important pillar in the development of tourism and aviation in Kenya and in the East African region. Further, KQ offers various quality jobs that have significant impact in other areas of the economy which need to be protected.

74. The General Secretary submitted that the aviation industry contributes 5% to the GDP, and supports an estimated 620,000 jobs. He noted that the industry can contribute more if both KQ and Kenya Airports Authority (KAA) experience growth and that the future of KAA growth is not assured in the event KQ was to collapse. In KALPA's view, KQ's growth is similarly not assured without significant financial injection from investors and shareholders. As the Government is now the largest shareholder and guarantor in KQ, the Kenyan taxpayer would be at great risk in the event KQ were to collapse.

75. The General Secretary submitted that KALPA's outlook is that the proposal suggests an avenue of improving KQ's cash position without additional financial injection. If implemented, the proposal would develop the aviation industry and grow JKIA as a regional hub while improving KQ's cash flow. This will spur growth and, in effect, increase traffic into JKIA and improve revenue for KAA. They noted the need for thorough due diligence on the proposal and the conclusion of a well-crafted agreement.

76. KALPA further submitted that, part of what could be ailing KQ is its skewed agreement with KLM which allows one KLM-appointed director to veto the decision of the rest of the members of the KQ Board and the formula of sharing monies for routes flown by the KQ which largely favours KLM.

77. In the view of KALPA, nationalization of KQ would be in order as long as such a process adequately caters for the obligations agreed to in their CBA with KQ.

Kenya Association of Air Operators

78. The Kenya Association of Air Operators (KAAO) CEO, Col. (Rtd.) Eutychus Karumba Waithaka appeared before the Committee. He submitted that air operators under KAAO wish Kenya Airways all the best in their regional quest to re-establish its dominance noting that such an endeavor must be done without jeopardizing the rest of the industry which is vibrant and plays a pivotal role in tourism, cargo as well as international humanitarian aviation operations, and also employs many Kenyans.

79. The CEO noted that apart from KQ, Kenya currently has 13 other national carriers who meet the requirements and have been granted such status in line with Kenyan aviation policy.

80. KAAO further noted that, they are yet to see the PIIP and that despite having been called for a public consultative forum over the document, the forum was indefinitely postponed. KAAO urged the Committee to interrogate the following areas of the transaction—

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(a) The shareholding and structure of the proposed venture, considering that KAA is a Government institution;

(b) The operational and financial management of the other 300 aerodromes under KAA, considering that most do not have the traffic sufficient to fund their operations and have been supported by revenues from JKIA;

(c) Assurances that the other aerodromes will retain the requisite standards as prescribed by the International Civil Aviation Organization (ICAO) without an additional cost to the already over-burdened operators;

(d) The current revenue and expenditure per airport for KAA and whether the proposal will lead to a shortfall in KAA's operating budget post takeover that will affect the management, maintenance and development of the other national airports;

(e) The exact scope of the PIIP in terms of the areas to be ceded to KQ by KAA;

(f) The applicable capital expenditure plan and funding during the concession period including development and/or redevelopment of JKIA to enable it compete with Bole International Airport and the new Rwanda airports;

(g) The expected relationship between the proposed SPV and other existing Kenyan operators at JKIA during the tenure of the concession;

(h) How the concession would run in line with current Government policies governing the aviation industry as well as the existing competition laws;

(i) Whether other options of reviving or strengthening KQ have been considered, and how critical the concession is to KQ's business plan going forward;

(j) Whether there are any examples of PIIPs in other jurisdictions and how successful have they been;

(k) The regional and global competitive context of the proposal in the light of the treaties that Kenya has signed in the past, including within the African Union; and

(l) Whether KQ, an international flights operator, running JKIA would pose a conflict of interest in provision of airport services to its competitors in International flight operations in light of the ICAO principle of encouraging fair and healthy competition in international commercial air operations.

Views from Members of the public

The Committee received various memoranda from members of the public with regard to the inquiry.

81. The Member for Embakasi East Constituency, Hon. Babu Owino opposed the PIIP noting that there would be massive job losses, KQ would be unable to fund the PIIP and that KQ is a private company seeking to benefit from a public asset. He further submitted that there was need for re-negotiation or nullification of the joint venture agreement between KQ and KLM/Air France.

82. The County Government of Uasin- Gishu submitted a memoranda dated 16th April, 2019 proposing a number of recommendations which the Committee took note of.

83. Dorcas Makena opposed the PIIP and proposed that KQ be nationalized.

84. Peter Mbatha opposed the PIIP noting that it would lead to the death of other airports and airstrips. He further noted that the PIIP would lead to the risk of using other airlines operating out of JKIA as it would give KQ an unfair advantage over other airlines.

85. Wilfred Momanyi opposed the PIIP questioning how an entity which does not have the capacity to run an airport could take over JKIA operations. He proposed the nationalization of the airline borrowing from the example of Ethiopian airlines and Emirates.

86. Denis Oseko opposed the PIIP noting that KAA has been running JKIA successfully and maintained its profitability. He proposed the nationalization of KQ instead.

87. Evans Mwangi proposed the nationalization of KQ before any merger with KAA

88. Debrah Kemunto opposed the PIIP and proposed that any merger between KQ and KAA should only be concluded in the event KQ is nationalized.

89. Harrison Mlamba on behalf of the Chartered Institute of Logistics and Transport (CILT) proposed that the Privatization Commission establishes an a

90. Advisory Committee to examine the pros and cons of the issue of JKIA and consider retaining public ownership but introducing management expertise. He additionally proposed that the part privatization of KAA to avoid its financial bondage and attract much needed funds. He opposed the subsidization of airports and air services and proposed that this be anchored in law.

91. Tony Kajiita submitted that the PIIP will not work as the current ownership of KQ constitutes a conflict of interest which will affect KQ employees and the aviation industry. He proposed the nationalization of KQ to enable a scrutiny and termination of the arrangement between KLM and KQ.

92. Joyce Kebati questioned the logic of the PIIP and whether KQ, a loss making private company should be left to manage KAA a profitable public entity.

93. Jared Mosota questioned whether KQ, a loss making company should be left to manage KAA, a profitable entity. He proposed that any merger between KQ and KAA should only be concluded in the event KQ is nationalized.

94. Jane Gichia opposed the PIIP questioning whether a loss making company should be allowed to take over a profit making company.

95. Festus Kalu opposed the PIIP questioning how a loss-making entity could take over operations of a profit-making one. He proposed the nationalization of KQ instead.

96. JK Waweru proposed the nationalization of KQ noting that as a loss-making private entity, KQ cannot be trusted with a profitable public entity.

97. Dennis Mutua opposed the PIIP questioning how a loss-making private entity could take over operations of a profit-making one.

98. Michael Kevin opposed the PIIP questioning how a loss-making private entity could take over operations of a profit-making one. He called for the consideration of the employees in the transaction.

99. John Matu opposed the PIIP. He proposed the nationalization of KQ.

100. Samuel Odunga opposed the PIIP. He proposed the nationalization of KQ.

101. Edward Gitonga submitted that the PIIP does not present any value for money to KAA and that the public, stakeholders and KQ shareholders have not commented on the document which is currently inaccessible.

102. Walter Mocha questioned the rationale of KQ as a private company seeking to benefit from a public asset and the reason why despite recommendations during the KQ restructuring, the renegotiation or nullification of the Joint Venture Agreement between KQ and KLM had not been implemented. He noted that the examples of airlines given by KQ are all owned by their respective governments

103. Raymond Muthomi opposed the PIIP noting that a loss making private entity ought not to take over a profit making Government entity and claim to develop it.

104. Edwin Mango opposed the PIIP noting that KQ has continued to make losses even after being bailed out by the Government and owing levies to KAA for the past four years.

105. Desmond Kiprotich opposed the PIIP noting that KQ is not capable of managing JKIA as they are unable to manage themselves and that such a move would kill the aviation industry. He proposed that KAA manage KQ.

106. Ebu Loter opposed the PIIP noting that KQ is a private entity and its revival should not be tied to the take-over of JKIA

107. Paul Wamai submitted that KQ's proposed involvement in KAA matters will affect other operators with investments at the airport who have legal agreements with KAA. According to him, such operators have not been included in the PIIP discussions and any new management of JKIA should absorb all liabilities before the transfer of JKIA assets.

108. Boniface Mugambi opposed the PIIP noting that KQ is poorly managed and cannot account for its resources given the fact that KQ tickets are the most expensive, their flights always full and in some instances overbooked yet they continue to make losses. He further noted that KQ has many managers earning huge salaries and that as a loss-making private company should not take over a profit making public entity.

109. Ronald Odhiambo opposed the PIIP noting that KAA has not demonstrated that it is unable to run JKIA and that it does not make sense to hand over JKIA, which is a strategic national asset to a privately owned, loss-making poorly run and financially crippled entity.

110. John Waweru opposed the PIIP on the basis of KQ being a poorly managed private company.

111. Alloys Siaya, ICT Manager KAA opposed the PIIP noting that KQ management has failed in terms of business strategy and innovation to tum around the KQ's fortunes, and will not be able to manage JKIA, a totally different kind of business. It was his further submission that the management of KQ have not been held to account for its huge losses and should not be allowed to oversee JKIA operations. In addition, it was his submission that the rescue of KQ in the national interest is a wrong premise for the consideration of a PPP. It was his view that the operations of JKIA as a border control point incorporate complex interactions between several state institutions which a private entity cannot execute and that airports are highly regulated and must comply with international civil aviation statutes and regulations and, by necessity, should be

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managed by the Government to ensure compliance. He proposed that if KQ is technically insolvent, the Government should consider its natural death and that another airline take over as the national carrier.

112. Capt. Gad Kamau opposed the PIIP noting that the agreement will deny other airports revenue and the fact that KQ has failed in its core business does not support its proposal to run an airport without any experience in running airports. He noted that KQ and JKIA are not joined as JKIA can easily survive without KQ given new players will step in and fill the void. In his view, the implementation of the PIIP will kill the aviation industry as other KAA airports will be open to safety and security challenges due to lack of revenue while development of new airports will cease

113. Julius Kinyua opposed the PIIP noting that KQ is owned by unknown individuals, including KLM which is a foreign airline and the implementation of the PIIP will result in Government money being directed into private hands. He proposed the nationalization of KQ before any such discussions continue.

114. Siddy Jepkirui proposed a 100% take-over of the aviation industry and that the industry should be viewed as a facilitator of economic growth.

115. Omache Violet, Everlyne Khayega, Juliet Wawira, Kalinga Charles, Hellen Nyamai, Jacinta Njeri, Jeremiah Suter and Susan Njenga opposed the PIIP.

116. Frank Lekaldale opposed the PIIP, noting that no UK or US airline manages an airport.

117. Maria Mbugua opposed the PIIP and proposed that KAA run KQ instead.

118. Richard Lumett opposed the PIIP, submitting that a loss-making private entity cannot take over a profitable public entity.

119. John Waweru opposed the PIIP noting that it could destabilize KAA.

120. Pius Victor opposed the PIIP noting that a Private individual should not be allowed to take over public properties through mismanagement of their business.

121. Stephen Mwangi opposed the PIIP submitting that JKIA is a public facility which should not be handed over to private hands. He proposed nationalization of KQ.

122. Lydia Munene opposed the PIIP and proposed that KQ be nationalized instead.

123. Antone Haukwa opposed the PIIP noting that it is not viable much like KQ's project Mawingu which was not well thought out. He proposed that KQ be nationalized like Qatar Airways and Emirates and its management issues sorted out first.

124. Kenedy Lumet Chumba opposed the PIIP submitting that it amounts to a loss-making private entity taking over a profit making public entity.

125. Lucy Kagambo opposed the PIIP. She proposed that KQ be nationalized.

3.2 Committee Observations

126. From the submissions of the stakeholders, the Committee observed that—

(1) KQ is losing its competitiveness and market share to other competing airlines in the region like Ethiopian Airlines and Rwandair. Currently in Africa, KQ operates 45 routes, ET 77 routes, Turkish Airlines 44 routes, Qatar Airways 23 routes and Emirates 21 routes. Secondly with regard to airport size, Bole International Airport, Ethiopia has a capacity of 22 million passengers annually, JKIA a maximum capacity of 7.4 million passengers, Kigali Airport 1.5 million passengers, Doha Airport 35 Million passengers, Istanbul Ataturk Airport 37 Million passengers and Dubai Airport 90 Million passengers. Third, with regard to the number of aircraft, Ethiopian Airlines has approximately 100 aircraft and 59 on order, Rwanda Air has 12 aircraft with four on order, Qatar Airways has 222 aircraft with 207 on order, Turkish Airlines has 335 aircraft with 205 on order, Emirates has 254 aircraft with 234 on order while KQ has 40 aircraft and currently no aircraft on order. Fourth, with regard to market share of the hubs in the region, between 2013 and 2017 JKIA's market share declined from 50% to 34% while the share of Bole International Airport and Kigali International Airport increased from 30% to 44% and 1% to 4 percent, respectively.

(2) KQ is operating using a different model, as it is a private company as compared to its competitors like Ethiopian Air and Qatar Air which are wholly Government owed.

(3) Other competing airlines like Ethiopian Airlines, Qatar Airways, Emirates, EgyptAir, Singapore Airlines and RwandAir enjoy Government subsidies as compared to KQ which does not.

(4) There is need to protect JKIA's regional competitive position in order to re-establish its regional dominance and KAA's commercial interests. In the event the current decline of Kenya's competitiveness in the aviation sector continues, Nairobi could be replaced by Addis Ababa as an aviation hub leading to loss of revenue and employment and the potential collapse of KQ which shall ultimately expose the Kenyan taxpayers to the Government guarantees of Kshs. 75 Billion issued to KQ's creditors;

(5) From the submissions to the Committee all successful airlines operate on a model which consolidates and shares aviation assets.

(6) The PIIP is not an appropriate vehicle for the implementation of the Government's Policy of consolidating key aviation assets and restoring the aviation sector's regional and international competitiveness as KQ and the proposed SPV are private companies which are proposed to benefit from public funds, facilities and concessions;

(7) The concession of JKIA to Kenya Airways as proposed in the PIIP will result in re-allocation of resources to strengthen airline business operations but could compromise safety and security of the operations of the SPV with less resources allocated to the Air Navigation Service Provider (ANSP) and aerodrome operations; and negatively impact the development of the other airports/airstrips in Kenya and slow the growth of domestic aviation as a result of loss of revenue by KAA since JKIA generates over 90% of KAA's revenue.

(8) The implementation of the PIIP will result to the loss of the certificate for the provision of ANS at JKIA and this will have a negative impact on international aircraft operations since Certificates under ICAO guidelines are not transferrable.

(9) Kenya Airways and KAA have a symbiotic relationship and KQ accounts for over 40% of KAA's business and revenues and as at 31st March, 2019, KQ owed KAA more than Kshs 5.54 billion in relation to unpaid Air Passenger Service Charge, landing fees, rent and other charges.

(10) The proposed role of KQ in the PIIP of operating JKIA creates a conflict of interest with regard to its dealings with other airline operators at the airport and may lead to the oppression of such operators.

(11) Most of the successful airlines in the aviation sector like Ethiopian Airlines, Emirates and Qatar Airways offer non-aeronautical services such as hospitality and catering.

(12) In terms of exemptions, section 5A of the State Corporations Act, Cap. 446 allows the President to exempt a state corporation from any of the provisions of the State Corporations Act by notice in the Gazette. Further, Section 114A of the Public

Procurement and Asset Disposal Act, 2015 allows a procuring entity to use a procurement procedure specially permitted by the National Treasury.

(13) The shares of KLM and any other foreign investors in KQ are protected by any existing Shareholder's Agreement, the provisions of the Foreign Investments Protection Act and Article 75 of the Constitution which precludes the Government from compulsorily acquiring property except for cause. To comply with Article 75 of the Constitution, the Government must demonstrate that compulsory acquisition of an asset is intended to promote the public benefit and promptly pay fair compensation.

(14) The nationalisation of KQ under the stated policy of consolidating Kenya's aviation assets qualifies as an exercise intended to promote the public benefit.

(15) Nationalisation of KQ shall entail its delisting and negotiation and buy-out of other shareholders after the valuation of KQ shares. The buy-out may require appropriate and adequate budgetary arrangements to be made by the National Treasury, including consideration of issuing a long-term Bond or Guarantee to the other shareholders to expedite the process.

(16) Nationalisation of KQ shall affect its currently existing contractual obligations in respect of aircraft leasing and employment.

CHAPTER FOUR

4.0 IMPACT OF THE PIIP ON HUMAN RESOURCE

4.1 Submissions Received

Stakeholders made submissions on human resource issues as follows—

Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

127. The Cabinet Secretary submitted that in the event the PIIP was approved, it would not lead to the loss of employment. He noted that he had given the affected trade unions a similar guarantee in talks held when JKIA staff recently took industrial action protesting against the PIIP.

Kenya Airways

128. The CEO submitted that KQ is a global company operating in a complex airline market where word wide standards must be fulfilled. He noted that KQ employs around 3,700 employees who need to be protected at whatever cost. He informed the Committee that implementation of the PIIP will result in increased employment in aviation-related and other industries through creation of between 25,000 to 30,000 jobs for Kenyans. According to him, more employees will be required once KQ traffic increases as a result of the proposal.

129. The CEO further submitted that in the PIIP, KQ has committed to second all the current JKIA staff to the SPV on terms equal to those offered at KAA for a period of 12 months. After the secondment period, KQ has undertaken to transfer employees to the SPV and that no jobs will be lost in the process.

130. The CEO noted that of KQ's 3,700 employees, 14 are expatriates whereas of the top 50 managers, 5 are expatriates thus representing 10% of the leadership team. He noted that 2 expatriates are managers, the Chief Operating Officer and the Head of Global Sales, seconded from KLM.

131. In terms of remuneration of staff, the CEO noted that it constitutes 19% of KQ's total costs. He informed the Committee that he earns Kshs. 4 Million in salary, allowances and benefits, before tax as reported in KQ's financial statements. He submitted that on average, Airline Captains and First Officers earn Kshs. 1.6 Million and Kshs 900,000/- per month, respectively. It was his submission that on average, staff in flight operations

earn Kshs. 225,000/- while technical, ground services, cargo and commercial staff earn Kshs. 150,000/- per month.

132. With regard to pilots, the CEO noted that their remuneration is substantial in comparison to their counterparts from wealthy, developed economies such as the United Arab Emirates, Kuwait, Lebanon, Mauritius, Qatar, and South Africa. Locally, the CEO noted that, KQ pilot remuneration was equivalent to 29 times the private sector average, 12 times the average of the earnings of workers in the electricity and gas sector and 11 times the average remuneration of workers in the financial and insurance services sector.

133. The CEO noted that the remuneration is not, however, commensurate to their productivity submitting that KQ pilots flew an average of 533 hours per year, much lower than the 859 hours flown by ET pilots who, he submitted, are paid half the remuneration.

Kenya Airports Authority

134. The CEO submitted that the implementation of the PIIP will not lead to any job redundancies or adverse changes to the existing terms and conditions for KAA staff as clarified by the CS Transport, Infrastructure, Housing & Urban Development in a press release dated 5th February, 2019.

135. With regard to the current KAA staffing structure, the CEO submitted that as at 31st March 2019, KAA employed a total of 1,945 staff, with 753 being in management. Out of those numbers, JKIA contributed 993 employees comprising 318 management and 675 non-management staff. In terms of remuneration, the CEO submitted that the management staff of KAA earn a total of Kshs. 2.316 Billion while non-management staff earn a total of Kshs. 1.92 Billion, annually.

136. The CEO noted that the Kenya Aviation Workers Union (KAWU) issued a strike notice dated 29th January, 2019 which prompted KAA to file ELRC Case Number 68 of 2019 ***Kenya Airports Authority vs Kenya Aviation Workers Union*** to restrain KAWU from calling for the strike. The Court issued temporary orders on 5th February, 2019 suspending the strike notice and referring the matter to conciliation. He noted that the matter is currently under conciliation. On the advice of the Director of Public Prosecutions, (DPP) KAA withdrew a contempt of court application against KAWU officials.

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137. The CEO further noted that KAWU has separately filed Constitutional Petition Number 57 of 2019 against the PIIP. The matter is pending in Court and is scheduled for directions on 4th June, 2019.

Kenya Civil Aviation Authority

138. KCAA submitted that the concession does not adequately address industrial relations issues which if not properly acted upon would lead to a complete halt in airport operations.

139. It was KCAA's further submission that with regard to the secondment of staff to the SPV, the 12 month period does not address the issue of job security and staff may decline to take up the offer with the SPV. Further, it was their view that ANS technical staff like Air Traffic Controllers, Communication, Navigation and Surveillance engineers and technicians, and Aeronautical Information Services are highly specialized and that in the event such staff do not take up the SPV offer, it would result to loss of critical services at JKIA. KCAA was also concerned with the provision of ANS in the same airspace and different remuneration by two different entities would result to conflict and an increase in safety incidents

Kenya Aviation Workers Union

140. The Secretary General submitted that KQ's declining business performance over the past seven years spells doom to the Country and its employees whose jobs have always been at risk. He noted that both KQ and KAA neither informed nor engaged their employees on the PIIP which is a sensitive issue with a great potential to affect their jobs. He submitted that KAWU's efforts to seek information on the PIIP had been futile and that if the take-over proceeds, there would definitely be redundancies mainly affecting KAA staff currently working at JKIA and the head office.

141. The Secretary General further submitted that KAWU was apprehensive and convinced that like many other previous attempts of resuscitating KQ since 2012, the PIIP could also fail and could lead to the retrenchment of many employees as was the case in 2012 where 600 employees were retrenched. He also noted that in 2016, another restructuring exercise had been carried out, being spearheaded by McKinsey Consultants in which over 100 employees had been retrenched.

142. As regards KQ management, KAWU submitted that KQ had continued to sink in losses even after engaging a foreign Chief Executive Officer and other foreign airline experts and consultants. The Secretary General submitted that KAWU and most KQ employees had lost confidence in the stewardship of the current KQ CEO, Mr. Sebastian Mikosz, under whose tenure KQ had sunk into deeper losses. He noted that some of the foreign airline consultants contracted by KQ had questionable credentials and that there was high number of expatriates employed by KQ despite there being sufficient local talent to perform the same roles. It was further submitted that the current KQ CEO had recruited and appointed managers without any regard to the established recruitment policy which advocates for transparency and openness.

Kenya Airline Pilots Association

143. The Kenya Pilots association submitted that KQ is currently haunted by various pitfalls which it needs to address. The General Secretary noted that KQ has a poorly motivated work force, especially for the customer care staff who are outsourced and have very poor working condition, in terms of their contract which are short term contracts and low in pay. Further, he informed the Committee that KQ has contracted several consultants like McKinsey who made a total of Kshs. 2.3 Billion for 10 months work and still recommended the retrenchment of KQ staff, sale of prime KQ assets such as the KQ slot in London, Heathrow and the sale of KQ fully owned aircraft equipment.

144. With regard to the remuneration paid to pilots, KALPA submitted that the information provided to the Committee by KQ was misleading. They submitted that their remuneration is the subject of a comprehensive CBA entered into between them and KQ and that the CBA does not cover the number of hours pilots are required to work. They submitted that the current pilots working for KQ do not meet the required ratio per aircraft as agreed in the CBA and that KQ actually lacks sufficient pilots to crew their aircrafts. As a result of this shortage of pilots and suitable aircraft, pilots are currently working their maximum allowed hours and KQ owes each pilot an average of 100 leave days. They noted that some flights have had to be cancelled due to inadequate crew. They submitted that on average they fly approximately 780 hours per year.

145. KALPA submitted that under the CBA, KQ agreed to have 12 pilots to crew each narrow body aircraft and 16 pilots or each wide-body aircraft and as per those numbers, the airline currently has an operating shortage of 200 pilots. They further noted that in

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terms of computing the average hours flown by a pilot should be viewed in the context of the statutory requirements and that they similarly are entitled to leave days and training every 6 months.

146. KALPA noted that in the past three years, KQ has lost more than 130 pilots to the Middle East owing to their uncompetitive remuneration. They submitted that the current CBA shows that on the higher side, a Captain and a First Officer earn an average of Kshs. 1,584,719/- and Kshs. 1,506,789/- respectively in salary and monetary allowances.

Views from Members of the public

The Committee received various memoranda from members of the public with regard to the inquiry -

147. Edward Gitonga submitted that the PIIP could lead to job losses.

148. Walter Mocha noted that there shall be massive job losses to both KAA employees and other operators who have invested heavily at JKIA if the PIIP is implemented as KQ proposes to consolidate all the businesses at JKIA through its SPV. He further noted that with the current deficit at which KQ is being run, it will be unable to fund the PIIP. He noted that KQ is afflicted with managerial problems that ought to be solved first, including the importation of Polish expatriates who are paid exorbitantly as compared to local KQ employees.

149. Roy Kinyanjui opposed the PIIP noting that it does not have the interest and welfare of KAA employees at heart. It was his view that as a performing parastatal, KAA should be allowed to continue managing JKIA.

150. KAA staff at JKIA submitted that the Committee should pay critical attention on staff welfare in its consideration of the PIIP and that if any retrenchment is to be considered, the exit package for KAA staff be significantly higher as the retrenchment shall not be for purposes of cost cutting.

151. Capt. Gad Kamau noted that the PIIP will lead to layoffs as most positions will be scrapped.

152. Plonyang Atudo opposed the PIIP noting that its implementation will lead to job losses.

153. Peter Mbalanya opposed the PIIP submitting that it would lead to retrenchment of employees.

4.2 Committee Observations

154. The Committee observed that—

(1) Kenya Airways and KAA neither informed nor engaged their employees on the PIIP which is a sensitive issue with a great potential to affect their jobs.

(2) In the PIIP, though KQ has committed to second all the current JKIA staff to the SPV on terms equal to those offered at KAA for a period of 12 months after which they will be transferred to the SPV, it does not address the issue of job security and could result in the loss of ANS technical staff since staff could decline taking up the SPV offer, a situation that could result in loss of critical services at JKIA;

(3) There is an over-reliance on expatriates for the core management operations of KQ. Out of KQ's 3,700 employees, 14 are expatriates whereas of the top 50 managers, 5 are expatriates thus representing 10% of the leadership team.

(4) The key union representing aviation workers has lost confidence in the stewardship of the current KQ management;

(5) Operations at JKIA constitute majority of KAA's work. As at 31st March 2019, KAA employed a total of 1,945 staff, with 753 being in management. Out of those numbers, JKIA contributed 993 employees comprising 318 management and 675 non-management staff;

(6) The current remuneration of the KQ management, senior staff and pilots is relatively high and does not accord with the financial performance of the company.

CHAPTER FIVE

5.0 LEGAL COMPLIANCE ISSUES

5.1 Applicable Legal Provisions

155. The Public Private Partnerships Act, No. 15 of 2013 was enacted by Parliament to provide for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government through concession or other contractual arrangements, the establishment of the institutions to regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects and for related purposes. The Act establishes three key organs to assist in the evaluation of PPPs, namely the PPP Committee, the PPP Unit and PPP nodes.

156. The PPP Committee comprises the Principal Secretaries responsible for matters relating to finance, national planning, land, county government; transport, infrastructure and energy, the Attorney General and the Director of the PPP Unit who are tasked with—

(a) ensuring that each project agreement is consistent with the provisions of the Act;

(b) formulating policy guidelines on PPPs;

(c) ensuring that all projects are consistent with the national priorities specified in the relevant policy on PPPs;

(d) approving project proposals submitted to the Committee by a contracting authority;

(e) approving project lists submitted to the Committee by contracting authorities

(f) authorizing allocations from the Project Facilitation Fund established under section 68 of the Act;

(g) formulating or approving standards, guidelines and procedures for awarding contracts and standardized bid documents;

(h) examining and approving a feasibility study conducted by a contracting authority under the Act;

(i) reviewing the legal, institutional and regulatory framework of public PPPs;

(j) overseeing the monitoring and evaluation by contracting authorities of a PPP from the commencement to the post completion stage;

(k) ensuring approval of, and fiscal accountability in the management of, financial and any other form of support granted by the Government in the implementation of projects under the Act; and

(l) ensuring the efficient implementation of any project agreement entered into by a contracting authority. [1]

157. Section 11 of the PPP Act, 2013 established the PPP Unit within the State Department responsible for matters relating to finance which, as provided under section 14 of the Act is to serve as the secretariat and technical arm of the PPP Committee and to support contracting authorities to identify, appraise, procure, negotiate, contract and monitor the operation of PPP projects.

158. The Act requires any public contracting authority which intends to enter into a PPP arrangement to establish a PPP node headed by the authority's accounting officer assisted by a number of financial, technical, procurement and legal personnel as the authority, in consultation with the PPP Unit, consider necessary.[2] A PPP node is responsible for project selection and development, procurement and contracting as well as the day to day management of a project. It reports administratively to the Contracting Authority and functionally to the PPP Unit.[3]

159. Section 19, as read together with the Second Schedule to the Act, outlines the 13 forms of PPP arrangements that a contracting authority may enter into with a private party, each subject to unique conditions. These are—

(a) Management contracts;

(b) Output performance-based contracts

(c) Leases not exceeding thirty years;

(d) Concessions at a fee;

(e) Build-Own-Operate-Transfer schemes;

(f) Build-Own Operate schemes;

(g) Build-Operate-and-Transfer schemes for a period not exceeding thirty years;

(h) Build-Lease-and-Transfer schemes;

(i) Build-Transfer-and-Operate schemes;

(j) Develop-Operate-and-Transfer Schemes;

[1] Section 7, PPP Act, 2013.
[2] Section 16 PPP Act, 2013.
[3] Section 17 PPP Act, 2013.

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(k) Rehabilitate-Operate-and-Transfer schemes;

(l) Rehabilitate-Own-and-Operate schemes; and

(m) Land Swaps.

160. The Act requires each contracting authority to prepare a list of projects that it intends to undertake on a priority basis under the Act and shall submit the list to the PPP Unit for assessment.[4] The projects submitted must be part of the development program of the authority. Upon submission, the list is assessed and transmitted, together with recommendations, to the PPP Committee for approval which similarly reviews it and transmits it to the Cabinet in a national priority list.[5]

161. The Act allows for a contracting authority to solicit for proposals, subject to a transparent and competitive bidding process, with successful bids being subjected to a feasibility study before consideration by the PPP Unit, the PPP Committee and Cabinet. [6] In addition, the Act allows a private party to propose a Privately Initiated proposal for the construction or development of a project or the performance of a service by negotiation outside the normal requirement for the authority to and undertake a competitive procurement process. A contracting authority may only consider a PIIP where—

(a) there is an urgent need for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in the competitive procurement process would be impractical on condition that the circumstances giving rise to the risk of disruption were not foreseeable by the contracting authority or the result of an unreasonable failure to act by the contracting authority;

(b) the costs relating to the intellectual property in relation to the proposed design of a project are substantial;

(c) there exists only one person or firm capable of undertaking the project, maintaining the facility or providing the service or such person or firm has exclusive rights over the use of the intellectual property, trade secrets or other exclusive rights necessary for the construction, operation or maintenance of the facility or provision of the service; or

[4] Section 23 PPP Act, 2013.
[5] Section 24 PPP Act, 2013.
[6] Section 37-60 PPP Act, 2013.

(d) there exists any other circumstance as the Cabinet Secretary may prescribe.[7]

162. Before commencing any negotiations with the proponent of a PIIP, a constricting authority is required to prescribe a criteria against which the outcome of negotiations shall be evaluated, submit the proposal to the PPP Unit for consideration and recommendation, apply for and obtain approval from the PPP Committee to negotiate the contract.

163. A contracting authority is expressly precluded from considering a PIIP unless it is satisfied that the project shall provide value for money and be affordable and that the appropriate risks of the project are transferred to the private party.[8]

164. Regulation 51 of the Public Private Partnerships Regulations, 2014 allows a contracting authority to consider a privately initiated investment proposal which is not specified in section 61 (1) (a), (b) or (c) of the Act on condition that the project which the proposal covers is included in the contracting authority's development programme. In considering such a proposal, the contracting authority is required, through the Unit, to apply to the Cabinet Secretary for approval.

165. With regard to negotiations, Regulation 52 of Public Private Partnerships Regulations, 2014 requires a contracting authority to develop criteria for the negotiation of a PIIP and submit it to the Unit for review and recommendation where it is of the opinion that the proposal meets the requirements of section 61 (3) of the Act with regard to the affordability and value for money to be derived from the project; and the transfer of any project risks to the proponent. The contracting authority is allowed to engage a transaction advisor to assist it in developing negotiation criteria and appraising the proposal. The Regulations further require a contracting authority to take all reasonable steps to prevent a conflict of interest by its officers and prevent any impropriety during negotiations.[9]

166. A PIIP proponent is required to submit both a financial and technical bid as part of the proposal. In the event of negotiations, the contracting authority may request for more information in relation to the proposal or a modification of the privately initiated investment proposal. At the close of negotiations, a contracting authority is required to prepare a project risk assessment report specifying the terms agreed with the proponent and submit the report to the PPP Unit for review and transmission to the Debt Management Office to confirm the accuracy of the contingent liabilities and the risk matrix contained in the proposal. Any award

[7] Section 61 PPP Act, 2013.

[8] Section 61(3) PPP Act, 2013.

[9] Regulation 54, Public Private Partnerships Regulations, 2014.

granted to the proponent of a PIIP after the conclusion of negotiations and verification of the project risk assessment report of must be approved by the PPP Committee.[10]

5.2 Submissions Received

Stakeholders made submissions on legal and compliance issues as follows—

Ministry of Transport, Infrastructure, Urban Development, Housing and Public Works

167. The CS submitted that for purposes of implementing the resolution of the Cabinet during its meetings, the Public Private Partnership Act, 2013 was identified as the suitable legal framework which allowed KQ to submit a PIIP to KAA. As required under the provisions of the Act, the PIIP has been submitted to the PPP Unit for consideration.

168. The CS however noted that following the concerns raised by the Public over the PIIP, the Ministry is exploring other options of enabling the Government to consolidate all aviation assets for approval by Cabinet.

Kenya Civil Aviation Authority

169. The Director General submitted that from the regulatory perspective, the current financial position of Kenya Airways could significantly affect the airline's capacity to comply with civil aviation regulations as provided for in the air operator certification and that the PIIP does not meet the criteria of the PPP concept which entails the concession of a public service to a private entity which has the technical expertise and financial capacity to manage, operate and undertake investment.

170. It was the further submission of the Director General that implementation of the PIIP would result in the loss of the regulatory certificate to operate JKIA and consequently loss of the FAA IASA Category I status that the airport currently enjoys with regard to its direct flights to USA and that it would take years for Kenya to be audited again and similar approval granted to the SPV. As per the International Standards and Recommended Practices (SARPs), Certificates and Licenses issued by a civil aviation authority are not transferrable and hence, locally, the SPV would be required to undertake the processes of getting new certifications, a process that could take more than one year. The Air Service License (ASL) currently held by Kenya Airways would

[10] Regulation 53, Public Private Partnerships Regulations, 2014.

have to be revoked and the SPV would have to apply for a new ASL with the scope of services being an Air Operator and Airport Operator combined.

171. In addition, for the implementation of the PIIP, the Director General noted that there would be need to renegotiate MOUs and Letters of Procedures previously signed with neighboring States and Agencies in respect to ANS coordination activities which were entered into on the strength of the ANS being part of the KCAA's mandate.

172. KCAA further submitted that with regard to the use of SPV for the PIIP, there is need to establish clear legal mechanisms of resolving ownership especially for funds to be used for the purpose of any CAPEX activities.

5.3 Committee Observations

173. The Committee observed that—

(1) The Public Private Partnerships Act, No.15 of 2013 allows a private party to propose a Privately Initiated proposal for the construction or development of a project or the performance of a service by negotiation outside the normal requirement for the authority to undertake a competitive procurement process on condition that the project is included in the development programme of the contracting authority;

(2) The concession of JKIA was not and is currently not included in the development programme of KAA;

(3) Kenya Airways has not demonstrated that it has the financial capacity, relevant experience and the relevant expertise to manage JKIA as required by section 23 of the Public Private Partnerships Act, No.15 of 2013;

(4) The implementation of the PIIP would result in the loss of the regulatory certificate to operate JKIA and consequently loss of the FAA IASA Category I status the airport currently enjoys with regard to its direct flights to USA and it would take years for Kenya to be audited again and similar approval granted to the SPV. The current regulatory certificates issued with regard to JKIA are not transferable to a third party;

(5) There would be need to renegotiate MOUs and Letters of Procedures previously signed with neighboring States and Agencies in respect to ANS coordination activities which were entered into on the strength of the ANS being part of KCAA's mandate if the PIIP is implemented.

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CHAPTER SIX

6.0 GENERAL ISSUES OF CONCERN TO THE PEOPLE

6.1 Submissions Received

Stakeholders made submissions on issues of concern as follows—

Status of the PIIP

174. The CS, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works noted that at present the PIIP is just a proposal that must be subjected to the rigorous process outlined in the PPP Act including a review and consideration by the PPP Committee and negotiations between KQ and KAA over any issues of concern for the mutual benefit of the parties. Such negotiations would include, staff matters, the concession fees payable, investments to be made over the concession period, service standards, transaction structure, roles and responsibilities of each party and competition with other airlines. It was his view that the running of the other airports and airstrips would constitute a critical part of the negotiations.

175. The CS further noted that Kenya has to start viewing its aviation assets more strategically as key contributors to the Gross Domestic Product (GDP) where having a world class airline and world class airports enables the country to achieve its objective of being an aviation hub in the region. In this regard, the aim of the PIIP is the creation of operational synergies between Kenya's main hub, JKIA and the national carrier, KQ to establish the two institutions as drivers of economic growth. This same structure is the one utilized by Kenya's main competitors in the global aviation industry.

Whether Kenya Airways is a public or private company

176. The KQ CEO submitted that KQ is a publicly listed company with Government of Kenya owning the majority of shares. In terms of shareholding, currently, the Government owns 48.9%, KQ Lenders Company 38.1% , KLM 7.8% , the Employee Share Ownership Plan 2.4%, and other individual shareholders own 2.8%.

The impact of fuel hedging on KQ performance

177. The KQ CEO submitted that Fuel hedging is a contractual tool used by airlines as an industry standard to reduce exposure to volatile fuel prices. He informed the Committee that the fuel hedge in place at the moment guarantees KQ's purchase of fuel at a set

price while protecting it against rises above a certain price. He noted that KQ is benefiting from fuel hedging as the current fuel prices are above $70 while its volumes are hedged at rates lower than $68. In addition, it was his submission that KQ is expected to reap benefits in the month of April going forward as the fuel curve projections point to an increase in fuel prices. He was of the view that KQ is not losing money through fuel hedging.

The impact of aircraft leases on KQ performance

178. The KQ CEO submitted that even though an outright purchase is an option in acquiring an aircraft, it is not a wise and financially sound option. According to him, the core competence of an airline is flying and not owning assets and tying up money in the form of aircraft. He submitted that the purchase of aircraft requires huge capital outlay, that the older an aircraft is, the less efficient it is, both fuel and maintenance wise and that passengers prefer to fly on newer aircraft.

179. The CEO submitted that the estimated cost of buying the entire 37 aircraft in KQ's fleet would cost Kshs. 486.4 Billion, representing 16% of the entire country's budget. He noted that the benefits of leasing an aircraft clearly outweigh those of outright purchase as it allows faster access to aircraft, a reduced capital outlay, access to fuel efficient aircraft, flexibility, access to latest technology, and not having to deal with residual value in aircraft.

180. The KQ CEO further submitted that leasing is not a case unique to KQ, but is the trend world over and more so in airlines that are a lot larger than Kenya Airways both in terms of fleet, revenue, as well as passenger numbers. He noted that the fleets of Emirates, Delta Air Lines, and Air France contain 62%, 22% and 64% leases respectively. The CEO submitted that KQ has a fleet of 40 Aircraft of which it wholly owns 20, and 20 are under operating leases. The breakdown of the fleet is shown in Table 1 below and the list of lessors for the leased aircraft is shown in Table 2.

Aircraft Type	Owned	Leased	TOTAL
Boeing 777-300 ER	1	2	3
Boeing 787-8	6	3	9
Boeing 737-800	-	8	8
Boeing 737-700	-	2	2
Boeing 737-300	1	-	1
Boeing 737-300F	2	-	2
Embraer 190	10	5	15
TOTAL	20	20	40

Table 1: Kenya Airways Fleet Breakdown
Source: Kenya Airways.

Lessor Name	Lessor Headquarters	Lessors Total Fleet	No. Leased to KQ	Aircraft Type
Aviation Capital Group	California, USA	297	3	Boeing 737-800
GE Capital Aviation Services (GECAS)	Dublin Ireland & Connecticut, USA	931	1	Boeing 737-800
			1	Boeing 787-8
China Development Bank (CDB) Leasing	Beijing, China	151	1	Boeing 737-800
MACQUIRIE AirFinance	Sydney, Australia	202	1	Boeing 737-800
Goshawk Aviation	Dublin Ireland	223	2	Boeing 737-800
AERCAP	Dublin, Ireland	1,153	1	Boeing 787-8
Dubai Aerospace Enterprise (DAE)	Dubai, UAE	350	1	Boeing 787-8
Bank of China (BOC) Aviation	Singapore	285	1	Boeing 777-300 ER
Cross Ocean Partners	London, UK	N/A	2	Boeing 737-700
China Development Bank (CDB) Leasing	Beijing, China	151	1	Boeing 777-300 ER
Nordic Aviation Capital	Billund, Denmark	468	5	Embraer 190

Table 2: List of lessors of KQ Aircraft
Source: Kenya Airways

181. The CEO noted that the leasing companies do not usually lease a large number of aircraft to one airline as a mechanism of limiting their exposure to risk and that it would not be possible for KQ to lease its entire fleet from one leasing company or bank. Of the 20 aircraft owned by KQ, the CEO submitted that 6 Boeing 787-8 and one Boeing 777-300 were purchased from proceeds of a syndicated loan from City Bank NA, JP Morgan Chase Bank, and Afrexim Bank through Tsavo Limited. In addition 10 Embraer 190 were purchased from proceeds of a syndicated loan from Standard Chartered Bank International and Afrexim Bank through Samburu Limited. The 3 remaining Boeing 737-300 aircraft are fully paid for.

182. The KQ CEO noted that due to the current KQ network structure, specific commercial needs and cost efficiency analysis, KQ had decided to sublease three of the 777-300ER to Turkish Airlines and one 787-8 Dreamliner to Oman Air to avoid the burden of costs of aircraft that cannot be utilized efficiently at the moment.

183. He further submitted that currently none of the two aircraft manufacturers, Boeing and Airbus are directly involved in leasing, which is the preserve of leasing companies and banks.

Public views

184. Walter Mocha called for the disclosure and review of any aircraft leasing agreements to ascertain their value as compared to other arrangements made internationally.

185. Joyce Kebati questioned the ownership of KQ aircraft.

186. Capt. Gad Kamau noted that what ails KQ is the internal procurement procedures and the leasing of aircraft through brokers and middlemen which has bled the airline over time. It was his view that this should be addressed before any bailout of KQ is considered.

The financial health status of KQ

187. The KQ CEO submitted that KQ had diagnosed the root causes of its previous poor financial results which enabled it to establish fundamentals for the turnaround plan currently being implemented to assist it to achieve operational profitability, first, and in the long run, ability to generate profit before tax and dividends for its shareholders. He noted that KQ is currently engaged in activities geared towards boosting revenues, reducing costs and efficient governance. He refereed the Committee to the KQ 2018 half year figures which showed KQ generated Kshs. 52 Billion in revenue, held a Kshs. 1 Billion operating loss with a Kshs. 4 Billion profit before tax.

188. The CEO noted that KAA charges KQ annual fees of up to USD 22 Million annually comprising of landing fees of USD 16 Million, Building and rent utilities of USD 4 Million and concession fees of USD 2 Million. In addition, he noted that KQ pays KAA the Air Passenger Service Charge (APSC) which is dependent on the number of passengers departing from Kenya with the airline. The APSC KQ pays annually amounts to USD 43 Million accounting for approximately 50% of JKIA's total revenue from APSC per year. In addition, he noted that KQ is charged various taxes and levies

by Kenya Revenue Authority (KRA). Import Declaration Fees and Railway Development Levy.

189. The KQ CEO submitted details on the company's other financial information, noting that the airline owed Kshs. 84.8 Billion in non-current liabilities and Kshs. 53.6 Billion in current liabilities financed by Kshs. 113.1 Billion in non-assets and Kshs. 21.3 Billion current assets, thereby leading to a cash-flow of Kshs. 5.9 Billion.

190. With regard to the nature of securities held by foreign and local banks in relation to KQ operations, the CEO submitted that the Government of Kenya has issued a sovereign guarantee to the Exim Bank for USD 525 Million for the loan taken by KQ to purchase one Boeing 777-300 Aircraft, 6 Boeing 787-8 Aircraft and one GEnx engine. In addition, the Government of Kenya has issued a further sovereign guarantee to a consortium of local banks comprising the Commercial Bank of Africa (CBA), NIC Bank Limited, Kenya Commercial Bank Limited (KCB), I&M Bank, National Bank of Kenya (NBK), Diamond Trust Bank (DTB), Ecobank, Jamii Bora Bank, Chase Bank, and Equity Bank, for a USD 225 Million debt that was converted into 38.1% equity in KQ held by KQ Lenders 2017 Limited (KQ Lenders) as part of the 2017 deal to restructure the airline. Under the terms of the restructuring, KQ Lenders may hold the equity for up to 10 years.

191. The CEO further noted that the banks whose debt was converted to the equity held by KQ Lenders, with the exception of Chase Bank and Jamii Bora Bank extended KQ a further loan of USD 44 Million for purposes of liquidity which amount is not guaranteed by the Government and KQ is currently only obligated to service the interest element over time.

192. With regard to KQ revenues, the CEO noted that for the financial years 2015, 2016 and 2017, KQ had generated revenues of Kshs. 110. 1 Billion, Kshs. 116.1 Billion and Kshs. 106.2 Billion, respectively. For the 2018 half year, he noted that KQ had generated Kshs. 52 Billion. The CEO submitted projections of revenue for the years 2019, 2020, 2021 and 2022 as USD 1.36 Billion, USD 1.64 Billion, USD 1.81 Billion and USD 1.98 Billion, respectively.

193. The Director General, KCAA submitted that KQ owes it Kshs. 516,195,794/- in outstanding Air Navigation Service fees and the PIIP would have to address how KQ's debts would be managed.

Collection of ANS charges

194. KCAA submitted that the PIIP was not clear with respect to the collection of ANS charges, on whether the SPV would collect ANS charges at JKIA or the entire country.

Ticket prices

195. KALPA submitted that KQ ticket prices are very expensive and passengers are opting for other cheaper airlines like Emirates and ET thus contributing to its decline.

196. On this issue, the KQ CEO noted that currently, his remit is the maximization of shareholder profits and that therefore requires him to negotiate the highest ticket price he can obtain for the airline. He however noted that in the even the PIIP is implemented and the aviation assets consolidated to streamline synergies between JKIA and KQ, the increased investment, traffic and routes would automatically bring down the prices of tickets

197. The Member for Embakasi East Constituency, Hon. Babu Owino questioned KQ's rationale for allowing ticketing software to be controlled and managed from India.

KQ Baggage Policy

198. KALPA questioned the rationale behind KQ's policy of reducing check-in baggage allowance from two bags to one bag weighing 23Kilograms, thus charging for any extra baggage while ET allows passengers an allowance of two bags, each double the weight of KQ's one bag. This, in their view acts to drive customers away from KQ.

199. The Member for Embakasi East Constituency, Hon. Babu Owino questioned KQ's one-bag baggage policy noting that the policy has decimated KQ's market share and benefited ET and other Airlines serving its African routes.

200. Walter Mocha questioned KQ's one-bag baggage policy noting that the policy has decimated KQ's market share and benefitted ET and other Airlines serving its African routes.

Deployment of inappropriate aircraft

201. KALPA also question KQ's deployment of smaller aircraft on their West African routes despite the route having being fully booked and the need for larger aircraft to ensure that passenger baggage is not left behind. The General Secretary noted that in many cases passengers have been forced to travel without their bags since the smaller aircraft

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cannot carry the luggage plus the passengers. This has led to dissatisfaction amongst their customers who have opted for other airlines. Further, it was KALPA's view that this particular failure has led to the decline of routes that could have been very profitable for KQ such as Douala, Yaoundé, Lagos and Accra.

Due Diligence on PIIP

202. The KAA CEO submitted that KAA engaged a consortium of transaction advisors comprising MMC Africa Law, KPMG and Saracen to provide transaction advisory services on the PIIP, including—

(a) a review of the PIIP, Heads of Terms and Financial Model;

(b) advice on the applicable legal and regulatory matters including approvals to be secured and the potential legal and operational risks to be managed;

(c) assessment of the financial deliverability of the transaction including KQ's legal, financial and operational capacity to enter into the proposed transaction;

(d) due diligence on the adequacy of the proposed operating, maintenance and investment plans in relation to the traffic growth assumptions made by KQ;

(e) a review of the terms and structure of the PIIP and a scenario analysis of the different possible transaction structures to evaluate and determine the deal structure most beneficial to the KAA;

(f) a Fiscal Commitments and Contingent Liability analysis of the PIIP under various transaction structure options;

(g) a review and stress-test of the Public Sector Comparator, Value for Money and affordability components of the financial model submitted by KQ to assess its robustness.

(h) a review of the structure and adequacy of the consideration offered by KQ and an investigation into structuring of contingent payouts that enhance value for money to KAA;

(i) advice on the tax structuring of the transaction and the subsequent tax impact on KAA;

(j) an assessment of and advice on matters related to possible staff redundancy, severance and pension liabilities arising out of the PIIP; and

(k) environmental, social and economic analyses of the project; and

(l) negotiation support throughout the deal execution phase.

203. The engagement of the transaction advisors was done through a restricted tendering process in light of the urgency of the matter and the fees of Kshs. 15 Million quoted by

the winning bid of MMC Law Africa were paid out of KAA's Legal budget. KAA is to shoulder all the costs of the transaction paid to its transaction advisors whether or not the PIIP is approved and implemented.

204. The CEO noted that apart from a review of certain key KQ agreements, the due diligence phase of the transaction advisory engagement had been completed and that KAA had already submitted a draft negotiation criteria to the PPP Unit and is awaiting approval from the Unit and from the National Treasury as envisaged under section 61(1) of the PPP Act for it to proceed to the negotiation phase.

205. The CEO submitted that, arising from the due diligence, KAA had identified significant gaps in the PIIP that would have to be addressed in its negotiations with KQ. These gaps include KQ's capacity to undertake the PIIP, the value of the PIIP to KAA, compliance of the PIIP with the viability gap funding requirements under the PPP Act and the financing gap left in KAA once JKIA and its assets are concessioned out under the PIIP.

206. The CEO further noted that KAA is yet to formally respond to KQ on the PIIP as it awaits the outcome of the due diligence and the statutory negotiation process under the PPP Act.

Standard of JKIA operations

207. The KAA CEO submitted that JKIA facilities are being operated within the required International Standards. He noted that JKIA has been granted an aerodrome certificate by the Kenya Civil Aviation Authority (KCAA) as evidence that the airport meets the design, operations and safety management systems of an international Airport. Further, he noted that JKIA has been granted Certification by the United States Department of Transport as a Last Point of Departure enabling direct flights from Nairobi to the United States of America (USA).

KAA Finances

208. The CEO submitted that as at 30th June 2018, KAA assets stood at Kshs. 82.78 Billion comprising Kshs. 50.845 Billion in fixed assets and Kshs. 31.935 Billion in current Assets. With regard to the fixed assets, the CEO submitted that the value submitted was based on a 2004 valuation and that KAA assets are slated to be revalued afresh by the Ministry of Lands with the current valuation of its prime portfolio of land and building

expected to be in excess of Kshs. 1 Trillion. The CEO further submitted that KAA's current assets include Cash and Bank balances of Kshs. 14.1 Billion in investment reserves for the financing of its priority projects which include runway upgrades, remodeling of terminals B, C and D, a second runway and a new terminal building.

209. The CEO noted that KAA owes long term liabilities of Kshs. 8.997 Billion comprising a World Bank loan of Kshs 2.2 Billion and a Kshs. 7.9 Billion loan from Agence Française de Développement (AFD) whose proceeds were used to finance JKIA's aviation infrastructure including the construction of Terminal 1A.

KAA Revenue and Sources

210. The CEO submitted that for the years 2015/2016, 2016/2017 and 2017, 2018, KAA generated total revenues of Kshs. 12 Billion, Kshs. 17. 2 Billion and Kshs. 17.624 Billion, respectively, from the Air Passenger Service Charge, landing and parking charges, air bridge charges, fuel uplift charges, rentals, concessions and other sources. The Air Passenger Service Charge contributed the single largest portion to KAA revenue during this period, generating Kshs. 6.719 Billion, Kshs. 9.567 Billion and Kshs. 10.147 Billion in the respective financial years.

211. The CEO further submitted that, as per its projections for the years 2018/2019, 2019/2020 and 2020/2021, KAA expected to generate revenues of Kshs. 17.429 Billion, Kshs. 16.889 Billion and Kshs. 18.332 Billion, respectively. In its projections, the Air Passenger Service Charge is similarly expected to contribute the single largest portion of more than half of KAA revenue in each year.

Contribution of KAA to the economy

212. The CEO submitted that according to the International Air Transport Association (IATA) KAA's contribution to GDP for the 2017/2018 financial year comprised Kshs. 18 Billion in income, Kshs 352 Million in corporation tax, Kshs 2.7 Billion in capital expenditure, Kshs. 13 Billion in spending, Kshs. 128 Million in dividend paid to the government, a Kshs. 79.8 Billion proportion of earnings from tourism and direct and indirect employment of 1,946 and 9730 persons, respectively.

Conflict of Interest

213. JK Waweru questioned why the KAA Chairperson should continue serving as Group CEO Commercial Bank of Africa, one of the banks which converted its loans to KQ into equity thus being in a position of conflict of interest.

214. The Chairperson of KAA, Mr. Isaac Awuonda, submitted that his dual roles of KAA Chairperson and Group General Manager of Commercial Bank of Africa Limited, one of the banks whose debt was converted into equity held by KQ Lenders in the 2017 in the restructuring of KQ could be perceived as a conflict of interest with regard to the consideration of the PIIP. He however noted that he is not engaged in the day-to-day operation of Commercial Bank of Africa (K) Limited and that he had at a very early stage declared the issue to the KAA Board and received no objection to his presence during deliberations over the PIIP.

6.2 Committee Observations

215. The Committee observed that—

(1) KQ is a private company which is listed at the Nairobi Securities Exchange. In terms of shareholding, currently, the Government of Kenya owns 48.9%, KQ Lenders Company 38.1%, KLM 7.8%, the Employee Share Ownership Plan 2.4%, and other individual shareholders 2.8%.

(2) KQ currently leases aircraft at an exorbitant cost, putting into question the manner in which the leases were negotiated;

(3) The fuel hedging model adopted by KQ is one of the areas of financial leakages in the company;

(4) The PIIP is not clear with respect to the collection of air navigation service charges especially on whether the SPV will collect the charges at JKIA only or the entire country.

(5) KQ ticket prices are very expensive and passengers are opting for other cheaper airlines like Emirates and ET thus contributing to its loss of market share.

(6) KQ's policy of reducing check-in baggage allowance from two bags to one bag weighing 23Kilograms, thus charging for any extra baggage drives customers away since other airlines like ET give passengers an allowance of two bags, each double the weight of KQ's one bag.

(7) KQ's deployment of smaller aircraft to busy routes has led to customer dissatisfaction since customers fail to secure seats and passenger baggage is left behind.

(8) There is a conflict of interest with regard to the consideration of the PIIP, since the Chairperson of KAA is also the Group CEO of Commercial Bank of Africa, one of the banks whose debt was converted into equity held by KQ Lenders in the 2017 restructuring of KQ.

CHAPTER SEVEN

7.0 COMMITTEE RECOMMENDATIONS

216.The Committee considered the submissions made by the stakeholders and noted that the PIIP does not present a viable option for restoring Nairobi as the civil aviation hub of choice in Africa and treating KQ and JKIA as strategic national assets. In addition, the Committee noted that taking into account KQ's current financial status and the current lack of competitiveness of Kenya's aviation industry, the Government and the people of Kenya stand to lose the most in the event the trend is left to continue, noting that KQ debtors enjoy a sovereign guarantee of Kshs. 75 Billion. Appreciating the policy adopted by the Cabinet with regard to the consolidation of the country's aviation assets and re-establishing Nairobi as a competitive international aviation hub, the Committee recommends—

(1) That Kenya Airways be nationalized.

(2) The government establishes an Aviation Holding Company with four wholly owned subsidiaries, namely,—

  (a) JKIA company incorporated to manage JKIA as an international hub, ground handling and catering services;

  (b) Kenya Airports Authority with a revised mandate of managing the remaining airports and airstrips. Under its new mandate KAA shall maintain at least one serviceable airstrip in each county for purposes of security, health and other emergencies;

  (c) KQ as the national carrier; and

  (d) a centralised Aviation Services College/Institute.

(3) The resources of the Aviation Holding Company and any revenue generated from such resources must be utilized for the mutual benefit and development of all its subsidiaries.

(4) All Air Navigation Services shall remain within the exclusive mandate of the Kenya Civil Aviation Authority. KCAA shall, in addition, collect en-route charges and aerodrome and approach charges.

(5) Upon nationalization of KQ, amendments be made to include exemptions in the State Corporations Act, the Public Finance Management Act, the Public Procurement and Asset

Disposal Act and the Public Service Commission Act; or a specific legislation be enacted to provide for the governance and operations, financial matters, procurement and disposal of goods and services, designation of certain air transport services as essential services and management of human resource in the Aviation Holding Company and all its subsidiaries in a manner that allows the entities to function as accountable going concerns without restrictive bureaucracy;

(6) Upon nationalization of KQ, priority legislation be enacted—

(a) to grant the Aviation Holding Company and its subsidiaries favourable tax concessions for a specified period;

(b) to amend the Miscellaneous Fees and Levies Act, 2016 to exempt the Aviation Holding Company, and KQ from paying Import Declaration Fees on aircraft, aircraft parts, utilities, commercial/on-board products and related goods and equipment, and imported Jet A-1 fuel for a specified period;

(c) to amend the East African Community Customs Management Act to exempt the Aviation Holding Company and its subsidiaries from paying customs duty on aircraft related parts and accessories including jet lubricants, grease, adhesives, aircraft specific detergents used for aircraft maintenance, aircraft seats and other related goods for a specified period;

(d) to amend the Excise Duty Act to exempt the Aviation Holding Company and its subsidiaries from excise duty on all excisable goods including imported Jet A-1 fuel for a specified period;

(e) to amend the Second Schedule to the Value Added Tax Act to Zero-rate all supplies made or received by the Aviation Holding Company and KQ, including supplies of Jet A-1 fuel for both domestic and international flights for a specified period;

(f) to amend the Kenya Airports Authority Act to—

(i) transfer the management and assets of JKIA to the JKIA Company; and

(ii) allow the Aviation Holding Company to collect tariffs and other airport user charges, including landing charges and parking charges;

(g) to amend the Air Passenger Service Charge Act to—

NP

(i) allow the Aviation Holding Company to collect the Air Passenger Service Charge for distribution to its subsidiaries subject to subparagraphs (ii) and (iii);

(ii) allocate at least 6% of the Air Passenger Service Charge to the Kenya Civil Aviation Authority to finance its operations; and

(iii) allocate and ring-fence at least 20% of the Air Passenger Service Charge to KAA for the management of the remaining airports and airstrips; and

(h) to amend the Civil Aviation Act to allow the transfer of any JKIA licenses to the SPV incorporated to manage JKIA;

(7) Upon nationalization of KQ, the government undertakes a staff rationalization programme with a view of retaining existing staff and harmonizing the terms of service and remuneration thereof under the Aviation Holding Company, including a review of the existing Collective Bargaining Agreements.

(8) Upon nationalization of KQ, the government reviews the aircraft leasing agreements entered into by KQ with a view to renegotiating better terms on account of the consolidated balance sheet of the Aviation Holding Company, improved KQ cash flow and a lowered risk profile of Kenyan aviation assets. Any future leasing arrangements for aircraft must be cost-effective.

SIGNED:.. **DATE:** 17/06/2019.

HON. DAVID PKOSING, CBS, MP - CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

Approved for tabling
SNA
9/5/19

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

REPORT ON SESSIONAL PAPER NO. 1 OF 2019 ON POLICY FRAMEWORK FOR REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT IN KENYA

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 09 MAY 2019		DAY: THURSDAY
TABLED BY:	HON. AMOS KIMUNYA VICE CHAIRPERSON	
CLERK-AT THE-TABLE:	INZOFU MWAKE	

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CHAIRPERSON'S FOREWORD

Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenyawas laid on the Table of the House by the Leader of the Majority Party on Thursday 14th March, 2019 and thereafter stood committed to the Departmental Committee on Education and Research for consideration.

Education and training is critical in promoting political, social and economic development of any country. Education is a human right, as enshrined in international treaties and convections to which Kenya is a signatory. The 4th goal of the Sustainable Development Goals (SDGs) calls for all states to provide equitable and inclusive quality education for all by 2030.

Since independence, the Government has been committed to the provision of quality education to learners. It's against this background that the government has commissioned a number of taskforces and whose reports' valuable recommendations continue to shape the education system in Kenya today. Key among this taskforces include; the Kenya Education Commission, Ominde Report (1964), which sought to reform the education system inherited from the colonial government and recommended education for all; The Mackay report (1981) on the presidential working party on establishment of the second university in Kenya which led to the expansion of other posts secondary training institutions, the establishment of second university and the establishment of the 8:4:4 system.

The Constitution of Kenya (2010) makes education a basic right under the Bill of Rights where basic education is guaranteed for all children and the state is obliged to make its provision possible. Kenya Vision 2030 blueprint also underscores the importance of education in ensuring relevant human and social capital for sustainable development. It further places great emphasis on the link between education and the labour market, the need to create entrepreneurial skills and competences, and strong public and private sector partnerships.

The Government of Kenya has, over the years, demonstrated its commitment to the development of education and training through sustained allocation of resources to the sector. However, despite the substantial allocation of resources and notable achievements attained, the sector still faces major challenges. Some of these challenges relate to drop out rates, transition rates, equity, quality, relevance, efficiency in the management of educational resources, cost and financing of education, gender and regional disparities, and teacher quality and teacher utilization. In addition, children with special needs and disabilities issues have not adequately been addressed.

It is against this backdrop that the Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya was developed by the Ministry of Education to address these challenges and provide a policy framework for the education and training sector in order to meet the challenges of the 21st Century. It is envisioned that the development of a competence based curricula will provide learners with the opportunity to acquire the pre-requisite knowledge, skills, values and attitudes to drive the country into knowledge –based and middle income industrialized nation.

As a consequence to the Sessional Paper, the Ministry of Education will develop an Education Sector Strategic Plan that will provide a comprehensive framework for programmeimplementation.

Hon. Julius Melly, MP

1.0. PREFACE

The Departmental Committee on Education and Research is established under the National Assembly Standing Order 216.

1.1 Mandate of the Committee

Pursuant to the National Assembly Standing Orders No. 2016, the Committee is mandated, among others, to: -

i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;

ii) study the programmes and policy objectives of Ministries and departments and the effectiveness of the implementation;

iii) study and review all legislation referred to it;

iv) study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;

v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;

vi) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);

vii) examine treaties, agreements and conventions;

viii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

ix) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and

x) Examine any questions raised by Members on a matter within its mandate.

1.2 Committee subjects

The Committee is mandated to consider the following subjects:

Education;

Training; and,

Research.

1.3 Oversight

The Committee oversights:

i) The Ministry of Education; and

ii) The Teachers Service Commission

1.4 Committee Membership

The Committee comprises of the following Members: -

	Name	Party	Constituency/County
1.	Hon. Julius Melly, MP - **Chairperson**	JP	Tinderet
2.	Hon. Amos Kimunya, EGH, MP- **Vice-Chairperson**	JP	Kipipiri
3.	Hon. Moses MalululInjendi, MP	JP	Malava
4.	Hon. Geoffrey MakokhaOdanga, MP	ODM	Matayos
5.	Hon. (Dr.) Pamela Ochieng, MP	ODM	Migori
6.	Hon. (Eng.) NzambiaThuddeusKithua, MP	WDM-K	Kilome
7.	Hon. (Prof.) Zadoc Abel Ogutu, MP	IND	Bomachonge-Borabu
8.	Hon. Catherine Wambilyanga, MP	Ford-K	Bungoma
9.	Hon. Eric MuchangiNjiru, MP	JP	Runyenjes
10.	Hon. Eve Obara, MBS, MP	ODM	KabondoKasipul
11.	Hon. Jackson Lekumontare, MP	KANU	Samburu East
12.	Hon. JerushaMonginaMomanyi, MP	JP	Nyamira
13.	Hon. John OrooOyioka, MP	PDP	Bonchari
14.	Hon. Joseph KipkosgeiTonui, MP	JP	Kuresoi South
15.	Hon. Lilian CheptooTomitom, MP	JP	West Pokot
16.	Hon. OmbokoMilemba, MP	ANC	Emuhaya
17.	Hon. Peter Lochakapong, MP	JP	West Pokot
18.	Hon. Wilson Sossion, MP	ODM	Nominated
19.	Hon. Wilson KipngetichKogo, MP	JP	Chesumei

1.5 Committee Secretariat

The Committee secretariat comprise the following officers; -

1. Mr. Daniel Mutunga - Principal Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Ms. Christine Odhiambo - Legal Counsel I
4. Mr. Eric Kanyi - Fiscal Analyst III
5. Ms. AnncetaGacheri - Research Officer III
6. Ms. Winnie Kizia - Media Relations Officer
7. Ms. Catherine Mukunyi - Serjeant At Arms
8. Mr.Kibet Mutai - Audio Officer

1.6 Acknowledgement

The Committee wishes to thank the offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Members in fulfillment of the Committee's mandate. Further, I wish to express my appreciation to the Honourable Members of the

Committee for their commitment and valuable contributions during the sittings to deliberate on the Sessional Paper and writing of this report.

Finally, it is my pleasant duty and privilege, on behalf of the Departmental Committee on Education and Research and pursuant to Standing Order, 199(6) to table the Report on the Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya.

Sign: ______________________ **Date:** 8/5/2019

HON. JULIUS MELLY, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

2.0 OVERVIEW OF THE SESSIONAL PAPER NO. 1 OF 2019 ON POLICY FRAMEWORK FOR REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT IN KENYA

2.1 Background

Education and training in Kenya is offered at four main levels as follows; pre-primary, basic education, TVET and University. The County Governments are responsible for management of pre-primary and Vocational Training Colleges, while the National Government is responsible for policy and the management of other levels.

The Ministry of Education has undertaken a number of reforms in the sector guided by the Sessional No. 1 of 2005 on Education, Training and Research. The sessional paper led to reforms through a Sector Wide Approach to Planning (SWAP). In spite of the paper laying emphasize on access, equity, quality, relevance and the strengthening of governance and management, the expected returns on investment in education in terms of productive and skilled manpower has not been realized to the full. The demands of globalization, Kenya Vision 2030 blueprint, and the new Constitution of Kenya promulgated in 2010 requires reforms in the education and training sector to respond to constitutional requirements and emerging issues to realize the country's goals and aspirations.

Specifically, the Constitution of Kenya (2010) articles 43(1)(f), 53(1)(b) 54 and 55(a) makes education and training a right of every Kenyan. TheConstitution further mandates the Governmenttoensureinclusiveandequitablequality educationandpromotelifelonglearningopportunitiesforall.

Kenya Vision 2030 unveiled in 2007 underscores the importance of Education and Training in making Kenya a prosperous country with a high quality of life by 2030. The Blue print obligates the Government to provide a globally competitive and quality education, training and research. Kenya aims to be a regional centre of research and development in new technologies. This will be achieved through integrating early childhood education into primary education; reforming secondary school curricula; modernizing teacher training; strengthening partnerships with the private sector; developing key programmes for learners with special needs, rejuvenating ongoing adult training programmes; revising the curriculum for university and technical institutes to include more science and technology; and in partnership with the private sector, with the Government increasing funding education in ensuring relevant human and social capital for sustainable development.

In 2011, a Task Force on Realignment of the Education Sector to the Constitution 2010 and Vision 2030 was formed. The taskforce recommended the following;

i. A more flexible and comprehensive structure for Kenya Education System and Curriculum Reform to specify the expected competences at every level of learning. The recommended structure was 2 years of Pre-primary, 6 years of Primary (3 years lower and 3 years upper), 6 years Secondary (3 years junior and 3 years senior), 2 years minimum of Middle Level Colleges and 3 years minimum University education
ii. Expand access to education at all levels
    a) Undertake major curriculum reviews.

environments. Furthermore, assessment of learning outcomes has to reflect changed educational objectives and outcomes.

The abovementioned has therefore informed the need for the development of sessional paper no 1 of 2019 on reforming education and training for sustainable development in Kenya to provide a policy framework to meet the current challenges and needs of the 21st Century.

2.2 Key highlights of the Policy issues in the Sessional PaperNo. 1 of 2019

2.21Structure of the proposed Education System in Kenya

The Session Paper proposes Competence Based Curriculum (CBC) to replace the 8-4-4 system. UnderthenewCompetenceBasedCurriculum system, the Policy document proposes that basicEducationwillbeorganizedintothree levels:EarlyYearsEducation, MiddleSchoolandSeniorSchool.

(i) EarlyYearsEducationincludes Pre- primaryandLowerPrimary.Pre-primaryeducationisfor2 years(Pre-primary1andPre-primary2and willbeforchildren agedbetween 4and 5years).ThelearnersfromPre-primary2will joinLower PrimaryinGrade1atabout6yearsofageandspend3yearsinthispartofEarlyYearsEducation beforejoiningmiddleschool.

(ii) MiddleSchoolEducationwillcomprisethreeyearsofUpperPrimaryand threeyearsofLowerSecondaryeducation. InUpperPrimary,learnerswillbeexposedtoabroad-based curriculumandwillbegivenanopportunityforexplorationandexperimentation.Lowersecondarywill expose the learners to a broad-based curriculumto enable themto explore their own abilities, personality andpotential,asabasisforchoosing subjectsaccording to careerpathsofinterestat the seniorschool.

(iii) SeniorSchoolcomprises threeyearsof education targeted atlearners in the agebracket of15to17years and lays the foundation forfurthereducationandtrainingat thetertiaryleveland the world ofwork. Itwillmarktheend ofBasicEducationasdefinedintheEducation Act, 2013.

Under the proposal, higher education will consist of under graduate and post graduate (Masters and doctoral) programmes as well as TVET diploma. Tertiary andUniversity education will lastforaminimumof3years.

2.22 Current Education Structure in Kenya

The national education system has evolved over time, with major changes having been instituted in the 1980s. In 1984, the 7-4-2-3 structure and system was replaced with the 8-4-4 system, which introduced a broad-based curriculum at all levels.

The 8-4-4 system is intended to make education more relevant to the world of work and thus produce skilled and high-level manpower to meet the demands of the economy. The scope of the 8-4-4 structure and system expanded to incorporate technical skills and pre-primary education (4-5-year-old children). The system consists of 8 years of primary school, 4 years of secondary school and 4 year of higher education. The primary education cycle caters for learners of between 6-13 years; and secondary education targets learners of 14-17 years, while university education targets learners of 18 years and above. The TVET catchment population includes youth who for some reasons do not enroll in the regular education system either at primary, secondary school or university levels. In addition, the sector offers alternative provision of basic education and training to reduce youth and adult illiteracy.

The current structure generally comprises of the following:

(i) The ECDE, which covers early childhood care for 0-3 year-old children and pre-primary for 4-5 year-old children;

(ii) Primary education which lasts 8 years and caters for 6-13 year-old children, leading to the Kenya Certificate of Primary Education (KCPE);

(iii) Secondary education which lasts 4 years and caters for 14-17 year-olds, leading to the Kenya Certificate of Secondary Education (KCSE);

(iv) TVET, which includes trade test courses in Youth Polytechnics, artisan, craft and diploma courses in technical training institutes and institutes of technology, craft and diploma courses in national polytechnics, leading to trade tests, certificates and diplomas in various disciplines and business education related courses;

(v) Business and professional studies in middle level colleges are also available, leading to certificates and diplomas; and

(vi) University education lasting a minimum of 4 years depending on the degree pursued, leads to a bachelor's degree and post-graduate training programmes leading to masters and doctorate degrees. In the current dispensation of the Constitution 2010, ECDE and village polytechnics is devolved to the county governments.

The implementation of 8-4-4 structureand systemdoes not prepare the primary level graduates well enough to enter the TVET sub-sector. In addition, it does not cater for the disadvantaged, those with special needs and those outside the formal education system. Additionally, the design of the current curriculum does not facilitate accelerated learning and flexibility for diverse needs and characteristics of learners. To contribute effectively towards the industrialization process and to address the challenges, the country is in the process of reforming education and training at all levels.

2.23 Enhancing Access, Equity, Quality and Relevance

Major challenges remains in ensuring and enhancing access, equity, quality and relevance in education and training as well as efficient utilization of education resources. Policies highlighted in the sessional paper to improve access, quality and relevance in the sectorincludes;

a) Pre- Primary Education

(i) Implement the National Pre Primary Education Policy

(ii) Review quality standards and develop a Pre-Primary performance framework

(iii) Mainstream ECDE (ages 4-5 years) into the primary school system

b) Primary Education

(i) Continue to provide free and compulsory primary education

(ii) Reform the Primary Education Curriculum
(iii) Implement automatic transition and transfer between grades and across levels of Basic Education.

c) Secondary Education

(i) Ensure free and compulsory secondary education to all children
(ii) Ensure 100% transition from primary to secondary education.
(iii) Reform the secondary education curriculum.

d) Special Needs Education and Training

(i) Provide quality and inclusive education to all learners with special learning needs.
(ii) Strengthen assessment for early identification, placement and referrals.

e) Adult and Continuing Education

(i) Provide quality Adult and Continuing Education (ACE) and APBET services, programmes, and opportunities for lifelong learning.

f) Hard to Reach and Vulnerable Groups

(i) Make provision for equitable, quality education to Marginalized, hard-to-reach and Vulnerable Groups.

g) Technical and Vocational Education and Training

(i) Expand TVET programmes at national, county and constituency level.
(ii) Provide adequate training opportunities for accessible competency-based training.

h) University Education

(i) Promote expansion to satisfy the demand for university places of the growing population.
(ii) Provide incentives and create an enabling environment for an increase in the number of private universities;
(iii) Expand Government student sponsorship to private universities and;
(iv) Ensure that universities enroll and graduate sufficient PhDs.

2.24 Curriculum and Assessment

The policy will reform curricula in line with relevant provisions of the Constitution 2010, aspirations of Kenya Vision 2030, the East African Community protocol, International Standards and the progressive needs of the society. The reforms shall ensure flexibility and broaden opportunities for all categories of learners. They shall also ensure both Pre-service and In-Service teachers and adequately equipped to implement the new curriculum.

a) Assessment and Examinations

(i) The Government will implement a policy to standardize assessment of core learning outcomes, transferable skills and subject related knowledge.

b) Quality Assurance and Standards (QAS)

(i) Establish a central system for accreditation and quality assurance in basic education.

(ii) Support research system for education and training. (iii) Promote voluntary compliance to standards.

(iii) Strengthen TVET Authority.

(iv) Strengthen CUE

c) Mentoring, Moulding and Nurturing of National Values

(i) Continue to implement commitment to the UN Convention on the Rights of the Child

(ii) (CRC) (1989) and Convention of the Rights of Persons with Disability (2006).

(iii) Review the guidance and counselling policy to include moulding, nurturing and mentoring.

(iv) Restructure provision of Guidance, Counselling, Moulding and Mentoring to ensure effectiveness across education institutions.

(v) Require schools and teacher training institutions to implement the guidance, counselling, moulding and mentoring policies, and provide materials in support of this.

(vi) Develop with sponsors, parents and faith groups, rules, guidelines and operational principles defining their partnership in this area.

(vii) Develop guidelines and establish implementation mechanisms for peer mentoring.

(viii) Mobilize sustainable funding for the provision of these services.

(ix) Introduce mentoring and moulding programmes in education institutions with a view to inculcating nationalvalues in order to promote national unity and cohesiveness.

d) Re-Branding Technical, Vocational Education and Training

(i) Re-brand TVET to reposition the sector to achieve the utmost contribution to the economy.

(ii) Continue supporting the sub-sector through enhanced budgetary allocation

(iii) Implement CBET framework.

e) University Education

(i) Promote expansion to satisfy the demand for university places of the growing population.

(ii) Provide incentives and create an enabling environment for an increase in the number of private universities;

(iii) Increase funding

(iv) Ensure that universities enroll and graduate sufficient PhDs.

2.25 Information and Communication and Technology

(i) Regard the funding and provision of ICT in education in all respects as a national development priority.

(ii) Strengthen ICT integration to improve teaching and learning while continuing to support ICTs for educational administration and management (e-government) and development of digital literacy relevant to the knowledge economy.

(iii) Link investments in ICTs at all levels in the education sector to key education objectives which will be set to ensure that school leavers and college graduates have the necessary skills to contribute to the development of a modern competitive knowledge - based economy by 2030.

(iv) Invest in appropriate ICT infrastructure, systems and human capacity development across all County and Sub-County offices to ensure results-based financing and real time information sharing for effective administration and management of the education system.

(v) Incorporate ICT in the education of children with special educational needs.

2.26Governance and Management of Education and Training

(i) Rationalize education and training management systems and structures at national and county levels.

(ii) Institutionalize research in education and training to inform planning.

2.27 Teacher Education and Development

(i) Establish teacher education and development standards, based on acceptable principles that will ensure optimal delivery of competency-based education and training.

(ii) Modernize pre-service and in-service teacher training.

2.28 Teachers, Trainers and Lecturers Management

(i) Ensure efficient and cost-effective utilization of teachers by regularly reviewing and establishing appropriate staffing norms;

(ii) Review the current teacher training programmes with a view to establishing diploma level as the minimum level qualification for teachers

(iii)Institutionalize teacher performance appraisal system.

2.29 TVET Institutions

(i) Rebrand the management of TVET trainers

2.30University Education

(i) Introduce Discipline Differentiated Remuneration (DDR) for academic members of staff. Empower public university councils to determine their own individual terms and conditions of service for their staff.

(ii) Introduce a Government-funded teaching assistantships public and private universities for post-graduate students who would transit from undergraduate studies to attaining their PhDs and serve as teaching assistants.

2.31Planning, Implementation, Monitoring and Evaluation

(i) Rationalize education and training management systems and structures at national and county levels.

(ii) Institutionalize research in education and training to inform planning.

(iii)Develop and implement a standard M&E system at the national, county and institutional level.

2.32Resource Mobilization

a) Pre-Primary

(i) Mainstream Pre-Primary into basic education and ensure automatic transition from Pre-Primary to primary education Encourage communities to continue provision of teaching and learning materials;
(ii) Promote increased private sector financing of Pre-Primary services;
(iii)Promote girls' education through provision of sanitary towels.

b) Primary

(i) Continue to provide teaching and learning resources for free and compulsory primary education for all children;
(ii) Continue to provide resources for infrastructure
(iii)Establish a cost-effective system of sustainable financing of primary education.
(iv)Encourage and mobilize Non State Actors (NSA) to invest in education services.
(v) Invest in more ICT as instructional resource as well as a management tool.
(vi)Continue to fund school meals, health and nutrition programme
(vii) Support low-cost boarding schools in ASALs
(viii) Review unit cost after every 5 years in line with MTEF.

c) Special Education

(i) Provide instructional materials and equipment and offer incentives for local production of such materials and equipment.
(ii) Provide infrastructure and facilities.
(iii)Rehabilitate and strengthen education assessment resources centres (EARCs) as well as assessment programme.

d) Secondary education

(i) Enhance resources for free day and compulsory education
(ii) Continue to provide resources for infrastructure
(iii)Establish a cost-effective system of sustainable financing
(iv)Encourage and mobilize Non-State Actors to invest in education services
(v) Invest in ICT as an instructional and a management tool
(vi)Provide resources for equipment, teaching and learning materials as well as infrastructure for 100% transition from primary to secondary
(vii) Review the unit cost every 3 years.

e) Technical and Vocational Education and Training

(i) Develop creative and innovative ways of mobilizing resources and generating revenue for TVET;
(ii) Establish secure and sustainable funding mechanisms for development of TVET infrastructure and improving equipment.
(iii)Establish a strong Public Private Partnership engagement.

f) University Education

(i) Establish lean and efficient management systems and efficient utilization of resources allocated to universities.
(iii)Provide budgetary support to public universities in direct proportion to the total number of Full-Time Student Equivalent (FTSE) in each institution;

(iv) Determine the amount of budgetary support per programme based on the strategic importance of the programme to national development goals and the programmes Differentiated Unit Cost;
(v) Extend Government sponsorship to students in private universities;
(vi) Diversify sources of funding university education through participation of businesses, industry and donations or endowments from individuals or philanthropic foundations;
(vii) Encourage higher education institutions to be more "entrepreneurial" in providing their services and seeking contracts for research and consultancy;
(viii) Encourage university faculty to incorporate students in consultancies, giving the students exposure and experience that will prove invaluable after graduation and
(ix) Seek consulting teams for major projects through competition among universities and government institutions as a first step, before considering other avenues of undertaking the same.

2.33 Public-Private Partnerships in Education and Training

Progressively adopt and operationalize a Public-Private Partnership (PPP) framework for the Education and training sector.

3.0 OBSERVATIONS OF THE COMMITTEE

A. Policy issues that should be addressed in the Sessional Paper No. 1 of 2019

The Committee observed that the Sessional Paper should have deliberate and clear measures to address the following: -

1. **Competency Based Modular Curriculum Framework:**The last curriculum reform was carried out more than **thirty (30) years** ago, when the school system shifted to the 8-4-4 mode. The current reforms are expected to last for the next decades hence the need to develop a comprehensive policy paper that addresses the learners' holistic needs and anticipated challenges. A Legal Framework will be necessary on which the Competency Based Modular Curriculum Framework will be anchored.

2. **Higher Education Institutions Linkages with Industry:**The link between higher education institutions and the world of work, the economy and national development is indelible. There is need therefore for clear mechanisms to address industry-institution linkages.

3. **Rebranding of TVET Institutions:**Re-engineering TVET including mechanismstoraise the profile and acceptance of TVET among potential youth in addition to scaling up private sector participation in vocational training within the communities is paramount.

4. **Reinforcement of apprenticeship programmes:** Industry–institutional linkages calls for reinforcement mechanisms of apprenticeships programmes to better address unemployment among the youth. This will be further mitigated by addressing skills mismatch in the provision of quality higher education and training in the country.

5. **Quality of education:**The100% transition policy has led to overstretching ofclass sizes, teacher ratio, constrained dormitories, dining halls and laboratories. The quality of education may be comprised if the Government does not allocate adequate resources to mitigate the challenges arising from increased transition.

6. **Framework for resource allocation on infrastructure development**
   Just like in Australia and other developed countries, the Committee on Education is keen to put in place a framework to providing mechanisms for the distribution of secondary schools infrastructure development resources. This will ensure that resources are not skewedbut distributed equitably in all the categories of secondary schools as far as practicable as enshrined in article 201 of the Constitution on Principles of Public Finance. The framework should provide for an Automated Solutions to track schools infrastructure. Currently most of the schools infrastructure lack basic facilities

7. **Relevance of the Curriculum:** The attention on the sector should be on the desire to align the system with the needs of the labour market and nurturing learners' potentials, comprehensive strategies for teacher development and provision of holistic early childhood care and education.

8. **Quality standards and Assurance Framework:** Ineffective and uncoordinated assessment and monitoring of education educators by TSC Curriculum Support Officers and MoE

Quality Assurance and Standards Officers programs has exacerbated weaknesses in evaluation of education outcomes of the new curriculum. There is need to develop a clear framework on monitoring and evaluation of the curriculum implementation and mechanisms to harmonizethe role of TSC Curriculum Support Officers and MoE Quality Assurance and Standards Officers.

9. Frequent strikes in the Education Sector

Inspite of the milestones achieved in the Education Sector, cases of student, teachers, and lectures unrest in Kenya has become an unfortunate phenomenon witnessed in the country annually. The unrest pose a serious threat to the educational system and to the nation at large and all these translate to low achievement in learning outcomes hence affecting the quality of education provided. The Ministry of Education should address the underlying causes of unrest and the necessary measures that can be implemented to stem out the culture of student, teachers, and lectures unrest. The Ministry of Education should seize the opportunity to address the myriad social unrest incidences in schools in the Sessional Paper.

10. Monitoring &Evaluation systems

Effective and efficient systems to monitor and evaluate performance in terms of the outcomes of all their programmes cannot be overemphasized. The Ministry of Education should develop a high performing, dynamic and sustainable M&E systems for measuring not only the outputs, but also the outcomes of education. Countries such as Chile, Brazil, Mexico and Colombia in Latin America, the Republic of Korea, Singapore, Australia and Malaysia in Asia, and South Africa, can be cited as having such well developed and gradually evolved M&E systems.

b. Gaps in the Sessional Paper No.1 of 2019

The Committee observed that the Sessional Paper was deficient in the following areas: -

1. Arrangement of the policy issues in the Sessional Paper

The Sessional Paper is very repetitive; for instance, pages 83-85 and 112-113 are repeated word for word in relation to strategies on university education.More importantly, the sessional paper should clearly link its objectives with national and international parameters and the Sustainable Development Goals.

The Sessional Paper should systematically provide information in regard to the status of access, quality, relevance, monitoring and evaluation, resource mobilization of education on each of the following level of education; Pre-Primary, Primary, Secondary, TIVET and University education.

2. Pre-Primary Level

(i) There is no overarching or comprehensive framework for the implementation of the National Pre-Primary Education Policy.

(ii) The Policy is not clear on the development and implementation of appropriate Pre-Primary programmes for children with special needs, including the vulnerable and disadvantaged groups.
(iii) The policy is silent on how often the Ministry of Education will undertake regular curriculum review to incorporate emerging issues and alternative approaches to Pre-Primary education.
(iv) Despite the policy outlines on how to develop capacity for Pre-Primary teachers, there is need for an overarching framework on their scheme of service.

2. Primary Level

(i) The Policy should provide basic indicators that include gross enrolment rate, net enrolment rate, retention rate, transition rate, pupil-teacher ratio, student textbook ratio, girl-boy gender parity index at primary school among others as a basis for policy planning.
(ii) The policy needs to establish an institutional framework for strengthening capacity of quality assurance officers
(iii) The Policy should provide elaborate measures to enhance quality education for students in urban slums.
(iv) The Policy is not clear on the resource mobilization framework that will ensure adequate infrastructure including teaching and learning materials for all primary schools.
(v) The policy should indicate the need for affirmative action in particular counties with unique needs to enhance pre-primary to primary transitions, for example nutrition and health services and age entry guidelines.
(vi) The Policy is silent on how often the Ministry of Education will undertake regular curriculum review to incorporate emerging issues and alternative approaches to primary education.

3. Secondary Education

(i) The Sessional Paper is not clear on how to mitigate secondary schools overstretched facilities due to the 100% transition policy.
(ii) The Session Paper is silent on the development of day schools as a means of expanding access and reducing the cost to parents.
(iii) The Sessional Paper should formulate mechanisms for the development of harmonized bursary kitty (the President's bursary fund; MoE, County and CDF bursary funds; Jomo Kenyatta Foundation, the Equity and other banks programmes) to support needy students in boarding schools.
(iv) The Policy Paper fails to elaborate mechanisms for harmonized funding of projects in infrastructure development of secondary schools.
(v) The Policy Paper needs to establish an institutional framework for strengthening capacity of quality assurance officers.
(vi) The Sessional Paper should put elaborate measures to institutionalize guidance and counselling in secondary schools.
(vii) The Policy should elaborate clear plans to motivate students especially the girls to study STEM subjects

(viii) The policy is silent on how often the Ministry of Education will undertake regular curriculum review to incorporate emerging issues and alternative approaches to secondary education.

4. Special Education

(i) The Policy lacks indicators regarding children with special needs to facilitate policy formulation.

(ii) The Policy should provide elaborate programmes that enhance inclusive education in all institutions of learning.

(iii) Mechanisms for promoting access to secondary, tertiary and university education for learners with special needs through affirmative action should be well laid out in the Policy.

(iv) The Policy should have tools for supervision and monitoring of special education programmes.

5. Adult, Continuing and Non-Formal Education

(i) A strategic framework to anchor comprehensive policy for adult, continuing and non-formal education programmes is necessary.

(ii) There is need to conduct regular literacy surveys to establish literacy status in the country.

6. University Education

(i) Clear mechanisms should be put in place in the Policy to promote rationalization of academic programmes among universities with the aim of creating centres of excellence and making each university to have a comparative advantage.

(ii) The Policy needs to provide mechanisms for reviewing all professional programmes to ensure that they incorporate internships/apprenticeship into the academic programmes.

(iii) There is no clear mechanism for enhancing linkages between industries and Universities.

(iv) The Policy should elaborate clear plans to increase the number of students studying STEM subjects.

(v) The Policy needs to elaborate clearly on how universities can be supported to offer STEM courses.

7. Technical, Industrial, Vocational and Entrepreneurship Training (TIVET)

(i) The Policy should address measures on how to enhance private sector participation in curriculum design and implementation to link skills and knowledge to the requirements of the labour market.

(ii) Clear mechanisms for provision of adequate physical facilities and modern equipment need to be provided for in the Policy.

8. Teacher Management

(i) The Policy does not address how to review staffing norms particularly in the implementation of the CBC which presents a different matrix in the computation of staffing norms.

(ii) There is need for clear tools for monitoring the teachers' performance in the Policy.

(iii) There is no framework guiding continuous capacity development of the Head teachers.

(iv) More resources are required for continuous training of teachers on CBC.

(v) The teachers deficit can be bridged by engaging intern teachers through a formulated internship program;

(vi) Statistics on the data provided on teachers, learners and educational institutions should be timely. The data provided is dated 2017.

9. Curriculum and Assessment

The Policy is not clear on the level of which different types of examinations will be offered in the basic education under the Competency Based Curriculum.

10. Governance and Management ofEducation and Training

The governance and management of education and training from Basic Education, TVET and University Education is not clearly laid out in the Policy.

11. Legal Framework

The Policy has not recommended any legal framework that requires harmonizing and review in line with the requirements of the new Constitution (2010) and vision 2030.

The mandates and roles of all the relevant Semi-Autonomous Government Agencies in the education sector are not captured in the Policy document.

13. Financing of Education

The Sessional Paper should clearly indicate the cost of implementing the CBC, cost for schooling under the current 8-4-4 system, TIVET and university education. The role of financing of education in regard to the parents/guardians and the state should be well spelt out.

14. Integration of ICT in Education

The Policy document is not clear on mechanisms for integration of ICT as a teaching and learning tool. Integration of ICT as a tool in the classroom increases the effectiveness of teaching and improves students' learning.

15. Public participation

Public participation is one of the values of National values and principles of governance. The Sessional paper lacks information in regard to whether the document was subjected to public participation. There is need for evidence on which stakeholders were engaged in the preparation of the Sessional Paper. Involvement of all stakeholders in the M&E process would greatly enhance its ownership by them.

4.0 COMMITTEE RECOMMENDATION

The Committee recommends that the Ministry of Education should revise Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya to address all the gaps observed by the Committee before the implementation process begins.

MINUTES OF THE 19TH SITTING OF THE COMMITTEE ON EDUCATION & RESEARCH HELD ON THURSDAY 14TH MARCH, 2019 IN PROTECTION HOUSE 4TH FLOOR BOARDROOM PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. Hon. Julius Melly, MP - Chairperson
2. Hon. Amos Kimunya EGH, MP - Vice Chairperson
3. Hon. Moses Injendi, MP
4. Hon. Geoffrey Odanga, MP
5. Hon. (Prof.) Zadoc Ogutu, MP
6. Hon. (Eng.) Nzambia Kithua, MP
7. Hon. Eric Muchangi, MP
8. Hon. Jackson Lekumontare, MP
9. Hon. Jerusha Momanyi, MP
10. Hon. Joseph Tonui, MP
11. Hon. Peter Lochakapong, MP
12. Hon. Oroo Oyioka, MP
13. Hon. Omboko Milemba, MP

ABSENT WITH APOLOGY

1. Hon. (Dr) Pamela Ochieng, MP
2. Hon. Catherine Wambilianga, MP
3. Hon. Eve Obara MBS, MP
4. Hon. Lilian Tomitom, MP
5. Hon. Wilson Kogo, MP
6. Hon. Wilson Sossion, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Daniel Mutunga - Principal Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Ms. Annceta Gacheri - Research Officer III
4. Mr. Kibet Mutai - Audio Officer
5. Ms. Catherine Mukunyi - Serjeant at Arms

MIN.NO. /EDUC/2019/090: PRELIMINARIES

The Chair called the meeting to order at 10:12 am thereafter followed by prayers.

The agenda of the meeting was adopted having been proposed and seconded by Hon. (Eng.) Nzambia Kithua, MP and Hon. Joseph Tonui, MP respectively.

MIN.NO. /EDUC/2019/091: CONFIRMATION OF MINUTES

Minutes of the previous sitting were confirmed as follows:

Minutes of the 11th Sitting were confirmed as a true record of the proceedings having been proposed Hon. Moses Injendi, MP and seconded by Hon. Eric Muchangi, MP.

Minutes of the 12th Sitting were confirmed as a true record of the proceedings having been proposed Hon. Jackson Lekumontare, MP and seconds by Hon. (Eng.) Nzambia Kithua, MP.

Minutes of the 13th Sitting were confirmed as a true record of the proceedings having been proposed Hon. Eric Muchangi, MP and seconded by Hon. Jerusha Momanyi, MP

Minutes of the 14th Sitting were confirmed as a true record of the proceedings having been proposed Hon. Hon. Joseph Tonui, MP and seconded by Hon. Oroo Oyioka, MP.

Minutes of the 15th Sitting were confirmed as a true record of the proceedings having been proposed Hon. (Prof.) Zadoc Ogutu, MP and seconded by Hon. Peter Lochakapong, MP.

Minutes of the 16th Sitting were confirmed as a true record of the proceedings having been proposed Hon. Jerusha Momanyi, MP and seconded by Hon. Eric Muchangi, MP.

Minutes of the 17th Sitting were confirmed as a true record of the proceedings having been proposed Hon. (Eng.) Nzambia Kithua, MP and seconded by Hon. Jackson Lekumontare, MP.

Minutes of the 18th Sitting were confirmed as a true record of the proceedings having been proposed Hon. (Eng.) Nzambia Kithua, MP and seconded by Hon. Geoffrey Odanga, MP.

MIN.NO./EDUC/2019/092: BRIEFING ON THE SESSIONAL PAPER SESSIONAL PAPER NO 1 OF 2019 ON REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT

The Research Officer took the Members through the Sessional Paper Sessional Paper No 1 of 2019 on reforming Education and Training for Sustainable Development and the following gaps in the paper were highlighted:

Quality education and training is important in any country because it contributes directly to the development of quality human resource, which is central to the attainment of national goals.

Rationale for the Sessional Paper No 1 of 2019

The overall policy goal for the Government is to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all in order to give every Kenyan the right to education and training as provided in the Constitution of Kenya, 2010. This will be achieved through the provision of all-inclusive quality education and training that is accessible and relevant to all Kenyans. This is in tandem with Kenya Vision 2030 and will contribute to the achievement of the "Big Four Agenda" by providing the requisite skilled human resource and promoting research and development.

2.0 Policy Area and Gaps

The following the policy gaps were noted in the sessional paper

No	Education Level	Policy Gaps
1.	**Pre-Primary Education**	i. There is no overarching framework for the implementation of the National Pre Primary Education Policy ii. The Policy is not clear on the Development and implementation of appropriate Pre Primary programmes for children with special needs, including the vulnerable and disadvantaged groups. iii. The policy is silent on how often the Ministry of Education will undertake regular curriculum review to incorporate emerging issues and alternative approaches to Pre Primary education. iv. Despite the policy outlines on how to develop capacity for Pre Primary teachers, there is need for an overarching framework on their scheme of service. v. The policy should indicate the need for affirmative action in particular counties with unique needs to enhance pre-primary to primary transitions for example nutrition and health services and age entry guidelines.
2	**Primary Education**	i. The policy should provide basic indicators that include Gross Enrolment Rate, Net Enrolment Rate, retention rate, transition rate, Pupil - teacher ratio, Student textbook ratio, Girl-Boy Gender parity index at primary school among others as a basis for policy planning. ii. The policy needs to establish an institutional framework for strengthening capacity of quality assurance officers iii. The policy should provide elaborate measures to enhance quality education for students in urban slums. iv. The policy is not clear on the resource mobilization framework that will ensure adequate infrastructure including teaching and learning materials for all primary schools.

3	**Secondary Education**	i. The Sessional paper isn't clear on how to mitigate secondary schools overstretched facilities, due to 100% transition policy. ii. The Session paper is silent on the development of day schools as a means of expanding access and reducing the cost to parents iii. The sessional paper need to formulate mechanisms for the development of harmonized bursary kitty (The President's bursary fund; MOE, county and CDF bursary funds; Jomo Kenyatta Foundation, the Equity and other banks programmes,), to support needy students in boarding schools. i. The policy fails to elaborate mechanisms for harmonized funding of projects in infrastructure development of secondary schools iv. The policy needs to establish an institutional framework for strengthening capacity of quality assurance officers v. The sessional should put elaborate measures to institutionalize guidance and counselling in secondary schools vi. The Policy should elaborate clear plans to motivate students especially the girls to study STEM subjects
4	**Special Education**	i. The policy lacks indicators regarding children with special needs to facilitate policy formulation ii. The policy should elaborate programmes that enhance inclusive education in all institutions of learning iii. Mechanisms for promoting access to secondary, tertiary and university education for learners with special needs through affirmative action should be well laid out in the policy iv. The policy should have tools for supervision and monitoring of special education programmes
5	**Adult, Continuing and Non-Formal Education** **Strategies**	i. A framework to anchor comprehensive policy for Adult, Continuing and Non-Formal Education programmes is necessary ii. There is need to Conduct regular literacy surveys to establish literacy status in the country

6	University Education	i. Clear mechanisms have to be put into place in the policy to promote rationalization of academic programmes among universities with the aim of creating centres of excellence and make each university have a comparative advantage ii. The policy need to provide mechanisms for reviewing all professional programmes to ensure that they incorporate internships/ apprenticeship into the academic programmes iii. There is no clear mechanism for enhancing linkages between industries and Universities iv. The Policy should elaborate clear plans to increase the number of students studying STEM subjects v. The policy need to elaborate clearly on how Universities can be supported to offer stem courses
7	**Technical, Industrial, Vocational and Entrepreneurship Training (TIVET)**	i. The policy should address how to enhance private sector participation in curriculum design and implementation ii. Clear mechanisms for provision of adequate physical facilities and modern equipment need to be provided in the policy
8	**Teacher Management**	i. The policy does not also address how to regularly review staffing norms
		ii. There is need for clear tools for monitoring the teachers performance in the policy
		iii. There is no framework guiding continuous capacity development of the Head teachers
9	**Curriculum And Assessment**	i. The policy isn't clear at the level which different types of examinations will be offered in the basic education under the Competency Based Curriculum.
10	**Governance And Management Of Education And Training**	ii. The governance and management of education and training from Basic Education , TVET and University Education is not clearly laid out in the policy

11	Legal Framework	i.	The Policy has not recommended any legal framework that requires review in line with the needs of the new Constitution (2010) and vision 2030?
12	**Arrangement of the policy issues in the sessional paper**	ii.	The sessional paper is very repetitive; there is need for clarity on every policy area. That is, the current indicators, the status of access, quality, relevance, monitoring and evaluation, resource mobilization among others.

MIN.NO. /EDUC/2019/093: ANY OTHER BUSINESS

Breakfast Meeting with the Ministry of Education

The Committee was informed that the Ministry of Education had organized a breakfast meeting at Pan-Afric Hotel in Nairobi on Tuesday 19th March 2019 starting at 7.30 am to brief the Committee on the contents of the Sessional Paper.

Members were urged to attend the breakfast meeting to be apprised on the paper further and give the Committee views on it.

No other business arose.

MIN. NO./EDUC/2019/094: ADJOURNMENT

There being no other business the meeting was adjourned at 11.40 am. The next meeting will be held on Tuesday 19th March, 2019.

Signed ____________________ **Date** 29/4/2019

Hon. Julius Melly, MP

(Chairman)

MINUTES OF THE 20^{TH} SITTING OF THE COMMITTEE ON EDUCATION & RESEARCH HELD ON TUESDAY 19^{TH} MARCH, 2019 IN PAN-AFRIC HOTEL NAIROBI AT 8.00 AM

PRESENT

1. Hon. Amos Kimunya EGH, MP - **Vice Chairperson**
2. Hon. (Prof.) Zadoc Ogutu, MP
3. Hon. (Eng.) Nzambia Kithua, MP
4. Hon. Eric Muchangi, MP
5. Hon. Jackson Lekumontare, MP
6. Hon. Jerusha Momanyi, MP
7. Hon. Peter Lochakapong, MP
8. Hon. Oroo Oyioka, MP

ABSENT WITH APOLOGY

1. Hon. Julius Melly, MP - **Chairperson**
2. Hon. (Dr) Pamela Ochieng, MP
3. Hon. Moses Injendi, MP
4. Hon. Geoffrey Odanga, MP
5. Hon. Catherine Wambilianga, MP
6. Hon. Eve Obara MBS, MP
7. Hon. Joseph Tonui, MP
8. Hon. Lilian Tomitom, MP
9. Hon. Omboko Milemba, MP
10. Hon. Wilson Kogo, MP
11. Hon. Wilson Sossion, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Daniel Mutunga - Principal Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Kibet Mutai - Audio Officer

MINISITRY OF EDUCATION

1. Dr. Amb. Amina Mohamed - Cabinet Secretary Sports/Ag. CS Education
2. Prof. Collete Suda CBS - Chief Administrative Secretary/PS for University Education
3. Dr. Belio Kipsang, CBS - Principal Secretary for Early Learning and Basic Education
4. Dr. Devit Desai - Principal Secretary for Vocational and Technical Training
5. Mr. Alfred Cheruiyot - Principal Secretary for Post Training and Skills
6. Prof. Mwenda Ntaragwi - CEO, CUE
7. Mr. Charles Ringera - CEO HELB

8. Mr. John Kimotho - KICD
9. Representatives from KNEC, KNQA, TVETA, KEPSHA, KESSHA, NACOSTI, TSC
10. Ministry of Education Officials

MIN.NO. /EDUC/2019/095: PRELIMINARIES

The meeting to order at 10:12 am thereafter followed by prayers.

Dr. Belio Kipsang, CBS, Principal Secretary for the State Department of Early Learning and Basic Education welcomed all participants into the meeting.

He further informed the meeting that the agenda was to brief the Members of the Departmental Committee on Education and Research on the Sessional Paper Sessional Paper No 1 of 2019 on reforming Education and Training for Sustainable Development that is expected to inform and guide education reforms and policies for the next several years.

He further welcomed all participants to give their views on the paper and fill the gaps that will help to production of a comprehensive document.

MIN.NO. /EDUC/2019/096: SUBMISSION BY PS EARLY EDUCATION AND BASIC LEARNING ON THE SESSIONAL PAPER

Kenya Vision 2030 underscores the importance of education in ensuring relevant human and social capital for sustainable development. The Constitution guarantees every child the right to free and compulsory basic education. Further, it provides for access to affordable tertiary education, training and skills development. The reform in education and training seeks to shift to a competence-based curriculum at all levels.

Rationale for the Sessional Paper No.1 OF 2019

1. The last gazetted Sessional Paper was Sessional No. 1 of 2005 on Education, Training and Research led to reforms through a Sector Wide Approach to Planning (SWAP). Though the emphasis was on access, equity, quality, relevance and the strengthening of governance and management, the expected returns on investment in education in terms of productive and skilled manpower has not been realized to the full.

2. The Constitution of Kenya (2010) articles 43(1)(f), 53(1)(b) 54 and 55(a) makes education and training a right of every Kenyan. The Constitution further binds the Government to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. This has necessitated the development of this policy through an elaborate consultative stakeholder process.

3. Kenya Vision 2030 unveiled in 2007 underscores the importance of Education and Training in making Kenya a prosperous country with a high quality of life by 2030. The Blue print obligates the Government to provide a globally competitive and quality education, training and research. Kenya aims to be a regional centre of research and development in new technologies.

This will be achieved through integrating early childhood education into primary education; reforming secondary school curricula; modernising teacher training; strengthening partnerships with the private sector; developing key programmes for learners with special needs, rejuvenating ongoing adult training programmes; revising the curriculum for university and technical institutes to include more science and technology; and in partnership with the private sector, with the Government increasing funding education in ensuring relevant human and social capital for sustainable development.

4. Implementation of the recommendations of the Task Force on the Re-Alignment of Education and Training Sector 2010 (The Prof. Odhiambo Report) and Prof Some on alignment of Higher Education, Science and Technology with Constitution 2010 and Vision 2030.

5. Realization that the Education currently offered is not meeting the skill demand of the country and a lot of wastage in transition of learners to the next level of education. There is therefore need for an education system, which would ensure learners acquire competences and skills to meet labour demands and one that:- offers a choice of subject pathways at the end of the elementary school phase; ensures the attainment of 100 per cent transition rate from primary to secondary school, thereby reducing wastage by introducing automatic progression to the next educational level and a system that promotes acquisition of core skills and competences (literacy, numeracy and communication skills) as opposed to acquisition of theoretical knowledge.

6. Rapid expansion in the university sub-sector and demand for higher education has witnessed tremendous growth in the last 5 years, both private and public universities. Along with the growth in the number of universities has come huge growth in enrolments. The growth was partially driven by the increase in the number of public universities and public financing of students in private universities by the Higher Educations Loans Board. Currently there are total of 31 public universities and constituent colleges, 18 private chartered universities, 14 operating under interim letter of authority and 5 private university colleges making a total of 74 institutions. The establishment of new university colleges and campuses has contributed to considerable growth hence university reforms is necessary to provide accessible, relevant and quality university education.

7. Transition from Millenium Development Goals to Sustainable Development Goals (SDGs): SDG No. 4 ensures inclusive and equitable quality education and promote lifelong learning opportunities for all if this goal is to be realised, it has to be accompanied by policies, strategies and programmes to develop curriculum and teaching resources, relevant teacher education and professional development, school- and classroom-based pedagogic initiatives and appropriate learning environments. Assessment of learning outcomes has to reflect changed educational objectives and outcomes.

Objectives of Education & Training

Improve access, equity and provide quality and relevant education and training at all levels; Establish, maintain and manage professional teaching and learning service in education and training

Formulate, review and implement appropriate policies, legal and institutional frameworks for the Sector and romote innovativeness, creativity and entrepreneurship in education and training;

Pillars of the Policy Framework

The Pillars of the policy framework include access, quality and relevance and equity in education and training, Governance and Management of Education Institutions and mentoring, moulding and nurturing of National Values

Given the above pillars, the learner is the central beneficiary of education system with enhanced rights and needs

Cross Cutting Policy Thrusts

(i) Reform curricula at all levels in line with relevant provisions of the Constitution 2010, aspirations of Kenya Vision 2030, the East African Community protocol, International Standards and the progressive needs of the society
(ii) Integration of ICT in education and training
(iii) Standardizing assessment and examinations of core competencies, learning outcomes, transferable skills and subject related knowledge
(iv) Establish a central system for accreditation and quality assurance in education and training.
(v) Strengthen Education Quality Assurance and Standards Services in education and training
(vi) Mainstream ethics and value based education in the curriculum in education and training ;

Teacher, instructor, trainer and lecturers Education and Development

(i) Establish standards, based on acceptable principles that will ensure optimal delivery of competency-based education and training

(ii) Modernize pre-service and in-service teacher training

(iii) Institutionalise Continuous Professional Development at all levels

(iv) Professionalize the teaching profession

(v) Ensure efficient and cost-effective utilization of teachers, instructors, trainers and lecturers;

(vi) Review the current teacher training programmes;

(vii) Establish mechanisms to enhance management, performance and accountability at all levels;

(viii) Rebrand the management of TVET trainers;

(ix) Provide quality and adequate human resource in education and training

Financing, Investment and Resource Mobilization

(i) Promote increased private sector financing of education and training

(ii) Strengthen internal and external partnerships

(iii) Strengthen governance and accountability at all levels

(iv) Promote increased private sector financing of education and training

(v) Strengthen internal and external partnerships

(vi) Strengthen governance and accountability at all levels

OBSERVATIONS AND SUBMISSION BY THE COMMITTEE

The Committee noted that:

1. Sustainable Development Goals 4 (SDG4)-Quality Education aims to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. Further quality Education is a Pillar in the UN 2030 Agenda for Sustainable Development
2. Kenya's education sector is experiencing a period of increased investment and attention. With pressing demand created by a growing population, the government should therefore focus more on improving quality across the system in addition to access and retention.
3. The last curriculum reform was carried out more than 30 years ago, when the school system shifted to the 8-4-4system and the current reforms are expected to last for the next decades hence the need to develop a comprehensive policy paper to addresses the learners needs and anticipated challenges.
4. The general upwards trend in enrolment and attendance suggests that government interventions are having a-positive effect. However, there are some concerns that this momentum could be lost if adequate resources are not allocated to the sector to mitigate the challenges of increased transition.
5. The attention on the sector should be on the desire to align the system with the needs of the labour market and nurturing learners' potentials, comprehensive strategies for teacher development and provision of holistic early childhood care and education.
6. Ineffective and uncoordinated assessment and monitoring and by both TSC Curriculum Support Officers and MoE Quality Assurance and Standards Officers programs has exacerbated weaknesses in evaluation of education outcomes of the new curriculum.

Private Schools

7. Private schools have made a huge contribution to the provision education in the country. The government should consider subsidizing fees charged by private schools through capitation just as it abolished payment of national examination fees in both public and private schools. It is noteworthy to note that some learners choose to attend private schools because of nonexistence of public schools in their locality or due to the quality education they offer and not because they the learners are from well to do families.

The Committee raised the following concerns on the gaps in the sessional paper.

Pre-Primary Level

(i) There is no overarching framework for the implementation of the National Pre Primary Education Policy

(ii) The Policy is not clear on the Development and implementation of appropriate Pre Primary programmes for children with special needs, including the vulnerable and disadvantaged groups.

(iii) The policy is silent on how often the Ministry of Education will undertake regular curriculum review to incorporate emerging issues and alternative approaches to Pre Primary education.

(iv) Despite the policy outlines on how to develop capacity for Pre Primary teachers, there is need for an overarching framework on their scheme of service.

Primary Level

(i) The policy should provide basic indicators that include Gross Enrolment Rate, Net Enrolment Rate, retention rate, transition rate, Pupil - teacher ratio, Student textbook ratio, Girl-Boy Gender parity index at primary school among others as a basis for policy planning.

(ii) The policy needs to establish an institutional framework for strengthening capacity of quality assurance officers

(iii) The policy should provide elaborate measures to enhance quality education for students in urban slums.

(iv) The policy is not clear on the resource mobilization framework that will ensure adequate infrastructure including teaching and learning materials for all primary schools.

(v) The policy should indicate the need for affirmative action in particular counties with unique needs to enhance pre-primary to primary transitions for example nutrition and health services and age entry guidelines.

Secondary Education

(i) The Sessional paper isn't clear on how to mitigate secondary schools overstretched facilities, due to 100% transition policy.

(ii) The Session paper is silent on the development of day schools as a means of expanding access and reducing the cost to parents

(iii) The sessional paper need to formulate mechanisms for the development of harmonized bursary kitty (The President's bursary fund; MOE, county and CDF bursary funds; Jomo Kenyatta Foundation, the Equity and other banks programmes,), to support needy students in boarding schools.

(iv) The policy fails to elaborate mechanisms for harmonized funding of projects in infrastructure development of secondary schools

(v) The policy needs to establish an institutional framework for strengthening capacity of quality assurance officers

(vi) The sessional should put elaborate measures to institutionalize guidance and counselling in secondary schools

(vii) The Policy should elaborate clear plans to motivate students especially the girls to study STEM subjects

Special Education

(i) The policy lacks indicators regarding children with special needs to facilitate policy formulation

(ii) The policy should elaborate programmes that enhance inclusive education in all institutions of learning

(iii) Mechanisms for promoting access to secondary, tertiary and university education for learners with special needs through affirmative action should be well laid out in the policy

(iv) The policy should have tools for supervision and monitoring of special education programmes

Adult, Continuing and Non-Formal Education

(i) **Strategies** A framework to anchor comprehensive policy for Adult, Continuing and Non-Formal Education programmes is necessary

(ii) There is need to Conduct regular literacy surveys to establish literacy status in the country

University Education

(i) Clear mechanisms have to be put into place in the policy to promote rationalization of academic programmes among universities with the aim of creating centres of excellence and make each university have a comparative advantage

(ii) The policy need to provide mechanisms for reviewing all professional programmes to ensure that they incorporate internships/ apprenticeship into the academic programmes

(iii) There is no clear mechanism for enhancing linkages between industries and Universities

(iv) The Policy should elaborate clear plans to increase the number of students studying STEM subjects.

(v) The policy need to elaborate clearly on how Universities can be supported to offer stem courses

Technical, Industrial, Vocational and Entrepreneurship Training (TIVET)

(i) The policy should address how to enhance private sector participation in curriculum design and implementation to link skills and knowledge to the requirements of the labour market

(ii) Clear mechanisms for provision of adequate physical facilities and modern equipment need to be provided in the policy

Teacher Management

(i) The policy does not also address how to review staffing norms particularly in the implementation of the CBC which presents a different matrix in the computation of staffing norms.
(ii) There is need for clear tools for monitoring the teachers performance in the policy
(iii) There is no framework guiding continuous capacity development of the Head teachers
(iv) More resources are required for continuous training of teachers on CBC
(v) The Teachers deficit can be bridged by engaging intern teachers through a formulated internship program;
(vi) Statistics on the data for provided on teachers, learners and educational institutions is for the 2017 therefore not current.

Curriculum and Assessment

The policy isn't clear at the level which different types of examinations will be offered in the basic education under the Competency Based Curriculum.

Governance and Management of Education and Training

The governance and management of education and training from Basic Education, TVET and University Education is not clearly laid out in the policy

Legal Framework

The Policy has not recommended any legal framework that requires review in line with the needs of the new Constitution (2010) and vision 2030.
The paper should provide a policy thrust in the future in regards to ensuring, access, quality, equity and provide data on educational institutions.
The mandates and roles of all the relevant Semi-Autonomous Government Agencies in educator sector should be captured in the document.

Arrangement of the policy issues in the sessional paper

The sessional paper is very repetitive; there is need for clarity on every policy area. That is, the current indicators, the status of access, quality, relevance, monitoring and evaluation, resource mobilization among others.

Financing

The Financing of education at the various levels should be a topic of its own
The Paper should address issues of decreasing resources amidst increasing demands and suggest innovative means of raising funds.
The Framework of the document should link the objectives with national and international goals of and the Sustainable development goals.

Integration of ICT in Education

Teachers should be trained on to know exactly how ICT is used as a teaching and learning tool to help students to use them. Integration of ICT as a tool in the classroom overally increases the effectiveness of teaching and improves students' learning.

KEPSHA

The officials of Kepsha raised a concern that the headteachers and classroom teachers have not been adequately trained on the CBC.

KESSHA

The KESSHA Chair submitted that Secondary schools teachers need to be exposed to the new curriculum as early as now so as to

Way Forward

The Ministry undertook to collate and incorporate all the views and comments of the participants in the sessional paper and requested for 3 weeks to complete an addendum to the document before sharing it with the Committee.

MIN.NO. /EDUC/2019/097: ANY OTHER BUSINES

No other business arose.

MIN. NO./EDUC/2019/098: ADJOURNMENT

There being no other business the meeting was adjourned at 12.10 pm. The next meeting will be held on Thursday 21st March, 2019.

Signed ____________________ **Date** 24/4/2019

Hon. Julius Melly, MP

(Chairman)

MINUTES OF THE 23RD SITTING OF THE COMMITTEE ON EDUCATION & RESEARCH HELD ON THURSDAY 4TH APRIL, 2019 IN CONTINTAL HOUSE COMMITTEE BOARDROOM ON 2ND FLOOR AT 10.00 AM

PRESENT

1. Hon. Julius Melly, MP - **Chairperson**
2. Hon. Moses Injendi, MP
3. Hon. Geoffrey Odanga, MP
4. Hon. (Prof.) Zadoc Ogutu, MP
5. Hon. (Eng.) Nzambia Kithua, MP
6. Hon. Eve Obara MBS, MP
7. Hon. Catherine Wambilianga, MP
8. Hon. Eric Muchangi, MP
9. Hon. Jackson Lekumontare, MP
10. Hon. Joseph Tonui, MP
11. Hon. Oroo Oyioka, MP
12. Hon. Omboko Milemba, MP
13. Hon. Wilson Sossion, MP
14. Hon. Wilson Kogo, MP

ABSENT WITH APOLOGY

1. Hon. Amos Kimunya EGH, MP - **Vice Chairperson**
2. Hon. (Dr) Pamela Ochieng, MP
3. Hon. Jerusha Momanyi, MP
4. Hon. Lilian Tomitom, MP
5. Hon. Peter Lochakapong, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Daniel Mutunga - Principal Clerk Assistant I
2. Mr. Philip Lekarkar - Clerk Assistant III
3. Mr. Kibet Mutai - Audio Officer
4. Ms. Catherine Mukunyi - Serjeant at Arms

MIN.NO. /EDUC/2019/121: PRELIMINARIES

The Chair called the meeting to order at 10:23 am thereafter followed by prayers. The agenda of the meeting was adopted having been proposed by Hon. Geoffrey Odanga, MP and seconded by Hon. MP and Hon. (Eng.) Nzambia Kithua, MP respectively.

MIN.NO. /EDUC/2019/122: CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO./EDUC/2019/123 ADOPTION OF THE ON THE SESSIONAL PAPER NO. 1 OF 2019 ON POLICY FRAMEWORK FOR REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT IN KENYA

The Committee the draft Report on the Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya and made the following amendments on the draft report on the gaps that need to be relooked by the Ministry

On page 15: Under Infrastructure in schools

"The is need to address the dire need of facilities in schools to enable delivery of quality education" was added as item no. (iv).

On page 17: On Capitation:

The paper should capture a framework of funding education in the form of capitation was added as item no. (vi).

On page 18: University Education

The sessional paper should include strategies the Ministry of Education would put in place to ensure delivery of sustainable quality and relevant education from basic education up to tertiary education in the midst of challenges facing education which includes inadequate government funding, students, teachers and lectures strikes, insecurity in educational institutions, drugs and substance abuse.

On Page 20: Educational Institutions Governance, Private Schools.

The paper should include a section on governance and management of Education and Training and specify the roles and functions the University Senate, University Council, Education Board and School Board to avoid duplication and confliction roles.

The government should enhance the quality of infrastructure and strengthen management of public schools to offer quality education as is offered in well performing private schools.

On days schools, the Ministry should lay more emphasis on establishment and development of days to increase access to secondary school education in response to the high demand for secondary education following increased enrolment in primary schools and of 100% transition policy adopted by the government.

Teachers;

The Government should plan for annual recruitment of teachers in the next five years to bridge the teachers' shortage gap.

Training of teachers should go beyond acquisition of pedagogical skills/Mastering of the content but should include training on handling of learners outside classroom, nurturing learners, talents, ways of addressing indiscipline and helping learners acquire values, ethics and life skills.

On Page 21: Competency Based Curriculum

The Ministry of Education should do costing of the new curriculum, establish the requisite infrastructure, identify the teaching and learning resources required to implement for smooth implementation of the curriculum.

The Report was subsequently adopted subject to the amendments having been proposed by Hon. (Prof.) Zadoc Ogutu, MP and seconded by Hon. (Eng.) Nzambia Kithua, MP.

MIN.NO. /EDUC/2019/124: FOREIGN VISI

Members were informed that the Committee is in receipt of the following invitations:-

1. Invitation from Colleges and Institutes of Canada (CICan) in conjunction with the Kenya Education for Employment Program (KEFEP) and TVETA to attend its annual Conference on Technical and Vocational Education (TVET) in Niagara Falls, Ontario, Canada from 5th to 7th May 2019.

2. Invitation from Education International to attend the Pearson Annual General Conference to be held in London, United Kingdom between 26th and 28th April, 2019.

The following delegation has been nominated to attend the following proposed conferences:

Pearson Annual General Conference in London

1. Hon. Julius Kipbiwot Melly, MP-Chairperson & Leader of Delegation
2. Hon. Catherine Wambilianga, MP
3. Hon. Thuddeus Nzambia Kithua, MP
4. Hon. Eve Obara, MP

(CICan) Conference in Canada

1. Hon. Geoffrey Makhoha Odanga, MP - Leader of Delegation
2. Hon. (Prof.) Zadock Abel Ogutu, MP
3. Hon. Joseph Tonui, MP
4. Hon. Eric Muchangi Njiru, MP

This subject to availability of funds

MIN.NO. /EDUC/2019/125: ANY OTHER BUSINESS

Visit to Mwiki Primary School

Members gave a preliminary report on the fact finding visit to Mwiki Primary School in Ruiru Constituency. A comprehensive report is being compiled by the secretariat.

Business pending before the Committee

The Committee was briefed on the following business awaiting consideration by the Committee:

1. Petition on Implementation of delocalization policy by the Teachers' Service Commission

2. Petition on Transfer of Technical and Vocational Education and Training Trainers from Teachers Service Commission to the Public Service Commission. Petition on Funding of Co-Curricular Activities in Public Primary Schools
3. Petition on release of results for Mr. Nick Onyango

Legislative Proposals & Bills

1. Universities' Act (Amendment) Bill, 2018 received on 15th March, 2019.
2. The Basic Education (Amendment) Bill 2019
3. The HELB (Amendment) Bill
4. TSC Amendment Legislative Proposal 2019

The Committee resolved to prioritize consideration of the above petitions and bills and conclude within the statutory timelines.

No other business arose.

MIN. NO./EDUC/2019/125: ADJOURNMENT

There being no other business the meeting was adjourned at 12.10 pm. The next meeting will be held on Tuesday 9th April, 2019.

Signed ______________________ **Date** 29/4/2019

Hon. Julius Melly, MP

(Chairman)

MINUTES OF THE 29TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH HELD ON THURSDAY, 2ND MAY, 2019 INTHE BOARDROOM, 4TH FLOOR, PROTECTION HOUSE, MAIN PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. Hon. Amos Kimunya EGH, MP- **Vice Chairperson**
2. Hon. Eric Muchangi, MP
3. Hon. Oroo Oyioka, MP
4. Hon. Eve Obara MBS, MP
5. Hon. Geoffrey Odanga, MP
6. Hon. (Eng.) Thaddeus Nzambia Kithua, MP
7. Hon. (Prof.) Zadoc Ogutu, MP
8. Hon. Catherine Wambilianga, MP
9. Hon. Wilson Sossion, MP
10. Hon. Jackson Lekumontare, MP
11. Hon. Jerusha Momanyi, MP
12. Hon. Omboko Milemba, MP
13. Hon. Peter Lochakapong, MP
14. Hon. Wilson Kogo, MP

ABSENT WITH APOLOGY

1. Hon. Julius Melly, MP - **Chairperson**
2. Hon. Moses Injendi, MP
3. Hon. (Dr.) Pamela Ochieng, MP
4. Hon. Joseph Tonui, MP
5. Hon. Lilian Tomitom, MP

IN-ATTENDANCE - NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga- Principal Clerk Assistant I
2. Ms. Annceta Gacheri - Research Assistant III
3. Mr. Kibet Mutai - Audio Officer

MIN.NO./EDUC/2019/136: PRELIMINARIES/ADOPTION OF THE AGENDA

The Vice Chairman called the meeting to order at 10.30am. The Prayerwas said. The Agenda of the Meeting was adopted as the true business for the day after having been proposed by Hon. Wilson Kogo, MP, and seconded by Hon. Oroo Oyioka, MP.

MIN. NO. /EDUC/2019/137: CONFIRMATION OF MINUTES

Confirmation of Minutes was deferred to the next Meeting. There were no matters arising.

MIN.NO./EDUC/2019/138: CONSIDERATION AND ADOPTION OF THE REPORT ON THE DELOCALIZATION POLICY AND SESSIONAL PAPER NO. 1 OF 2019

Report on the Petition by Hon. Patrick Mariru, MP, on the delocalization policy by TSC

The Committee Members noted that changes on the text of the observations and recommendations proposed in the previous meeting had been incorporated.

Proposal on the adoption of the report was made by Hon. (Prof.) Zaddock Ogutu, MP, and seconded by Hon. Catherine Wambilianga, MP. The report was thereby unanimously adopted by the Members present.

Report on the Sessional Paper No. 1 of 2109

The Committee considered the report on the Sessional Paper No. 1 of 2019 and noted the following:

i. That the Ministry had submitted an addendum on suggestions made by the Committee during a recent retreat with officials of the Ministry. The Committee resolved to hold a Sitting to consider the addendum and make recommendations as necessary.

ii. The implementation of the Sessional Paper should commence immediately after adoption of the Committee report by the National Assembly.

Proposal on the adoption of the report was made by Hon.Wilson Sossion, MP, and seconded by Hon. Jerusha Momanyi, MP. The report was thereby unanimously adopted by the Members present.

MIN. NO./EDUC/2019/139: UNIVERSITIES VISITS

It was resolved that the Universities visits scheduled for 4th to 5th May, 2019 be postponed to 17th and 18th May, 2019. The visits to include an inspection tour of one public school within the proximity of the universities.

MIN. NO./EDUC/2019/140: ANY OTHER BUSINESS

The Committee resolved to hold a retreat with the Ministry of Education to deliberate on, among other agenda, Capitation to schools, status on the implementation of the Competence Based Curriculum and updates on the process of the implantation of Sessional Paper No. 1 of 2019.

MIN. NO. 017/EDUC/2017: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.35 pm. The next meeting would be held on Tuesday 7th May, 2019 at 10.00 am.

Signed.................................Date....8/05/2019....................

Hon. Julius Melly, MP
(Chairman)

Approved for tabling.
SNA
18/6/19

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON AN INQUIRY INTO A COMPLAINT BY KAMITI ANMER FOREST SQUATTERS ASSOCIATION REGARDING ALLOCATION OF LAND LR.NO. 8390 IN KAMITI ANMER FOREST

DIRECTORATE OF COMMITTEE SERVICES
CLERKS CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2019

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CHAIRPERSON'S FOREWORD

The complaint regarding allocation of land LR. No. 8390 Kamiti/ Anmer Forest was forwarded to the Committee by Kamiti Forest Squatters Association through a letter dated 23rd January 2018. The group indicated that it comprised former labourers, who worked in coffee plantations within Kamiti area and persons who were internally displaced from the then Rift Valley Province due to the post 1992 general elections clashes. The displaced persons were first settled in Kirigiti Stadium in Kiambu. They then requested the government to resettle them by allocating them land in Kamiti forest. They further stated that on 5th December 1994 the then Provincial Commissioner conveyed the decision of H. E the President to excise 300 acres of Kamiti Forest for their resettlement. They further claimed that the contested land still belonged to the Kenya Forest Service as it was not officially degazetted.

However, they alleged that other persons obtained leases to the same land and in the process the squatters were abandoned. Their efforts to establish shelters on the contested land had been thwarted by persons, who claim to possess title deeds for the contested land. Therefore, the complainants requested the Committee to intervene in the matter to ensure that their plight was addressed.

In considering the complaint the Committee held meetings with the representatives of Kamiti Forest Squatters Association (the complainants) on 12th June 2018, the Cabinet Secretary, Ministry of Lands and Physical Planning, the Chief Administrative Secretary, Ministry of Environment & Forestry and the Ag. Chief Executive Officer, National Land Commission on 23rd April 2019. The Committee also undertook a visit to Kiambu County on Friday 16th November 2018. During the visit the Committee held meetings with representatives of government agencies based in the County, namely the Ministry of Lands and Physical Planning, the Kenya Forest Service, the National Land Commission and the Ministry of Interior and Coordination of National Government. The Committee also received oral and written submissions from several groups contesting the ownership of the land. The groups included: Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano wa Kamiti Group and Kamiti Anmer Development Welfare Group.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Ag. Chief Executive Officer, National Land Commission, the Cabinet Secretary, Ministry of Lands and Physical Planning, the Chief Administrative Secretary, Ministry of Environment & Forestry and the representatives of various groups that made submissions to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 199 it is my pleasant duty to table the Report of the Departmental Committee on Land on its consideration of an inquiry into a complaint by Kamiti Forest Squatters Association regarding allocation of land LR.No. 8390 Kamiti/ Anmer.

Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands

EXECUTIVE SUMMARY

The purpose of this report is to respond to a complaint regarding allocation of land LR.No. 8390 Kamiti/ Anmer that was forwarded to the Committee by Kamiti Forest Squatters Association. The group indicated it requested the government to resettle them by allocating them land in Kamiti forest. They further stated that on 5th December 1994 the then Provincial Commissioner conveyed the decision of H. E the President to excise 300 acres of Kamiti Forest for their resettlement. They also stated that although the land LR. No. 8390 Kamiti /Anmer was allocated to the group, other persons colluded with the Commissioner of Lands, who issued them leasehold title documents at the expense of the squatters. They further claimed that the contested land still belonged to the Kenya Forest Service as it was not officially degazetted.

The Committee observed that the basis of the complaint was the allocation of the LR. No. 8390 Kamiti/ Anmer forest to internally displaced persons following a public pronouncement by the former President H.E Daniel Moi that land from Kamiti Forest would be excised for the resettlement of squatters. Which was communicated by then Provincial Commissioner Mr. Victor Musoga to the Kiambu County Council.

The LR. No. 8390 Kamiti/ Anmer forest land was subsequently allocated to squatters in 1995. Additionally, individual owners also obtained 149 title deeds at the Kiambu Land Registry for LR. No. 8390 Kamiti/ Anmer forest land.

Based on the field visit conducted by the Committee, the Committee also observed that the land was nearly fully occupied as evidenced by presence of residential houses, public primary school constructed using public funds, provision of water and electricity services, churches and a cemetery among other public facilities.

The Committee noted that the National Land Commission had admitted the complaint on the contested land as a historical land injustice and confirmed that the letters of allotment issued to Kamiti Anmer Development Association in respect to the land were valid.

The Committee also observed that although there were several groups laying claim to the land in question these being the Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano Kamiti Group and Kamiti Anmer Development Welfare Group, following alternative dispute resolution mechanisms, three of the groups namely the Kamiti Forest Squatters Association, Kamiti Anmer Development Welfare Group and Muungano Kamiti Group had since agreed that the land be distributed among the members of the groups and had developed a reconciled list of allottees for consideration of issuance of titles.

Based on the submissions made to the Committee, the Committee observed that there existed ser ous security concerns due to disputes between various groups concerning ownership of LR. No. 8390 Kamiti/ Anmer forest land which calls for urgent settlement of the dispute through regularization of the de-gazettement process and subsequent allocation of land to the members of the four groups.

The Committee recommends that pursuant to section 34 of the Forest Conservation and Management Act, 2016 the LR. No. 8390 Kamiti/ Anmer forest be de-gazetted and excised from the Kamiti forest for purposes of settlement of the members of the Kamiti Forest Squatters Association, Kamiti Development Association, Muungano Kamiti Group and Kamiti Anmer Development Welfare Group.

The Committee also recommends that the Cabinet Secretary, Ministry of Lands& Physical Planning in consultation with the Cabinet Secretaries Ministry of Interior and Coordination of National Government, Ministry of Environment and Forestry and the National Land Commission do ensure through alternative dispute resolution mechanisms that the allocation of LR. No. 8390 Kamiti/ Anmer is regularized taking into consideration the membership of the four groups, physical developments undertaken on the land and the public utilities existing on the land within sixty days of adoption of this report by the House.

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
    (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

    (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;

    (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;

    (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;

    (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.

    (vi) study and review all legislation referred to it

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects:
    a) Lands
    b) Settlement

1.3 Oversight

3. The Committee oversights:

    i. The Ministry of Lands and Physical Planning; and

    ii. The National Land Commission

1.4 Committee Membership

4. The Committee membership comprises: -

Member	Constituency	Party
Hon. Dr. Rachael Nyamai, MP - **Chairperson**	Kitui South	Jubilee Party
Hon. Khatib Mwashetani, MP – **V/Chairperson**	Lunga Lunga	Jubilee Party
Hon. Jayne Wanjiru Kihara, MP	Naivaisha	Jubilee Party
Hon Joshua Kutuny Serem, MP	Cherangany	Jubilee Party
Hon. Kimani Ngunjiri, MP	Bahati	Jubilee Party
Hon. Mishi Mboko, MP	Likoni	Orange Democratic Movement (ODM)
Hon. Omar Mwinyi, MP	Changamwe	Orange Democratic Movement (ODM)
Hon. Ali Mbogo, MP	Kisauni	Wiper Democratic Party
Hon. Babu Owino, MP	Embakasi East	Orange Democratic Movement (ODM)
Hon. Caleb Kipkemei Kositany, MP	Soy	Jubilee Party
Hon. Catherine Waruguru, MP	Laikipia County	Jubilee Party
Hon George Aladwa, MP	Makadara	Orange Democratic Movement (ODM)
Hon George Risa Sunkuyia, MP	Kajiado West	Jubilee Party
Hon. Jane Wanjuki Njiru, MP	Embu County	Jubilee Party
Hon. Josphat Gichunge Kabeabea, MP	Tigania East	Party of National Unity
Hon. Owen Yaa Baya, MP	Kilifi North	Orange Democratic Movement (ODM)
Hon. Samuel Kinuthia Gachobe, MP	Subukia	Jubilee Party
Hon. Simon Nganga Kingara, MP	Ruiru	Jubilee Party
Hon. Teddy Mwambire, MP	Ganze	Orange Democratic Movement (ODM)

1.5 Committee Secretariat

5. The Committee secretariat comprises: -

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Legal Counsel I	Ms. Jemimah Waigwa
Researcher III	Mr. Joseph Tiyan
Fiscal Analyst III	Mr. Adan Abdi
Media Relations Officer III	Ms. Winnie Kizia

Audio Officer	Mr. Nimrod Ochieng
Serjeant-At-Arms	Ms. Peris Kaburi

2.0 INTRODUCTION

6. The complaint regarding allocation of land LR.No. 8390 Kamiti/ Anmer was forwarded to the Committee by Kamiti Forest Squatters Association through a letter dated 23rd January 2018. The group indicated that it comprised former labourers, who worked in coffee plantations within Kamiti area and persons who were internally displaced from the then Rift Valley province due to the post 1992 general elections clashes. The displaced persons were first settled in Kirigiti Stadium in Kiambu. They requested the government to resettle them by allocating them land in Kamiti forest. They further stated that on 5th December 1994 the then Provincial Commissioner conveyed the decision of H. E the President to excise 300 acres of Kamiti Forest for their resettlement. They further claimed that the contested land still belonged to the Kenya Forest Service as it was not officially degazetted hence no one could claim exclusive ownership of the said land.

7. However, they alleged that influential persons obtained leases to the same land and in the process the squatters were abandoned. The complainants further indicated that the contested land still belonged to the Kenya Forest Service as it was not officially degazetted.

8. They also argued that the issuance of the titles to 149 individuals by the Commissioner of Lands was done without first degazetting the land that was by then a forest reserve. Further the complainants stated that beneficiaries of the alleged illicit titles had never settled on the land until 5th October 2015 when the National Land Commission reinstated the leasehold title documents that had had been annulled.

9. The complainants also stated that their efforts to establish shelters on the contested land had been thwarted by persons, who claim to possess title deeds for the said land. Therefore, the complainants requested the Committee to intervene in the matter to ensure that their plight was addressed.

10. In undertaking the inquiry, the Committee sought to establish the following:
    - i. Whether the government decided to excise 300 acres of Kamiti Forest for the resettlement of squatters;
    - ii. The validity of the 149 title deeds in respite to the disputed land, issued by the Ministry; and
    - iii. Whether Kamiti Forest LR. No. 8390 Kamiti was degazetted.

3.0 SUBMISSIONS

3.1 Submissions by the complainants (Kamiti Forest Squatters Association)

3 The Committee held a meeting with the representatives of Kamiti Forest Squatters Association on 12th June 2018. The representatives of the group led by Mr. John Wakaba informed the Committee of the following:

4 The group comprised 1200 Internally Displaced Persons, mainly for the former Riff Valley province, who were displaced due to the 1992 post-election violence. They indicated that they had occupied the disputed land, LR. No. 8390 Kamiti /Anmer, within Kamiti Forest in Kiambu County for the past two decades.

5 They also alleged that the land was allocated to them by H.E. President Daniel Moi in 1994 following a request they had made to the President through the then area Member of Parliament, Hon Arthur Magugu.

6 The Kamiti Forest Squatters Association representatives further alleged that although the land LR. No. 8390 Kamiti /Anmer was allocated to the group, other persons colluded with the Commissioner of Lands, who issued them leasehold title documents at the expense of the squatters. The squatters complained and requested the government to stop the issuance of said titles.

7 The contested land still belonged to the Kenya Forest Service as it was not officially degazetted hence no one could claim exclusive ownership of the said land.

8 The issuance of the titles by the Commissioner of Lands was done without first degazetting the land that was by then a forest reserve.

9 The titles issued before the degazettement remain invalid because they were issued over property that is a government forest.

10 Their efforts to establish shelters on the contested land had been thwarted by members Kamiti Development Association, who claim to possess title deeds for the contested land

11 The Association applied for the degazettement of the contested land through Gazette Notice No. 966 of 3rd February 2017.

12 In letter, dated 20th June 2018, the Association also requested Parliament through the Committee to recommend that the process of degazetting the 300 acres of land from Kamiti Forest for the squatters to be issued with valid title deeds. The Association also appealed to the Government to allocate them a portion of the land should the forest be officially degazetted.

3.2 Submissions from stakeholders during a field visit to Kiambu County

15. The Committee undertook a field visit to Kiambu County on Friday 16th November 2018 and received oral and written submissions from several group contesting ownership of LR. No. 8390 and from government officers based in Kiambu County. The Committee was informed as follows:

a. Kamiti Forest Squatters Association

16. The representative of the group alleged that the contested land was allocated to them by H.E. President Daniel Moi in 1994 following a request they had made to the President through the then area Member of Parliament, Hon Arthur Magugu.

17. He also alleged that although the land LR. No. 8390 Kamiti /Anmer was allocated to the group, other persons colluded with the Commissioner of Lands and obtained leasehold title documents at the expense of the squatters.

18. The contested land still belonged to the Kenya Forest Service as it was not officially degazetted.

19. The issuance of the titles by the Commissioner of Lands was done without first degazetting the land that was by then a forest reserve. Further the beneficiaries of the alleged illicit titles had never settled on the land until 5th October 2015 when the National Land Commission reinstated the leasehold title documents that had had been annulled.

b. Kamiti Anmer Development Association

20. The representative of Kamiti Anmer Development Association (KADA) also claimed that members of the group were allocated the contested land following a directive by H. E. President Moi through the Kiambu County Council. The Commissioner of Lands then transferred the land to 1500 members of KADA.

21. He also claimed the contested land ceased being a forest following:
    - The approval of planning by Director of Planning
    - A survey undertaken by Survey of Kenya
    - The production of IRMS and issuance of title deeds

22. The group also claimed that they were the only party that submitted ownership documents to the National Land Commission during a public hearing conducted by the commission

regarding the disputed land in 2015. The documents included letters of allotment and title deeds.

23. The group stated that the National Land Commission intervened in the matter under its Constitutional powers provided for in Article 67 of the Constitution and section 5 (5f) the National Land Commission Act 2012 and invited the groups involved in the dispute for a meeting but none of the said groups apart from KADA produced ownership documents. The Commission determined that the land belonged to KADA and instructed the Director of Forestry to degazette it to enable the completion of the ownership process to be realized.

24. The representatives also stated that the contested land, L.R No. 8390 (approximately 169.7 Ha.) formerly Kamiti Forest Reserve was degazetted and converted to the provisions of the Registered Land Act (Cap 300) vide Legal Notice No. 32 of 12th May 1995 and;
    - A part Development Plan was prepared for the same (Ref KBU/266/95/2).
    - Survey was done and authenticated by the Director of Survey in 1996 as Kamiti/Anmer Block II and letters of allotments issued for all parcels except for public utility plots.
    - The area had fully developed plots, a primary school, churches, a temporary chief's office and several residential houses

25. The Committee was also informed that the persons who were allotted plots and issued with 149 title deeds for the contested land had been identified by the District Plot Allocation Committee (DPAC. Therefore, the group argued that currently there was no parcel of land known as L.R No. 8390 since the land had been adjudicated and allotted. The remaining pieces of land were either public utility plots or parcels of land owned by absentee landlords.

c. Muungano wa Kamiti Group

26. Two representatives, each claiming, to represent Muungano wa Kamiti informed the Committee that the group had a membership of about 500 members who used to farm in the forest before the presidential declaration to allocate the land to squatters.

27. The group also claimed to be the legitimate representatives of landless persons who worked in the coffee plantations in the Kamiti Anmner area, who had requested the government to allocate them the contested land that was within the said coffee plantations. They were allocated the land, LR. No. 8390 Kamiti /Anmer, within Kamiti Forest in Kiambu County in 1995.

    27. The group applied for the degazettement of the forest land in 1995 for the settlement of its members and the said degazettemet was done vide legal notice No. 179 of 12th May 1995.

28. The Members of the group had occupied the contested land for the past two decades and had lived peacefully on the land save for minor disruptions by individuals seeking to intimidate them to vacate the land.

29. In 2012 the District Administration in Kiambu through a ground status assessment established that members of the group were in occupation of the contested land.

d. Kamiti Anmer Development Welfare Group

30. The group led by Mr. James Kinuthia Mwangi, a former councilor for the then Anmer Ward., informed the Committee that the group was a splinter group from Kamiti Development Association (KADA). It also requested that the government allocates the group part of the contested land once the degazettement process was completed

Submissions by representatives of Government Agencies in Kiambu County

e. The Ministry of Lands and Physical Planning

31. The County Lands Officer, Kiambu County informed the Committee that L.R No. 8390 (approximately 169.7 Ha.) formerly Kamiti Forest Reserve was degazetted vide Legal Notice No. 32 of 12th May 1995.

32. A part Development Plan was prepared for the same (Ref KBU/266/95/2). Survey was done and authenticated by the Director of Survey in 1996 as Kamiti/Anmer Block II and letters of allotments issued for all parcels except for public utility plots.

33. About 149 title deeds were processed and registered at the Kiambu Land Registry.

34. The area had fully developed plots, a primary school, churches, a temporary chief's office and several residential houses.

f. The Kenya Forest Service

35. The Officers representing the Kenya Forest Service informed the Committee that the L.R No. 8390 measuring 169.8 Ha was originally declared a forest area vide proclamation no. 14 of 1933 and subsequently declared a central forest vide Legal Notice No. 174 of 20th May 1964.

36. There were attempts to hive off 300 acres of the forest and convert it into a settlement area but the degazettement process was not done. Therefore, the contested land is still a government forest.

37. The Kenya Forest Service placed a "Caveat Emptor" in 2009 warning the public not to be duped into buying land of the forest which is still in force.

38. The Chief Conservator of Forests requested Kiambu County Security and Intelligence Committee under the County Commissioner to coordinate the process of securing the forest from squatters.

g. The County Commissioner Kiambu County

39. The Deputy County Commissioner, Kiambu Sub – County on behalf of the County Commissioner informed the Committee that the government decided to hive off 300 acres of the forest and convert it into a settlement area following a public Presidential pronouncement made by H.E. Retired President Daniel T. Arp Moi in 1994 to the effect that internally displaced persons who had fled the then Rift Valley Province due the 192 post-election violence be settled in Kamiti Forest.

40. The forest was also a security treat at the time as many victims of carjacking and murder cases in Kiambu and Nairobi Counties were dumped there. Therefore, the government sought to settle the squatters in the land as a solution to curb the rising insecurity

41. The former Provincial Commissioner of Central Province, Mr. Victor Musoga vide a letter Ref. No. D74/1/173 of 5th December 1919 to the Clerk of Kiambu County Council allowed the County Council to settle the squatters on 300 acres of Kamiti Forest.

42. The Kenya Forest Service cut all the trees in the forest and later moved itsb officers from the area . This allowed the squatters occupied the said land. However, conflict ensued among the squatters who had been allocated the land and currently four groups were contesting ownership of the land.

43. 149 title deeds for the contested land were processed and registered at the Kiambu Land Registry.

44. The area had fully developed plots, a primary school, churches, a temporary chief's office and several residential houses.

45. The County Commissioner Kiambu County in a letter dated 12th March 2019 also stated that three groups Kamiti Forest Squatters Association, Kamiti Anmer Development Association and Muungano wa Kamiti Association had through Alternative Dispute Resolution agreed that the land would be distributed to the members of the three groups. The said groups had also developed a reconciled list of allotees for consideration for issuance of titles against respective allotment numbers.

46. The County commissioner also recommended that it was more viable to de- gazette the land and have it allocated to needy cases rather than reverting it to Kenya Forest Services.

3.3 Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning

47. The Committee held a meeting with the Cabinet Secretary, Ministry of Lands and Physical Planning on 23rd April 2019. The Cabinet Secretary informed the Committee of the following.

48. **Whether the land was surveyed, and a Part Development Plan issued**: The Cabinet Secretary informed the Committee that the forest was surveyed in 1954 vide survey plan FR 69/29 and declared a central forest on 20th May 1964 vide Legal Notice No. 174.

49. **Whether the land was first degazetted before the issuance of title deeds**: The Cabinet Secretary stated that Legal Notice No. 179 of May, 1995 issued by then Minister for Lands J.K. Mulinge was intended to facilitate the conversion of the contested land from the provisions of the Registration of Titles Act , CAP 281(repealed) to the Registered Land Act Cap 300 (repealed) .The notice was therefore for the purposes of conversion of the land from one titling regime to another and not to de-gazette the forest. This only made it possible for the allotees to process their title deeds at Kiambu rather than in Nairobi. However, this was irregular as it was done without the involvement of the Ministry of Environment & Forestry in reference to the then Forest Act Cap 385(repealed).

50. The Cabinet Secretary added that the allocation and subsequent issuance of titles was un-procedural since the process of de-gazettement was not completed as the then Minister for Environment did not issue a gazette notice altering the boundaries of the forest. However, the titles can be regularized once the forest was degazetted.

3.4 Submissions by the Chief Administrative Secretary, Ministry of Environment and Forestry

51. The Committee held a meeting with the Chief Administrative Secretary, Ministry of Environment and Forestry on 23rd April 2019. During the meeting the Committee was informed as follows:
52. **Whether the land in question is still a State Forest**; The Chief Administrative Secretary informed the Committee that Kamiti Forest is a gazetted forest reserve registered as L.R .No. 8390 measuring 169.8 Ha. It was declared a forest area vide proclamation no. 14 of 1933 and subsequently declared a central forest vide Legal Notice No. 174 of 20th May 1964. The forest was therefore public land and its ownership was vested in the state.

53. **The circumstances under which the Kenya Forest Services vacated the land:** The attempt to hive off 300 acres of the forest and convert it into a settlement area was made by the former Provincial Commissioner of Central Province, Mr. Victor Musoga vide a letter Ref. No. D74/1/173 of 5th December 1995 to the Clerk of Kiambu County Council. This was to implement a Public Presidential pronouncement made by H.E. Retired President Daniel T. Arap Moi. In 1994 to the effect that internally displaced persons who had fled the then Rift Valley Province due the 1992 post-election violence be settled in Kamiti Forest.

54. In the said letter the Provincial Commissioner allowed the County Council to settle the squatters on 300 acres of Kamiti Forest. However, there is no record indicating any process that was undertaken in accordance with the provisions of the Forest Act Cap 385 to have the Minister issue a legal notice to degazette any part of the said forest.

55. The claimants then invaded the land and due to poor law enforcement capacity of the Forest Department managed to construct houses on approximately 10% of the said land. The Chief Conservator of Forests requested the Kiambu County Security and Intelligence Committee under the County Commissioner to coordinate the process of securing the forest from squatters, but the efforts were futile. Arising from the pressure for conversion of the forest into a settlement area, Kenya Forest Service placed a "Caveat Emptor" in 2009 warning the public not to be duped into buying land on any part of the forest. The said notice is still in force.

56. **Whether any degazettement process regarding the disputed land was undertake prior to the enactment of the Forest Conservation and Management Act 2016:** The Chief Administrative Secretary maintained that no degazettement process regarding the disputed land was undertaken under the repealed Forest Act Cap 385, the Forest Act 2005 and the Forest Conservation and Management Act 2016. Therefore, the land was still a State Forest.

3.4 Submissions by the Acting Chief Executive Officer, National Land Commission

57. The Committee held a meeting with the Acting Chief Executive Officer, National Land Commission on 23rd April 2019. She informed the Committee that a Historical Injustice Claim No. NLC/HLI/070/2017 regarding the contested land was launched with the Commission by Kamiti Forest Squatters Association.

58. The National Land Commission commenced investigations into the matter and had since issued a gazette notice dated 1st March 2019 in which it resolved that the letters of allotment issued to Kamiti Anmer Development Association valid. The commission also directed the group and the other squatters to adopt Alternative Dispute Resolution with a view that the land held by the allotees be partly distributed to the squatters. Further the Kenya Forest Service was directed to degazette the forest.

59. The Commission reached a verdict that the title deeds held by Kamiti/Anmer Development Association were valid based on the following reasons;
    a. The land was allocated by the Government under the District Plot Allocation Committee under the supervision of the Commissioner of Lands on 25th August 1995;
    b. Letters of allotments were issued by the then Kiambu County Council upon payment of requisite fees;
    c. The leases issued by the Commissioner of Lands were registered by the Chief Land Registrar;
    d. The High Court Misc Case No. 1446 of 1994 Justice Moijo Ole Keuwa held that the land was legally alienated by the Defunct County Council of Kiambu; and
    e. Public utilities such as a Primary School, provision of water services and rural electrification were available in the scheme meaning that the government didn't consider it as a forest hence provision of basic government services.

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations:

1. The Committee observed that the basis of the complaint was the allocation of the LR. No. 8390 Kamiti/ Anmer forest to internally displaced persons following a public pronouncement by the former President H.E Daniel Moi that land in Kamiti Forest would be excised for their resettlement.

2. The Committee also observed that the then Provincial Commissioner Mr. Victor Musoga conveyed the decision of the former President to the Kiambu County Council vide letter Ref. No. D74/1/173 seeking to implement the pronouncement.

3. The LR. No. 8390 Kamiti/ Anmer forest land was subsequently allocated to squatters in 1995. Additionally, individual owners also obtained 149 title deeds at the Kiambu Land Registry for LR. No. 8390 Kamiti/ Anmer forest land.

4. Based on the field visit conducted by the Committee, the Committee also observed that the land was nearly fully occupied as evidenced by presence of residential houses, public primary school constructed using public funds, provision of water and electricity services, churches and a cemetery among other public facilities.

5. In view of paragraph 4 above, individual owners have invested in building residential houses and national government constituency development funds have also been utilized in putting up public facilities in particular the primary school and hence failure to degazette the forest would lead to loss of livelihood for many innocent members of the public and loss of public funds.

6. During the field visit, the Committee was also informed by the Land Officer at Kiambu that indeed there existed 149 title deeds held by individual owners as proof of ownership of land in LR. No. 8390 Kamiti/ Anmer forest land.

7. The National Land Commission had also admitted the complaint on the contested land as a historical land injustice and confirmed that the letters of allotment issued to Kamiti Anmer Development Association in respect to the land were valid.

8. The Committee also observed that in the High Court Miscellaneous Case No. 1446 of 1994, the court held that the land was legally alienated by the Defunct County Council of Kiambu to the allottees.

9. The Committee also observed that although there were several groups laying claim to the land in question these being the Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano Kamiti Group and Kamiti Anmer Development Welfare Group,

following alternative dispute resolution mechanisms, three of the groups namely the Kamiti Forest Squatters Association, Kamiti Anmer Development Welfare Group and Muungano Kamiti Group had since agreed that the land be distributed among the members of the groups and had developed a reconciled list of allottees for consideration of issuance of titles.

10. In accordance with the submissions received by the Committee in respect of LR. No. 8390 Kamiti/ Anmer forest land from the Ministry of Land, the Committee observed that the land was surveyed in 1954 vide FR69/29 as Kamiti Forest Reserve measuring 419 acres and 149 title deeds have since been issued at the Kiambu Land Registry to individual owners in respect of for LR. No. 8390 Kamiti/ Anmer forest land.

11. Based on the submissions made to the Committee, the Committee observed there existed serious security concerns due to disputes between various groups concerning ownership of LR. No. 8390 Kamiti/ Anmer forest land which calls for urgent settlement of the dispute through regularization of the de-gazettement process and subsequent allocation of land to the members of the four groups.

12. The Committee further observed that although the de-gazettement process was not concluded, based on -
    (a) the letter by the then Provincial Commissioner Mr. Victor Musoga conveying the decision of the former President to the Kiambu County Council vide letter Ref. No. D74/1/173 seeking to implement the pronouncement for settlement of squatters in LR. No. 8390 Kamiti/ Anmer forest;
    (b) the Legal Notice No. 179 of May, 1995 issued by the then Minister J.K Mulinge on the 419 acres converting the titling regime;
    (c) issuance of letters of allotments to individuals by the then Kiambu County Council upon payment of requisite fees;
    (d) issuance of 149 title deeds to individual owners in respect of LR. No. 8390 Kamiti/ Anmer forest;
    (e) occupation and development of the contested land evidenced by presence of residential homes and public facilities including a primary school;
    (f) presence of public utilities such as provision of water services and electrification provided through use of public funds by the government;
    (g) confirmation by the National Land Commission on the validity of the allotment letters in respect of the land; and
    (h) the High Court Miscellaneous Case No. 1446 of 1994, that held that the land was legally alienated by the Defunct County Council of Kiambu to the allottees;

    there indeed existed sufficient evidence to disclose that there was an intention to degazette the LR. No. 8390 Kamiti/ Anmer forest for purposes of settling the members of the four groups.

13. The Ministry of Lands submitted that the titles can be regularized once the forest was degazetted. In this regard, the Committee also observed that the de-gazettement of the forest excising the 419 acres can be completed under section 34 of the Forest Conservation and Management Act, 2016 and the allotments and titles issued to members of the four groups regularized.

5.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that:

1. Pursuant to section 34 of the Forest Conservation and Management Act, 2016 the LR. No. 8390 Kamiti/ Anmer forest be de-gazetted and excised from the Kamiti forest for purposes of settlement of the members of the Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano Kamiti Group and Kamiti Anmer Development Welfare Group.

2. The Cabinet Secretary, Ministry of Lands & Physical Planning in consultation with the Cabinet Secretaries, Ministry of Interior and Coordination of National Government, Ministry of Environment and Forestry and the National Land Commission do ensure through alternative dispute resolution mechanisms that the allocation of LR. No. 8390 Kamiti/ Anmer is regularized taking into consideration the membership of the four groups, physical developments undertaken on the land and the public utilities existing on the land within sixty days of adoption of this report by the House.

Signature: .... Date: 13/6/2019 ....

THE HON. DR. RACHAEL NYAMAI, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LANDS