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(CHINA PERFORM)

THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF 2016/2017 REPORT OF THE  
JUDICIARY ON THE STATE OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

MAY, 2019

THE OFFICE OF  
CHAMBERS  
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## ABBREVIATIONS AND ACRONYMS

COA	-	Court of Appeal
CUCs	-	Court Users Committees
DBS	-	Directorate of Building Services
ECE	-	Early Childhood Education
ELC	-	Environment and Land Court
ELRC	-	Employment and Labour Relations Court
ESAMI	-	Eastern and Southern Africa Management Institute
FIDA Kenya	-	Federation of Women Lawyers Kenya
FY	-	Financial Year
GJLOS	-	Governance Justice Law and Order Sector
Hon	-	Honourable
HRMAC	-	Human Resource Management Advisory Committee
ICT	-	Information and Communication Technology
IEBC	-	Independent Electoral and Boundaries Commission
IFMIS	-	Integrated Financial Management Integrated System
IMC	-	Implementation and Monitoring Committee
JCE	-	Judiciary Committee on Elections
JPIP	-	Judicial Performance Improvement Project
JSC	-	Judicial Service Commission
KMJA	-	Kenya Magistrates and Judges Association
MP	-	Member of Parliament
PMMSC	-	Performance Management and Measurement Standing Committees
SJT	-	Sustaining Judiciary Transformation

## **LIST OF ANNEXURES**

- Annexure 1 :** Minutes of the Committee sittings on the consideration of the Judiciary's report on the State of the Judiciary and the Administration of Justice Report for the year 2016/2017
- Annexure 2:** Signed list of Members who attended the sittings that adopted the report.

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## CHAIRPERSON'S FOREWORD

The Sixth Annual State of the Judiciary and Administration of Justice Report covers the period from July 1, 2016 to June 30, 2017 and was tabled in the House by the Leader of Majority Party on 14<sup>th</sup> February, 2018. The report was prepared pursuant to the provisions of Section 5(2) (b) of the Judicial Service Act No.1 of 2011 which requires the Chief Justice to submit to the Clerks of the National Assembly and the Senate, a report on the State of the Judiciary and Administration of Justice to be placed before Parliament for debate and adoption. Upon tabling, the report was committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

The Committee considered the State of the Judiciary and Administration of Justice Report for the year 2016/2017 concurrently with the Report for the year 2017/2018. This was done in order to save on time, resources and avoid duplication of effort since the matters the Committee was considering in the two reports were the same. For this reason, most of the observations and recommendations made by the Committee in the reports for the two years are similar.

The Committee held six (6) sittings considering the Sixth Annual State of the Judiciary and Administration of Justice Report for the year 2016/2017. While considering the report, Chief Registrar of Judiciary accompanied by other senior officers from the Judiciary appeared before the Committee on 2<sup>nd</sup> May, 2019 and was interrogated on issues in chapters of the report. The Committee unanimously considered and adopted its report at its sitting of 4<sup>th</sup> May, 2019.

While considering the report and making recommendations, the Committee was guided by the existing procedures and modalities of operations of the National Assembly derived from the Constitution of the Republic of Kenya, Acts of Parliament, the National Assembly Standing Orders, conventions, practices and rulings of the Speaker.

The Committee wishes to express its sincere gratitude to you for the support the House under your leadership accorded it in the consideration of the report judiciary report and compiling this report. The Committee also wishes to appreciate the

technical and logistical support accorded to it by the Office of the Clerk of the National Assembly and its secretariat.

I also wish to express my sincere gratitude to Committee Members for their devotion and commitment to duty without which the consideration of the Judiciary report and compilation of this report would not have been possible.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it's my privilege and duty to present to the House a report of the Committee on its consideration of the State of the Judiciary and Administration of Justice Report for the year 2016/2017.

Signed..........Date.....09.05.19

**HON. WILLIAM K. CHEPTUMO, M.P.**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND**  
**LEGAL AFFAIRS**

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## EXECUTIVE SUMMARY

The Sixth Annual State of the Judiciary and Administration of Justice Report for 2016/2017 was Tabled in the House on 14<sup>th</sup> February, 2018. The report was prepared pursuant to the provisions of Section 5(2) (b) of the Judicial Service Act No.1 of 2011 which requires the Chief Justice to submit to the Clerks of the National Assembly and the Senate a report on the State of the Judiciary and Administration of Justice to be placed before Parliament for debate and adoption.

This report contains seven (7) areas which the Committee interrogated the Judiciary in order to write this report. The areas are; Leadership and Management, Access to Justice in Courts, Access to Justice in Tribunals, Jurisprudence, Human Resource Management and Development, Finance and Infrastructure and Inter Agency Collaboration.

Among the key recommendations the Committee has made in the report are–

- (i) The Judiciary should take necessary action to ensure the Office of the Judiciary Ombudsman is anchored in legislation;
- (ii) The National Assembly and National Treasury should ensure adequate budgetary allocation to the Judiciary to enable it address several issues facing it, most notably for, development of infrastructure and hiring of more Judges and Magistrates to clear case backlog;
- (iii) The Judiciary should develop a policy or draft legislation for enactment providing for timelines within which cases should be heard to address the issue of case backlog and instil public confidence in courts of law.
- (iv) The ~~Attorney~~-General should submit to the National Assembly for ~~enactment~~ the Tribunals Bill which addresses so many issues facing ~~tribunals~~ especially the unwillingness by Ministries to transfer forty (40) Tribunals to the Judiciary which is mandated by the Constitution to be in their charge;
- (v) Agencies and institutions under the umbrella body of National Council on Administration of Justice should invest in one (1) training institute to save on costs as opposed to each wanting to establish its own.

## PART 1

### 1.0 PREFACE

#### 1.1. MANDATE OF THE COMMITTEE

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees 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 their implementation;
  - (c) study and review all legislation referred to it;
  - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (e) investigate and enquire 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) 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);
  - (g) examine treaties, agreements and conventions;
  - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and

(j) examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (a) Constitutional affairs;
- (b) The administration of law and Justice
- (c) The Judiciary;
- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

### **1.2.COMMITTEE MEMBERSHIP**

3. The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	–	<i>Chairperson</i>
Hon. Alice Muthoni Wahome, M.P.	–	<i>Vice Chairperson</i>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Zuleikha Hassan, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		

### 1.3.COMMITTEE SECRETARIAT

4. The Committee's secretariat is serviced by the following staff-

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Recording Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang	-	Serjeant-at-Arms

5. Minutes of sittings of the Committee on the consideration of the State of the Judiciary and the Administration of Justice Annual Report for 2016-2017 are annexure 1 of this report.

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## PART TWO

### 2.0 INTRODUCTION TO THE STATE OF THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE ANNUAL REPORT (2016 -2017)

6. The Sixth Annual State of the Judiciary and Administration of Justice Report covers the period from July 1, 2016 to June 30, 2017. It was prepared in fulfilment of Section 5(2) (b) of the Judicial Service Act No.1 of 2011 which requires that once every year the Chief Justice submits to the Clerks of the National Assembly and the Senate a report on the State of the Judiciary and Administration of Justice to be placed before Parliament for debate and adoption. The Report has been submitted to the National Assembly pursuant to the above provision.
7. The Report indicates that the Judiciary's progress in its transformation journey as part of the on-going implementation of the Kenya's Constitution 2010. It also records the achievements and challenges experienced by the Judiciary in the FY 2016/2017.
8. Key highlights of the Report include:
  - a) **The leadership transition-** The reports notes the appointment of Hon. Justice David Kenani Maraga as Chief Justice and Hon. Justice Philomena Mbete Mwilu as Deputy Chief Justice in October 2016 following the retirement of Hon. Dr. Willy Mutunga as Chief Justice and Hon. Justice Kalpana Rawal as Deputy Chief Justice in June 2016. Also, Hon. Justice Isaac Lenaola was appointed as judge of the Supreme Court replacing Hon. Justice Philip Tunoi.
  - b) **The Launch of a Strategic Blue Print: *Sustaining Judiciary Transformation : A Service Delivery Agenda, 2017- 2021***- The Blue print is intended to identify new strategic priorities for the Judiciary while consolidating the achievements of the *Judiciary Transformation Framework, 2012- 2016*.
    - (i) The Sustaining Judiciary Transformation strategy shifts focus away from institutional capacity building approach of the previous strategy to service delivery as its overriding theme

(ii) The Sustaining Judiciary Transformation strategic blueprint is anchored on five thematic issues:

- a) Access to justice;
- b) Reduction of case backlog;
- c) Enhanced integrity and restructuring and strengthening of  
the Office of the Ombudsperson;
- d) Accelerated digitization of Judiciary operations, and
- e) Mainstreaming leadership and good governance.

9. Other developments noted in the report include-

- (i) Establishment of new court stations;
- (ii) Recruitment of more judges and staff;
- (iii) Expansion of the court infrastructure;
- (iv) Reduction of case backlog;
- (v) Continued transition of Tribunals from the Executive to the Judiciary;
- (vi) Enhanced trainings for Judges, Magistrates, Kadhis and staff;
- (vii) Deepening the work of justice sector committees;
- (viii) Promoting inter-agency cooperation; and
- (ix) Promotion and disciplining of staff.

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## PART THREE

### 3.0 CONSIDERATION OF THE STATE OF THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE ANNUAL REPORT (2016- 2017)

#### 3.1. CHAPTER 1: LEADERSHIP AND MANAGEMENT

10. The Chapter focuses on the transition and new leadership in the Judiciary under a new strategic and programmatic direction for the Judiciary titled "*Sustaining Judiciary Transformation: A Service Delivery Agenda (SJT) 2017- 2021*" which emphasises on enhanced service delivery in the institution. The blueprint builds on the successes and lessons of the Judicial Transformation Framework (2012- 2016). Towards the implementation of strategic plan the Chief Justice established an Implementation and Monitoring Committee (IMC) to coordinate and support the various court stations, tribunals and implementing units.
11. There are also highlights of various key events presided over by the Judiciary leadership in 2016/ 2017 including the swearing in of commissioners and admission of advocates, paying tribute to retiring and departed judges and advocates, court visits to assess the state of court operations and inspect various infrastructural developments in the institution, and the speaking engagements that the Chief Justice and Deputy Chief Justice were invited. Further, the Chapter notes the preparations by the Judiciary to adjudicate disputes arising from the 2017 General Election cycle and the status of specialised Committees within the Judiciary.
12. The chapter also highlights a summary of various reports of different Committees and projects of the Judiciary including Judiciary Committee on Inquiry into the Status of Judiciary Land in Kenya; Judiciary Infrastructure Committee; Performance Measurement and Management Steering Committee; Technical Committee Developing a Criminal Procedure Bench Book; Human Resource Management Advisory Committee and Selection Board; Judiciary Library Committee; Technical Committee to Develop an Election Dispute Resolution Bench Book; Rules Committee; Judiciary Working Committee on Restructuring of Tribunals; Committee on the Judiciary Code of Conduct and Ethics; Taskforce on Traditional, Informal and Other Mechanisms used to Access Justice in Kenya; Mediation Accreditation Committee; and the Court

Annexed Mediation Pilot Project (pg. 8-11). The report also notes the activities of the Office of Judiciary Ombudsman, including public complaints resolution, referral mechanisms, monitoring compliance with practice directions and service charters (pg. 17- 21).

### **3.1.1 Committee's observations**

**13. The Committee observed as follows-**

- (i) There were several programmes and activities being implemented by the Judiciary leadership geared towards improving service delivery;**
- (ii) From 16<sup>th</sup> June to 20<sup>th</sup> October, 2016, both the offices of the Chief Justice and Deputy Chief Justice of the Judiciary were vacant thus posing a challenge as to the leadership of the Judiciary. To avoid such occurrence in future, Parliament has since amended section 5 of the Judicial Service Act to provide that the senior most Judge in the Supreme Court shall act as the Chief Justice should there be a vacancy in both the offices of the Chief Justice and the deputy Chief Justice.**

### **3.1.2 Committee's recommendation**

**14. The Committee recommends that the judiciary should ensure that all programmes and activities being implemented are timely implemented to ensure improved service delivery.**

## **3.2. CHAPTER 2: ACCESS TO JUSTICE- COURTS**

**15. Part I of this chapter focuses on case load data (pg. 23- 52) while Part II centres on strategic efforts and initiatives to improve access to justice (pg. 53- 57)**

### **Part 1: Case Load Data**

**16. The report notes that in fulfilment of its constitutional mandate to dispense justice, the Judiciary put in place an elaborate policy, legal and administrative framework, and implemented various strategic initiatives to facilitate access to justice. The report provides a numerical record of the turnover of cases.**



17. During the period under review, a total of 344,180 cases were filed in the entire Judiciary, out of which 258,982 were criminal while 85,198 were civil in nature. In the same period, a total of 304,182 cases were concluded, comprising 218,796 criminal cases and 85,386 civil cases, which translates to an overall efficiency of about 88 percent (pg.23).

18. At the end of the FY 2016/17, there were 533,350 pending cases in the judiciary, which comprised 185,369 criminal and 347,981 civil cases. The pending cases represented an increase of 7 per cent from the 499,341 at the close of FY 2015/16. Out of the 533,350 pending cases, 315,378 were categorized as backlog. The Magistrate Courts continued to bear the heaviest burden, accounting for 87 per cent of all cases filed in FY 2016/17 (pg.25).

19. At the end of the FY 2016/17, the total case backlog stood at 315,378 cases. Out of these, 83,046 cases were aged 1-2 years; 113,766 cases were aged 2- 5 years; 66,214 cases were 5- 10 years and 52,352 cases were over 10 years in age since the date of filing. The Magistrate Courts and High Court had the highest case backlog at 199,536 cases (63 per cent) and 94,686 cases (30 per cent) respectively (pg.26)

**Table showing Case Backlog by Age as at the end of FY 2016/17**

<b>Court</b>	<b>1-2 years</b>	<b>2-5years</b>	<b>5-10 years</b>	<b>Over 10 years</b>	<b>Total</b>
<b>Supreme Court</b>	13	1	0	0	14
<b>Court of Appeal</b>	693	768	502	34	1997
<b>High Court</b>	18,354	34,356	21,657	20,319	94,686
<b>Environment and Labour Court</b>	3,825	5,683	1,367	492	11,367
<b>Magistrate Court</b>	55,811	70,065	42,153	31,507	199,536

The above table shows the number of backlog cases, by age, of various Courts (pg 28- 51)

## **Part II: Strategic Efforts and Initiatives to Improve Access to Justice**

20. The Judiciary has implemented various strategic initiatives to enhance access to justice in Kenya. They include:

- (i) Establishment of new courts, sub registries, mobile courts and infrastructural development
- (ii) Recruitment of more judges and staff
- (iii) Promoting procedural access to justice
- (iv) Employment of Alternative Dispute Resolution Mechanisms;
- (v) Strategies for reduction of case backlog
- (vi) Implementation of performance management and measurement
- (vii) Implementation of Judicial Digital Strategy

### **3.2.1 Committee's observations**

21. The Committee observed as follows-

- (i) Major factors contributing to case backlog were lack of statutory or policy documents on timelines within which cases should be heard by courts, and the inadequate number of Judges and Magistrates;
- (ii) While several cases were determined on merit through various measures devised and employed by the Judiciary, several other cases were dismissed for want of prosecution;
- (iii) Delayed conclusion of court cases is frustrating to litigants and an impediment to economic development as it leads to projects stalling, funds being held up without use and discourages potential local and foreign investors from investing among other reasons;
- (iv) The Judiciary had embraced Alternative Dispute Resolution mechanisms and rolled out Court Annexed Mediation to several

counties as a means of reducing backlog of cases which is commendable.

- (v) Whereas mobile courts are necessary in reduction of case backlog, inadequate funding of other government agencies like the Office of the Director of Public Prosecutions hampered their operations thereby making achievement of desired results difficult;
- (vi) The Judiciary had developed a Performance Management and Measurement framework to monitor performance of Judges, judicial officers and staff with a view to reducing case backlog;
- (vii) Magistrates had a heavy workload since most cases in the country were filed in the Magistrates Courts. The Judiciary's establishment of Magistrates was 1200. However, there were 500 Magistrates in service leaving a shortfall of 500. A country like Germany with a population of about 80 million had 20,000 Judges and Magistrates.
- (viii) Hiring more Magistrates and increasing the jurisdiction of Magistrates to deal with matters currently within the jurisdiction of the High court and Courts of equal status would significantly reduce case backlog;
- (ix) The Small Courts Claims Act, 2016 which would be important in reducing case backlog had not been operationalized because Rules to effect the legislation had not been developed.

### **3.2.2 Committee's recommendations**

**22. The Committee recommends as follows-**

- (i) The Judiciary should propose legislation for enactment by the National Assembly providing for statutory timelines within which cases should be heard and determined by courts;
- (ii) The National Assembly and the National Treasury should allocate adequate resources to the Judiciary to enable it employ more

**Judges and Magistrates for expeditious determination of cases before the courts;**

- (iii) The Judiciary should increase the jurisdiction of Magistrates to deal with matters currently a preserve of the High court which would significantly reduce the backlog in the High Court;**
- (iv) The Judiciary should as a matter of urgency submit to the National Assembly for approval Rules to operationalize the Small Court Claims Act, 2016.**

### **3.3.CHAPTER 3: TRIBUNALS**

- 23.The report notes that Tribunals are emerging as an influential and consequential institutional framework in the administration of justice. The transition of Tribunals from the Executive to the Judiciary continued rapidly in this financial year, even though the process faced major legal, policy, administrative and infrastructural challenges.
- 24.During the year under review, two Tribunals - Competition Tribunal and Communication and Multimedia Appeals Tribunal - transited to the Judiciary, bringing the total number now under the Judiciary to sixteen (16). An Acting Registrar of the Tribunals was appointed to coordinate the activities of the various tribunals, and a secretariat established at Reinsurance Plaza in Nairobi.
- 25.The Secretariat commenced the collection of data on caseload and jurisprudence from the Tribunals, which form part of the Report. During the year under review, 11,981 cases were pending at the Tribunals. Some 11,383 cases were filed, and 14,942 resolved. There were 8332 pending cases representing a 30.5% reduction in case backlog (pg 59).
- 26.Key developments and achievements in the Tribunal Sector, FY 2016/ 17 include- Establishment of the Office of the Registrar- Tribunals and Tribunals Secretariat; Appointment of the Registrar-Tribunals; Hearing of Political Parties Disputes; and Development of Rules of Procedure for several tribunals, among others: (pg 60)

27. The effective performance of Tribunals in the discharge of their mandates was hampered by various challenges including- legal challenges owing to a lack of a facilitative framework as all existing Tribunals operate under different legislative frameworks and mandates; operational challenges due to the incomplete transition process from the Executive (previously Tribunals were under respective Ministries) which also negatively affected staff; some Tribunals were yet to be operationalized; and there were also infrastructural challenges as a result of poor resourcing.

### **3.3.1 Committee's observations**

28. The Committee observed as follows-

- (i) While the Constitution of Kenya places all tribunals under the Judiciary, some tribunals had not transited from the parent ministries to the Judiciary thereby posing challenges to the Judiciary in administering them;**
- (ii) There are sixty (60) tribunals in Kenya out of which only twenty (20) are under the Judiciary administratively while the rest are still under respective ministries;**
- (iii) It was noted that many ministries were not keen on transferring tribunals under them to the Judiciary;**
- (iv) Some tribunals didn't have chairpersons or had gone for long without chairpersons and members. These include the Competition Tribunal, the Industrial Property Tribunal, the HIV/ AIDS Tribunal, the Energy Tribunal, the Micro and Small Enterprises Tribunal, Business Premises Tribunal, Sports Disputes Tribunal, and the State Corporations Appeals Tribunals;**
- (v) A Bill addressing the issue of transition of tribunals to the Judiciary had been submitted to the Office of the Attorney-General and Department of Justice for onward transmission to the National Assembly for enactment.**

### 3.3.2 Committee's recommendation

29. The Committee recommends that the Attorney-General should as a matter of urgency submit to the National Assembly for enactment the Tribunals Bill to address the aforesaid issues affecting tribunals.

### 3.4. CHAPTER 4: JURISPRUDENCE

30. During the period under review, the Judiciary developed jurisprudence through the decisions made in various spheres of law. These include- Constitutional law, Judicial Review, Commercial law, Land law, Criminal law and Electoral law, among others. There had been landmark decisions made by the Supreme Court, Court of Appeal (COA), High Court, Environment and Land Court (ELC), Employment and Labour Relations Court (ELRC) and Tribunals.

31. In the year 2016/2017, various decisions were made that touched on the following matters- the jurisdiction of various courts, electoral laws, constitutionality of certain pieces of legislation, decisions of the courts on employment and labour relations cases, criminal law, devolution, environment cases, among others. Some of the important decisions made by the courts during the period under review include

- i. Determination of the extent of the jurisdiction of Judges serving in Specialized Courts-Republic v Karisa Chengo & 2 Others- Supreme Court -Petition No. 5 of 2015(pg. 85-88)
- ii. Determination on whether the Supreme Court can hear and determine an appeal in a situation where the Court of Appeal had not made a determination on the substantive questions raised in the appeal Godfrey Kinuu Maingi & 4 Others vs Nthimbiri Farmers' Co-operative Society- Supreme Court -Petition No. 9 of 2016 (pg 89)
- iii. Determination that the Chairperson of the IEBC cannot vary the results of a presidential election declared at the constituency tallying centres Independent Electoral & Boundaries Commission v Maina

Kiai, Khelef Khalifa, Tirop Kitur, Attorney-General, Katiba Institute & Coalition for Reforms & Democracy- Court of Appeal at Nairobi- Civil Appeal no.105 of 2017(pg 90-91)

- iv. Determination that public participation is mandatory in direct procurement by public entities Republic vs The Independent Electoral and Boundaries Commission & 6 Others- Judicial Review Petition Number 378 of 2017(pg 91-92 )
- v. Determination that section 44(8) of the Elections Act, 2011, that provides for the establishment of a Technical Committee to oversee elections is unconstitutional Kenneth Oliena -vs- Attorney General & Independent Electoral Boundaries Commission (IEBC) Petition No. 127 of 2017(pg 92-93)
- vi. Determination on what amounts to an unfair termination of employment Louis Armstrong Otieno v Mediamax Network Limited- Employment and Labour Relations Court at Nairobi -Cause No. 1454 of 2011(pg 94-96)
- vii. Declaration that sections 295, 296(1) and (2) and 297(1) and (2) of the Penal Code are too imprecise, broad and vague in scope to enable an accused person to adequately prepare and conduct his defence Joseph Kaberia Kahinga & 11 others vs. the Honourable Attorney- General- the High Court at Nairobi -Petition 618 of 2010(pg 97-101)
- viii. Declaration that section 30A of the Copyright Act is unconstitutional for limiting artists' rights and freedom of association Mercy Muneo Kingoo & another vs. Safaricom Limited and 3 Others- High Court at Malindi -Constitutional Petition 5 of 2016 (pg 101-104)
- ix. Declaration that it is duplicity of awards for a court to separately award damages for false imprisonment, malicious prosecution and deprivation of liberty- Daniel Njuguna Muchiri v Barclays Bank of Kenya Ltd & Another- High Court at Nairobi -Civil Case 116 of 2003(pg 104-109)

- x. Declaration of circumstances under which a court may decline to follow a decision, which would be binding, on it -Michael Waweru Ndegwa v Republic- High Court of Kenya Nyeri Criminal Appeal 290 of 2010(pg 109-113)
- xi. Declaration that it is not unconstitutional but in the best interest of the child for the courts to order for DNA tests on an accused person during trial in defilement cases Boniface Kyalo Mwololo vs The Republic Court of Appeal at Nairobi -Misc. Crim. Application NAI 10F 2016(pg 113-114)
- xii. Declaration that the doctrine of *Res Judicata* is not applicable in children matters and that such matters were determined on the basis of the best interests of the child. A N M v P M N -High Court at Nairobi- HCCC No. 14 of 2015 (pg 114-115)
- xiii. Declaration that the Doctrine of separation of powers is not an absolute bar to the court from determining issues on the other arms of government National and Gender Equality Commission v Cabinet Secretary, Ministry of Labour and Social Security & Another- High Court at Nairobi -Constitutional and Human Rights Division- Petition No. 226 of 2015 (pg116-117)
- xiv. Declaration that amendments introduced through the Statute Law (Miscellaneous Amendments) legislation have to be minor and non-controversial Okiya Omtatah Okoiti -vs- Communications Authority of Kenya & 21 others -Petition No. 45 of 2016 (pg 117- 118)
- xv. Declaration that section 25(2) of the County Governments Act is inconsistent with Article 199(1) of the Constitution in so far as it envisioned that county legislation could come into effect without necessarily having been published in the Kenya Gazette.- James Gacheru Kariuki & others v Attorney General & another -High Court of Kenya at Nairobi -Petition 52 & 7 of 2016 & 308 of 2015 (Consolidated) (pg 118- 120)



- xvi. Declaration that recruitment of ECE teachers by county governments was unconstitutional -*Kenya National Union of Teachers vs the Attorney General and Others -High Court of Kenya at Nairobi - Constitutional Petition No. 127 of 2014(pg 120)*
- xvii. Declaration that Kenyan law prevails in situations of conflict between principles of usages of international law and Kenyan Law- *Federation of women Lawyers (Fida Kenya) & 4 others v Attorney General as Representative of Lands & 2 other -Environment and Land Court at Malindi -ELC Constitutional Petition No. 8 of 2013(pg 121-123)*
- xviii. Declaration on the jurisdiction of the Courts to review their own decisions in constitutional litigation *Ferdinand Ndungu Waititu & 4 others v Attorney General & 11 others, High Court of Kenya at Nairobi Petition No 169 of 2016 19th August, 2016 (pg 123- 124)*

#### **3.4.1 Committee's observations**

**32.The Committee observed as follows-**

- (i) Article 159 of the Constitution of Kenya provides that judicial authority is derived from the people of Kenya and vests in and is exercised by the courts and tribunals which shall be guided by justice for all and justice without undue delay principals, among others;**
- (ii) The Judiciary developed jurisprudence through landmark decisions in Criminal Law, Judicial Review, Constitutional Law, Commercial Law and Electoral Laws.**
- (iii) The Government of Kenya was spending about 1 billion Kenya shillings annually feeding and maintaining death row convicts (Kenya Correctional Services estimates);**
- (iv) The Supreme Court ruling on the extent of jurisdiction of Judges of Specialized Courts raises issues on the efficient use of Judiciary resources and is a matter that may be addressed through a constitutional amendment;**

- (v) The Judiciary wished that the timeline for hearing presidential elections petition of fourteen (14) days was inadequate and should be increased to thirty (30) days. This will require a constitutional amendment and proposals to that effect have been rejected by the Committee on two previous occasions;
- (vi) The Supreme Court was not meant to be an Appellate court for all matters and there is need to review the law to provide clarity as to the matters that can be dealt with by the Supreme Court.

#### **3.4.2 Committee's recommendations**

33. The Committee recommends as follows-

- (i) Jurisdiction of judges serving in the Specialized Courts and those of the High Court should be reviewed to enable Judges to be administratively redeployed;
- (ii) Parliament should enact legislation on assumption to office by the Deputy Governor and filling of vacancy as and when it arises;
- (iii) The Judiciary should bring to parliament for consideration legislative proposal on increment of time within which the Supreme Court should hear and determine Presidential Election Petition from fourteen (14) to thirty (30) days.
- (iv) Parliament should enact legislation to clearly delineate the jurisdiction of the Supreme Court.

#### **3.5. CHAPTER 5: HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT**

34. The focus of the activities in human resource management and development was enhancing service delivery through adequate staffing and ensuring that the staff had the relevant skills and qualifications to facilitate them deliver on the Judiciary's agenda.

35. Key milestones achieved during the period under review include-

- i. Actualizing performance appraisal in all court stations,
- ii. Preparation of customer service charter, and
- iii. Undertaking a comprehensive organizational review.

36. In June 2017, the Judiciary launched the first report of the **Performance Management and Measurement Steering Committee (PMMSC)** on the outcome of the evaluation of the first cycle of targets set in the FY2015/16 and good performers were recognized.
37. During the period under review, twenty-eight (28) new judges were appointed, bringing the total number in the entire Judiciary to 159 judges. Of the twenty-eight, nine joined the High Court while nineteen were appointed Environment and Land Court (ELC) judges. The recruitment complied with the one third gender rule- 61% of all judges are male while 39.6% are female (pg 127-128).
38. Magistrates and Kadhis and judicial staff were promoted during the year under review. Similarly, judicial officers were transferred to various stations within the Republic in line with the Judiciary Transfer Policy. A total of six hundred and sixty-six (666) judicial staff were recruited during the year (pg 129- 130). The institution also carried out the authentication of certificates owing to the increased number of staff recruited during the reporting period.
39. In line with the staff regulations and Employment Act Cap 226 No. 11 of 2007, Section 42(2) which requires that an employee whose performance is satisfactory be confirmed in appointment after six months from the date of appointment, the one thousand seven hundred and eleven (1711) judicial staff in PLS 8 and below were confirmed in appointment during the reporting period. There was opportunity for career progression through staff promotion for magistrates, kadhis and judicial staff.
40. The human resource development of the Judiciary employees continues through trainings offered internally by the Judiciary Training Institute as well externally by other institutions. Staff members were trained locally in various institutions, including at the Kenya School of Government while others were sponsored to attend professional training outside Kenya, including ESAMI in Arusha, Tanzania, and in Johannesburg, South Africa. There were 2886 students who

went through attachment in the Judiciary that included clinical attachment for law students, law pupillage and students from other disciplines.

41. The disciplinary mechanism of the JSC and the Human Resource Management Advisory Committee (HRMAC) remained active during the reporting period. The Commission received cases (fresh and appeals or reviews) against officers. Some cases are pending while others have been concluded. The JSC received forty-four (44) complaints and petitions against judges, which were at various stages of investigation as at the end of the reporting period, and twenty-one (21) complaints, twenty (20) appeals and reviews against judicial officers and staff and concluded on thirty-one (31) matters. The commission had twenty-eight (28) pending matters by the end of the reporting period.

### **3.5.1 Committee's observations**

42. The Committee observed as follows-

- (i) Recruitment, transfer and promotion are inevitable in any organization. During the year under review, the Judiciary recruited for various posts and also carried out transfers, promotions and deployment of staff to various court stations to ensure effectiveness and efficiency in the provision of services;**
- (ii) The human resource development of judicial staff continued throughout at the year through trainings offered internally by the Judicial Training Institute and externally by other institutions.**
- (iii) The Judiciary experienced delay in service delivery which was majorly occasioned by poor organizational structures. The organizational structure had since been reviewed and implementation is underway;**
- (iv) It is important for the judiciary to consider the welfare and interest of staff members while undertaking transfers.**

### **3.5.2 Committee's recommendations**

43. The Committee recommends that the Judiciary should fast track the implementation of the organizational structure to guard against delays in service delivery;

- (i) The National Assembly should allocate 300 million Kenya Shillings toward the implementation of the new organizational structure with regard to recruitment of new staff; upgrading, promotion and re-designation of staff; transfers and staff movements; and skills and audit documentation as required.

### **3.6. CHAPTER 6: FINANCE AND INFRASTRUCTURE**

44. The Judiciary Transformation Framework (2012– 2016) blueprint and Judiciary Strategic Plan (2014 – 2018) provided the outputs and indicators for the Medium Term Expenditure Framework for the 2016/17 financial year.

45. The report noted that the Judiciary bids for its budget under the Governance, Justice, Law and Order (GJLO) Sector which comprises fourteen (14) sub-sectors. In the FY 2016/17 the Judiciary received 8 per cent of the budget allocated for the GJLO sector. The Judiciary budget was 23 per cent less than what was required to effectively finance the delivery of justice - Kshs.17 billion compared to a requirement of Kshs.23 billion.

**Table showing the Resource Requirements versus Allocation**

<b>Financial Year</b>	<b>Requirement (Billion Kshs)</b>	<b>Allocation (Billion Kshs)</b>	<b>Percentage Allocation</b>	<b>Percentage shortfall</b>
<b>2013/14</b>	22.075	15.699	71%	29%
<b>2014/15</b>	26.211	14.163	54%	46%
<b>2015/16</b>	26.609	14.799	56%	44%

2016/17	23.366	17.109	73%	27%
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The Table provides a comparison of the resource requirements and resource allocation over the past four fiscal years.

46. During the period under review, the budgetary absorption levels improved significantly, especially on the development vote which previously had severe implementation challenges. The operationalization of the in-house Directorate of Building Services (DBS) propelled absorption from 54% in the FY 2015/16 to 67% in the FY 2016/17 (pg 162). The revenue yields from fines and fees charged at the courts have risen sharply over the last five years. The total revenue collected in FY 2016/17 amounted to Kshs 1.972 Billion compared to Kshs 2.308 Billion in FY 2015/16, representing a minor decline. In addition, the Judiciary holds Court Deposits in trust and as at the end of the FY 2016/17, the Judiciary held court deposits amounting to Kshs 4,367,834,191 while at the end of FY 2015/16, the court deposit amounted to Kshs 4,306,650,530 (pg 167).

47. In compliance with Article 173 of the Constitution, the Judiciary Fund Act was assented to in December 2015. The Judiciary Fund Regulations have been drafted pursuant to the Act and are awaiting adoption and gazettelement for the Fund to become operational.

48. Infrastructural development has been a major factor in the Judiciary transformation program. During the FY 2016/17, the Judiciary was involved in the construction of new court buildings, refurbishment of existing ones and construction of court facilities such as ramps, public waiting sheds, customer care offices, gate houses, boundary walls, lifts, signage, robbing rooms, lactation rooms, and public ablution blocks. Significant progress has been made in the construction of various court buildings and facilities. The courts in Bungoma, Garsen, Rongo and Mpeketoni were handed over during the reporting period. Another five courts – in Chuka, Kigumo, Engineer, Molo and Makindu – were awaiting handover. Other building works and renovations throughout the country were at various stages of completion. Funding came from the Government of Kenya development fund and development partners such as the World Bank, which supported the construction of nineteen (19) new

High Courts and the refurbishment of eleven (11) Magistrate Courts through the Judicial Performance Improvement Project (JPIP).

49. Even though the establishment of Directorate of Building Services boosted the implementation of projects, a number of projects experienced faltering progress due to various challenges such as: delay by the previous project managers in formalizing instructions, variations and extension of time, which, for example, affected projects in places such as Embu and Nkubu; delay in processing payment for contractors due to various reasons such as IFMIS failure; pending court cases and disputes such as in Runyenjes, Tawa, Marimanti and Lodwar; contractors' financial challenges, which affected Bomet; security challenges, for example, in Mandera; and Lean staffing at the Directorate of Building Services.

### **3.6.1 Committee's observations**

50. The Committee observed as follows-

- (i) There was a drop in Government of Kenya allocation of resources to the Judiciary during the year under review and this impacted negatively on operations. Government funding to the Judiciary was unstable with variance between what was approved and what was allocated and delay in release;**
- (ii) The Judiciary has gazetted regulations to operationalize the Judiciary Fund and is awaiting National Assembly's approval. Operationalization of the Fund would guarantee financial stability for the Judiciary;**
- (iii) Infrastructural development was a major pillar in transformation of the Judiciary as articulated in the Sustaining Judiciary Transformation blue print;**
- (iv) During the period under review, the Judiciary budgetary absorption rate improved from 54% to 67% and this was attributed to operationalization of the In house Directorate of Building Services;**

- (v) Despite introducing cashless payment systems at Judiciary, some judicial staff in conspiracy with unscrupulous Bank agents had misappropriated funds paid to the institution. As a result, the Judiciary had dismissed some officers from service while others were facing disciplinary action.
- (vi) Monies deposited or received by the Judiciary in its bank accounts do not earn interest as the Public Finance Management Act, 2012 prohibited this;
- (vii) Though there were models for court construction, the Judiciary was constructing new courts with the future in mind. For this reason courts constructed in different stations would have some variations in terms of size and other aspects;
- (viii) Some Judges lack official vehicles while some were operating vehicles in bad shape which is demeaning and embarrassing considering their stature;
- (ix) Whereas Judges were provided with cars for official use, Magistrates do not enjoy the same privilege. Instead, they have a car loan facility. The Committee was concerned with the poor terms and conditions of Magistrates notwithstanding they handled the bulk of the cases filed in courts;
- (x) Inadequate funding; delayed exchequer releases, court cases and lack of title documents were main challenges experienced by the Judiciary in implementation of projects. The issue of lack of title documents was being handled administratively.

### **3.6.2 Committee's recommendations**

**51. The Committee recommends as follows-**

- (i) The National Assembly and National Treasury should allocate adequate resources to the Judiciary to address financial issues emerging under this matter;
- (ii) The Judiciary should come up with a legislative proposal to amend the Public Finance Management Act, 2011 to enable all monies held in bank accounts maintained by the Judiciary to earn interest.



- (iii) The Judiciary should ensure proper project planning and implementation to ensure projects are implemented to acceptable standards, in time and there is value for money;
- (iv) The Judiciary should ensure old projects are completed before embarking on new ones;
- (v) The National Treasury should ensure timely disbursement of exchequers to the Judiciary and other agencies to ensure timely undertaking of projects to avoid possible litigation and escalation of costs as a result of delay;
- (vi) The Judiciary should take necessary action to ensure that it has title documents for all its land.

### **3.7. CHAPTER 7: THE STATE OF THE AGENCIES AND COOPERATION IN THE JUSTICE SECTOR**

52. This chapter details the activities, achievements and challenges of the justice sector agencies and institutions as they operate under the framework of the National Council on the Administration of Justice (NCAJ).

The NCAJ, which is established under Section 34 of the Judicial Service Act (No. 1 of 2011), is a high-level policymaking, implementation and oversight coordinating mechanism as reflected in its membership that is composed of State and Non-State Actors from the justice sector. Its mandate is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.

53. The NCAJ Agencies include:

- (i) Office of the Director of Public Prosecution
- (ii) Office of the Attorney General
- (iii) Kenya Police Services
- (iv) Kenya Prison Services
- (v) Council of Governors
- (vi) Department of Probation and Aftercare
- (vii) Council of Legal Education
- (viii) Ethics and Anti- Corruption Commission

- (ix) National Council on Law Reporting
- (x) Kenya Law Reform Commission
- (xi) Witness Protection Agencies
- (xii) National Crime Research Centre
- (xiii) Commission on Administrative Justice
- (xiv) Kenya National Commission on Human Rights
- (xv) Kenya Human Rights Commission
- (xvi) Federation of Women Lawyers- Kenya
- (xvii) Kenya Association of Manufactures
- (xviii) National Transport and Safety Authority
- (xix) Department of Children Services
- (xx) The Cradle
- (xxi) Legal Resources Foundation

54. The Report notes the activities, achievements and challenges in the administration of justice and reform of the justice system. During the period under review, there were many collaborative activities, the main one being a joint assessment of election preparedness. The different players discussed strategies to enhance security, integrity, peace and cohesion during the electoral process. The report gives a comprehensive account of the accelerated rate of transformation in the Judiciary and the justice sector as a whole. It points to the challenges facing the sector and gives options and avenues for perfecting the administration of justice in Kenya.

55. Various activities and initiatives were undertaken under the support of the National Council for the Administration of Justice. A new technical committee, the Criminal Justice Reform Committee, was gazetted. The NCAJ devoted itself to strengthening access to justice through enhancement of Court Users Committees (CUCs) which received a significant boost in their funding and capacity. Various stakeholder interventions were put in place for better administration of justice. This included legislation on children's matters and amendments to the Sexual Offences Act, implementation of Policies on Bail and Bond, reforms in the traffic sector and measures adopted for the business community to enhance investor confidence (pg 192-194).

### **3.7.1 Committee's observations**

**56. The Committee observed as follows-**

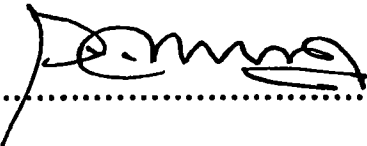
- (i) The National Council on Administration of Justice is responsible for the collaboration of agencies in the justice sector with a view to ensuring service delivery and institutional strengthening amongst members. The Council is established under section 34 of the Judicial Service Act;**
- (ii) The Councils was underfunded thereby making its operations and activities difficult;**
- (iii) During the year under review, the Council established the Bail and Bond Implementation Committee to oversee, monitor and evaluate the implementation of the Bail and Bond Policy Guidelines and recommendations of the Task Force on Bail and Bond.**
- (iv) The Council also formed a Special Task Force on Children Matters to review and report on status of children in the administration of Justice and another Committee on Sexual Offences to review the Sexual Offences Act;**
- (v) It was noted that some Court Users Committees failed to produce their annual reports on activities undertaken due to lack of resources;**
- (vi) The National Council for Law Reporting which was under the jurisdiction of the Judiciary had since been placed under the Office of the Attorney-General and Department of Justice, The Judiciary was opposed to this.**

### **3.7.2 Committee's recommendations**

**57. The Committee recommends as follows-**

- (i) The National Assembly and National Treasury should ensure adequate resource allocation to the National Council on Administration of Justice to enable it carry out its programmes well;**

- (ii) The National Council on Administration of Justice should take necessary action to ensure all agencies and Court User Committees prepare and submit annual reports to the council for further action;
- (iii) The National Council on Administration of Justice engage stakeholders with a view to determining whether or not the Council should be established as body corporate and take further actions should the response be in the affirmative.
- (iv) The Judiciary and the Office of the Attorney-General and Department of Justice should dialogue with a view to agreeing on the best location for the National Council for Law Reporting while taking into account the Council's core mandate.

Signed..........Date.....09.05.19.....

**HON. WILLIAM CHEPTUMO, M.P.**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND**  
**LEGAL AFFAIRS**

# **ANNEXURE 1**

**(Minutes of the Committee on sittings considering and  
adopting the Report)**

**MINUTES OF THE ONE HUNDRED AND TWENTY-NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 2<sup>ND</sup> MAY, 2019 AT 9.30 A.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA**

**PRESENT-**

- |                                    |   |                  |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P.     | - | Chairperson      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P.    |   |                  |
| 4. Hon. William K. Mwamkale, M.P.  |   |                  |
| 5. Hon. Peter Opondo Kaluma, M.P.  |   |                  |
| 6. Hon. Zuleikha Hassan, M.P.      |   |                  |
| 7. Hon. Charles Gimose, M.P.       |   |                  |
| 8. Hon. Japheth Mutai, M.P.        |   |                  |
| 9. Hon. John M. Wambugu, M.P.      |   |                  |
| 10. Hon. Beatrice Adagala, M.P.    |   |                  |
| 11. Hon. Anthony G. Kiai, M.P.     |   |                  |
| 12. Hon. George G. Murugara, M.P.  |   |                  |
| 13. Hon. Jennifer Shamalla, M.P.   |   |                  |
| 14. Hon. Adan Haji Yussuf, M.P.    |   |                  |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                      |   |                              |
|----------------------|---|------------------------------|
| 1. George Gazemba    | - | Principal Clerk Assistant II |
| 2. Denis Abisai      | - | Principal Legal Counsel      |
| 3. Halima Hussein    | - | Clerk Assistant III          |
| 4. Fiona Musili      | - | Research Officer             |
| 5. Omar Abdirahim    | - | Fiscal Analyst               |
| 6. Mr. Hakeem Kimiti | - | Audio Recording Officer      |
| 7. Simon Maina       | - | Support Staff                |

**IN ATTENDANCE-**

**JUDICIAL SERVICE COMMISSION-**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi       | - | Chief Register, Judiciary   |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary   |
| 3. Ms. Irene Oman       | - | Programme Coordinator       |
| 4. Mr. Joseph M. Were   | - | Senior Principal Magistrate |

**MIN No. 515/2019:-**

**PRELIMINARIES**

The meeting commenced at 9.30a.m with a word of prayer by Chairperson

**MIN No. 516/2019:-**

**EXAMINATION OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE REPORTS  
FOR THE YEARS 2016-2017 AND 2017-2018**

The Committee considered the the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

**CHAPTER ONE OF THE REPORTS ON LEADERSHIP AND MANAGEMENT**

The chapters state the mandate of the Judiciary and the source of judicial authority. Its further states the progress and challenges in the specific areas of focus in the implementation of the Sustaining Judiciary Transformation (SJT): A Service Delivery Agenda 2017- 2021

**Committee's observations**

The Committee made the following observations

- (i) The Judicial Service Act Schedule 3 Part IV Paragraph 15 delegates specified disciplinary roles to the Chief Justice on behalf of the Judicial Service Commission and in light of this the Chief Justice administratively created the Office of the Judiciary Ombudsman to assist in the performance of the specified roles
- (ii) The existence of the Office of the Judiciary Ombudsman is not widely known to the people of Kenya and therefore the need for awareness creation

## CHAPTER TWO OF THE REPORTS ON ACCESS TO JUSTICE

The Chapters in the reports are about access to justice, analyses on case backlog and statistics of cases before the different courts. The Chapters further described the various strategies and efforts that have been put in place to enhance and improve access to justice. The initiatives detailed in the chapter include: reduction of case backlog; digitization of Judiciary processes and enhancement of human resource capacity.

### **Committee's observations**

The Committee made the following observations;

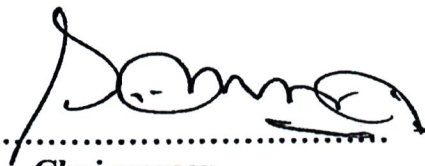
- (i) Lack of statutory or policy documents providing for timelines within which cases should be heard by courts, and the inadequate number of Judges and Magistrates were major factors contributing to case backlog in the Judiciary;
- (ii) Delayed conclusion of court cases was frustrating to litigants, and hampered economic growth as it would lead to project stalling, funds being held up without use and discouragement of potential local and foreign investors among other reasons;

MIN No. 517/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at five minutes past one in the afternoon.

Signed.....



Chairperson

Date..... 09.05.019



**MINUTES OF THE ONE HUNDRED AND THIRTIETH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 2<sup>ND</sup> MAY, 2019 AT 2.30 P.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA**

**PRESENT-**

- |                                    |   |                  |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P.     | - | Chairperson      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P.    |   |                  |
| 4. Hon. William K. Mwamkale, M.P.  |   |                  |
| 5. Hon. Peter Opondo Kaluma, M.P.  |   |                  |
| 6. Hon. Zuleikha Hassan, M.P.      |   |                  |
| 7. Hon. Charles Gimose, M.P.       |   |                  |
| 8. Hon. Japheth Mutai, M.P.        |   |                  |
| 9. Hon. John M. Wambugu, M.P.      |   |                  |
| 10. Hon. Beatrice Adagala, M.P.    |   |                  |
| 11. Hon. Anthony G. Kiai, M.P.     |   |                  |
| 12. Hon. George G. Murugara, M.P.  |   |                  |
| 13. Hon. Jennifer Shamalla, M.P.   |   |                  |
| 14. Hon. Adan Haji Yussuf, M.P.    |   |                  |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                      |   |                              |
|----------------------|---|------------------------------|
| 1. George Gazemba    | - | Principal Clerk Assistant II |
| 2. Denis Abisai      | - | Principal Legal Counsel      |
| 3. Halima Hussein    | - | Clerk Assistant III          |
| 4. Fiona Musili      | - | Research Officer             |
| 5. Omar Abdirahim    | - | Fiscal Analyst               |
| 6. Mr. Hakeem Kimiti | - | Audio Recording Officer      |
| 7. Simon Maina       | - | Support Staff                |

**IN ATTENDANCE-**

**JUDICIAL SERVICE COMMISSION-**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi       | - | Chief Register, Judiciary   |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary   |
| 3. Ms. Irene Oman       | - | Programme Coordinator       |
| 4. Mr. Joseph M. Were   | - | Senior Principal Magistrate |

**MIN No. 518/2019:-**

**PRELIMINARIES**

The meeting commenced at 2.30 p.m with a word of prayer by Hon. Kamoti Mwamkale, MP

**MIN No. 519/2019:-**

**EXAMINATION OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE REPORTS  
FOR THE YEARS 2016-2017 AND 2017-2018**

The committee considered the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

**CHAPTER THREE OF THE REPORTS ON ACCESS TO JUSTICE-  
TRIBUNALS**

The chapters state the roles of tribunals and its emerging as an influential and consequential institutional framework in the administration of justice. The transition of Tribunals from the Executive to the Judiciary continued rapidly in this financial year, even though the process faced major legal, policy, administrative and infrastructural challenges.

**Committee's observations**

The Committee made the following observations;

- (i) Whereas the Constitution of Kenya places all tribunals under the Judiciary, some tribunals had not transited from the parent ministries to the Judiciary thereby posing challenges to the Judiciary in administering them;

- (ii) There are sixty (60) tribunals in Kenya out of which only twenty (20) are under the Judiciary administratively while the rest are still under respective ministries;
- (iii) It was noted that many ministries are resistant to transferring tribunals under them to the Judiciary;

#### **CHAPTER OF FOUR OF THE REPORTS ON JURISPRUDENCE**

The Chapters are about jurisprudence that emerged from the courts during the periods under review. Courts at various levels made several ground breaking decisions in various areas of law including constitutionality of the mandatory nature of the death penalty, electoral laws, constitutional law, criminal law, family law, land and environment, and employment and labour matters among others, which advanced the course of justice and development of jurisprudence.

#### **Committee's observations**

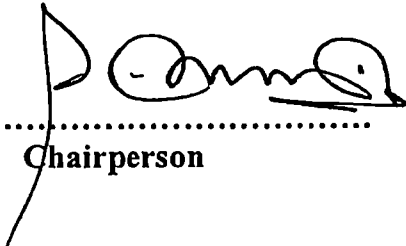
The Committee made the following observations;

- (i) During the period under review, the Judiciary made key decisions most notably in election disputes, constitutional law, criminal law, family law, land, environment, employment and labour matters among others. This contributed to the development of jurisprudence;
- (ii) The Government of Kenya was spending about 1 billion Kenya shillings annually feeding and maintaining death row convicts (Kenya Correctional Services estimates);
- (iii) The decision by the courts clarifying the jurisdiction of Judges of the High Court and that of Judges of Specialized Courts raises issues on the efficient use of Judiciary resources and is a matter that may be addressed through a constitutional amendment;
- (iv) The Judiciary submits that the timeline for hearing of presidential elections petition of fourteen (14) days was inadequate and should be increased to thirty (30) days. This will require a constitutional amendment and legislative proposals to that effect have been rejected by the Committee on two previous occasions;
- (v) The Supreme Court was not meant to be an appellate court for all matters and there is need to review the law to provide clarity as to the matters that can be dealt with by the Supreme Court.

MIN No. 520/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Five O'clock.

Signed.....  
Chairperson

Date.....00.05.19.....

**MINUTES OF THE ONE HUNDRED AND THIRTY-FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 3<sup>RD</sup> MAY, 2019 AT 9.00 A.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA**

**PRESENT-**

- |                                    |   |                  |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P.     | - | Chairperson      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P.    |   |                  |
| 4. Hon. William K. Mwamkale, M.P.  |   |                  |
| 5. Hon. Peter Opondo Kaluma, M.P.  |   |                  |
| 6. Hon. Zuleikha Hassan, M.P.      |   |                  |
| 7. Hon. Charles Gimose, M.P.       |   |                  |
| 8. Hon. Japheth Mutai, M.P.        |   |                  |
| 9. Hon. John M. Wambugu, M.P.      |   |                  |
| 10. Hon. Beatrice Adagala, M.P.    |   |                  |
| 11. Hon. Anthony G. Kiai, M.P.     |   |                  |
| 12. Hon. George G. Murugara, M.P.  |   |                  |
| 13. Hon. Jennifer Shamalla, M.P.   |   |                  |
| 14. Hon. Adan Haji Yussuf, M.P.    |   |                  |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                   |   |                              |
|-------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai   | - | Principal Legal Counsel      |
| 3. Halima Hussein | - | Clerk Assistant III          |
| 4. Fiona Musili   | - | Research Officer             |
| 5. Omar Abdirahim | - | Fiscal Analyst               |
| 6. Hakeem Kimiti  | - | Audio Recording Officer      |
| 7. Simon Maina    | - | Support Staff                |

**IN ATTENDANCE-**

**JUDICIAL SERVICE COMMISSION-**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi       | - | Chief Register, Judiciary   |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary   |
| 3. Ms. Irene Oman       | - | Programme Coordinator       |
| 4. Mr. Joseph M. Were   | - | Senior Principal Magistrate |

**MIN No. 521/2019:-**

**PRELIMINARIES**

The meeting commenced at 9.00 a.m with a word of prayer by Hon. Adan Haji, MP

**MIN No. 522/2019:-**

**EXAMINATION OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE REPORTS  
FOR THE YEARS 2016-2017 AND 2017-2018**

The committee considered the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

**CHAPTER FIVE OF THE REPORTS ON HUMAN RESOURCE  
MANAGEMENT AND DEVELOPMENT**

The Chapters are on the development and status of human resource and the goal of the Judiciary is to ensure that there is adequate human resource to support the operations of the Judiciary.

**Committee's observations**

The Committee made the following observations;

- (i) During the reporting period the Judiciary undertook an organizational review in order to restructure the institution in a manner that would ensure better delivery of services. A report on the organizational review and restructuring was submitted to the Judicial Service Commission for adoption. This, together with other ongoing reforms, are expected to ensure that the Judiciary operates at its optimum and that the resources at their disposal (financial and human) are utilized in the most efficient manner;

- (ii) During the year under review, the Judiciary continued to recruit for various posts and also carried out transfers, promotions and deployment of staff to various court stations to ensure effectiveness and efficiency in the provision of services;
- (iii) During the year under review, the Judiciary commenced the review of the human resource manual and entrenched performance appraisal system to improve on efficiency and measure the performance of staff;

## **CHAPTER SIX OF THE REPORTS ON TRAINING AND CAPACITY BUILDING WITHIN THE JUDICIARY: THE JUDICIARY TRAINING INSTITUTE**

The chapters provide an update on the Judiciary's training and capacity development, a mandate that is executed through the Judiciary Training Institute which was established in 2008 to provide training for Judges and magistrates.

### **Committee's observations**

The Committee made the following observations;

- (i) The Judicial Training Institute (JTI) conducts in-house training for Judges, Judicial officers and judicial staff. The Institute issues certificates of attendance or participation after completion of training.
- (ii) The JTI is not an accredited training institution and as such the certificates issued cannot be used for employment or promotion at work;
- (iii) The Judiciary Training Institute is operating on premises leased from Postbank Kenya Ltd. The Bank has put up the premises valued at 1.2 billion shillings for sale and Judiciary has put a bid to purchase the premises. The Judiciary is engaging the National Treasury to obtain the requisite resources;
- (iv) Apart from the JTI other Agencies in the justice sector like the ODPP and the EACC are also seeking funding to establish training institutes dedicated to their respective mandates.

## **CHAPTER SEVEN ON THE REPORTS ON INFRASTRUCTURE**

The Chapters provide updates on the progress with the Judiciary's physical infrastructure across the country. The Sustainability Judiciary Transformation (SJT) blueprint

designates infrastructure development as a major pillar in the transformation of the Judiciary.

**Committee's observations**

The Committee made the following observations;

- (i) Infrastructural development was a major pillar in transformation of the Judiciary as articulated in the Sustaining Judiciary Transformation blue print;
- (ii) During the year under review, there were one hundred and two (102) court construction and rehabilitation works across various stations in the country. Out of the courts that were under construction, twenty-eight (28) were being financed by the World Bank of which nineteen (19) were refurbishments and nine (9) were construction of new courts. The Bank is also financing the provision of furniture for eleven (11) courts. These projects are set to be completed by 20<sup>th</sup> October, 2020. The Government of Kenya is financing the ongoing construction and rehabilitation of fifty-four (54) courts, new construction of thirteen (13) courts, tender evaluation for construction of one (1) court, drilling and equipping of thirteen (13) boreholes, shelving works at ten (10) courts and refurbishment of thirty- one (31) courts.
- (iii) The main challenges experienced by the Judiciary in implementation of projects were inadequate funding; delayed exchequer releases, court injunctions and lack of title documents. The issue of lack of title documents was being handled administratively.

MIN No. 523/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at One O'clock.

Signed.....

**Chairperson**

Date.....08.05.19.....



**MINUTES OF THE ONE HUNDRED AND THIRTY-SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 3<sup>RD</sup> MAY, 2019 AT 2:30 P.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA**

**PRESENT-**

- |                                    |   |                  |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P.     | - | Chairperson      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P.    |   |                  |
| 4. Hon. William K. Mwamkale, M.P.  |   |                  |
| 5. Hon. Peter Opondo Kaluma, M.P.  |   |                  |
| 6. Hon. Zuleikha Hassan, M.P.      |   |                  |
| 7. Hon. Charles Gimose, M.P.       |   |                  |
| 8. Hon. Japheth Mutai, M.P.        |   |                  |
| 9. Hon. John M. Wambugu, M.P.      |   |                  |
| 10. Hon. Beatrice Adagala, M.P.    |   |                  |
| 11. Hon. Anthony G. Kiai, M.P.     |   |                  |
| 12. Hon. George G. Murugara, M.P.  |   |                  |
| 13. Hon. Jennifer Shamalla, M.P.   |   |                  |
| 14. Hon. Adan Haji Yussuf, M.P.    |   |                  |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                      |   |                              |
|----------------------|---|------------------------------|
| 1. George Gazemba    | - | Principal Clerk Assistant II |
| 2. Denis Abisai      | - | Principal Legal Counsel      |
| 3. Halima Hussein    | - | Clerk Assistant III          |
| 4. Fiona Musili      | - | Research Officer             |
| 5. Omar Abdirahim    | - | Fiscal Analyst               |
| 6. Mr. Hakeem Kimiti | - | Audio Recording Officer      |
| 7. Simon Maina       | - | Support Staff                |

**IN ATTENDANCE-**

**JUDICIAL SERVICE COMMISSION-**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi       | - | Chief Register, Judiciary   |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary   |
| 3. Ms. Irene Oman       | - | Programme Coordinator       |
| 4. Mr. Joseph M. Were   | - | Senior Principal Magistrate |

**MIN No. 524/2019:-**

**PRELIMINARIES**

The meeting commenced at 2:30 p.m with a word of prayer by Hon. Anthony Kiai, MP

**MIN No. 525/2019:-**

**EXAMINATION OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE REPORTS  
FOR THE YEARS 2016-2017 AND 2017-2018**

The committee considered the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

**CHAPTER EIGHT OF THE REPORTS ON DIGITAL STRATEGY**

The Chapters highlight the Judiciary's developments with regard to ICT and implementation of the digital strategy and the progress with the implementation of the Judiciary operation support system comprising various components of digitization (electronic filing and case tracking).

**Committee's observations**

The Committee made the following observations;

- (i) Emerging trends worldwide in technology had opened a window for innovation in employment. The 4<sup>th</sup> pillar of the Judiciary Transformation Framework identifies ICT as a key result area. Use of technology is important in the administration of justice like in many other sectors;
- (ii) Out of the one hundred and thirty- two (132) court stations, only six (6) had not been connected with reliable internet and these were mainly stations in remote areas of the country in the North Eastern region. The Judiciary was working closely with the Ministry of ICT to ensure the stations are connected;

## **CHAPTER 9- FINANCE AND ACCOUNTS**

The Chapters presents an analysis of the Judiciary's financial performance covering areas such as funding within the national context, including a comparative analysis of overall budgetary allocation for the arms of government and public institutions. The Chapters further provides information on revenue and deposits from courts.

### **Committee's observations**

The Committee made the following observations;

- (i) There was a drop in allocation of resources to the Judiciary during the year under review and this impacted negatively on operations. In fact Government funding to the Judiciary had always been unstable with much variance between what was approved and what was allocated;
- (ii) The Judiciary has gazetted regulations to operationalize the Judiciary Fund and is awaiting National Assembly approval. Operationalization of the Fund would guarantee financial stability for the Judiciary;
- (iii) Some Judges lack official vehicles while some were operating vehicles in poor mechanical conditions which is demeaning and embarrassing to the Judges considering their status in society;

## **CHAPTER TEN OF THE REPORTS ON THE STATE OF THE AGENCIES AND COLLABORATION IN THE JUSTICE SECTOR**

The Chapters contains reports from the justice sector agencies as well as a report of activities of the various organs and committees of the National Council for the Administration of Justice.

### **Committee's observations**

The Committee made the following observations;

- (i) The National Council on Administration of Justice was responsible for the collaboration of all agencies in the justice sector with a view to ensuring enhanced service delivery and institutional strengthening amongst members;
- (ii) The National Council on Administration of Justice was underfunded. During the year under review, it was allocated 50 million shillings from the Judiciary which

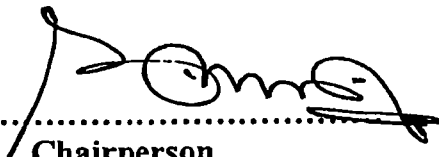
was inadequate to run its programmes and activities. The Council had to source and obtained additional funds from development partners in order to sustain its operations and activities;

- (iii) The Bail and Bond Implementation Committee had developed a draft Bail and Bond Bill for enactment, this being a major achievement during the year under review;
- (iv) The Special Taskforce on Children matters had also developed a Children's Bill for enactment;
- (v) The National Council on Administration of Justice is established under section 34 of the Judicial Service Act;
- (vi) The National Council for Law Reporting (NCLR) which is primarily mandated to monitor and report on the development of Kenya's jurisprudence through the publication of the Kenya Law Reports, is domiciled in the Office of the Attorney General;

MIN No. 526/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Five O'clock.

Signed.....  
Chairperson

Date.....29.05.19.....

**MINUTES OF THE ONE HUNDRED AND THIRTY-THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 4<sup>TH</sup> MAY, 2019 AT 9.00 A.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA**

**PRESENT-**

- |                                    |   |                  |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P.     | - | Chairperson      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P.    |   |                  |
| 4. Hon. William K. Mwamkale, M.P.  |   |                  |
| 5. Hon. Peter Opondo Kaluma, M.P.  |   |                  |
| 6. Hon. Zuleikha Hassan, M.P.      |   |                  |
| 7. Hon. Charles Gimose, M.P.       |   |                  |
| 8. Hon. Japheth Mutai, M.P.        |   |                  |
| 9. Hon. John M. Wambugu, M.P.      |   |                  |
| 10. Hon. Beatrice Adagala, M.P.    |   |                  |
| 11. Hon. Anthony G. Kiai, M.P.     |   |                  |
| 12. Hon. George G. Murugara, M.P.  |   |                  |
| 13. Hon. Jennifer Shamalla, M.P.   |   |                  |
| 14. Hon. Adan Haji Yussuf, M.P.    |   |                  |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                   |   |                              |
|-------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai   | - | Principal Legal Counsel      |
| 3. Halima Hussein | - | Clerk Assistant III          |
| 4. Fiona Musili   | - | Research Officer             |
| 5. Omar Abdirahim | - | Fiscal Analyst               |
| 6. Hakeem Kimiti  | - | Audio Recording Officer      |
| 7. Simon Maina    | - | Support Staff                |

**IN ATTENDANCE-**

**JUDICIAL SERVICE COMMISSION-**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi       | - | Chief Register, Judiciary   |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary   |
| 3. Ms. Irene Oman       | - | Programme Coordinator       |
| 4. Mr. Joseph M. Were   | - | Senior Principal Magistrate |

**MIN No. 527/2019:-**

**PRELIMINARIES**

The meeting commenced at 9am with a word of prayer by Hon. Beatrice Adagala, MP

**MIN No. 528/2019:-**

**EXAMINATION OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE REPORTS  
FOR THE YEARS 2016-2017**

The Committee considered and unanimously adopted its report on the State of Judiciary and Administration of Justice report for the years 2016/2017 after being proposed by Hon. Peter Kaluma and seconded Hon. Jennifer Shamalla with the following recommendations;

Under Chapter one of the reports on leadership and management the Committee made the following recommendations;

- (i) The Judiciary should submit to the National Assembly for enactment a legislative proposal to entrench the Office of the Judiciary Ombudsman in law;
- (ii) The Judiciary should create public awareness on the role and functions of the Office of the Judiciary Ombudsman to increase its effectiveness.

Under Chapter two of the reports on access to justice the Committee made the following recommendations;

- (i) The Judiciary should propose legislation for enactment by the National Assembly providing for statutory timelines within which cases should be heard and determined by courts;
- (ii) The National Assembly and the National Treasury should allocate adequate resources to the Judiciary to enable it employ more Judges and Magistrates for expeditious determination of cases before the courts;
- (iii) The Judiciary should increase the jurisdiction of Magistrates to deal with matters currently a preserve of the High court which would significantly reduce the backlog in the High Court;
- (iv) The Judiciary should as a matter of urgency submit to the National Assembly for approval Rules to operationalize the Small Court Claims Act, 2016.

Under Chapter three of the reports on Access to Justice- Tribunals the Committee made the following recommendations;

- (i) The Committee recommends that the Attorney-General, should as a matter of urgency, submit to the National Assembly for enactment the Tribunals Bill to address the aforesaid issues affecting tribunals.

Under Chapter four of the reports on jurisprudence the Committee made the following recommendations;

- (i) Jurisdiction of judges serving in the Specialized Courts and those of the High Court should be reviewed to enable Judges to be administratively redeployed;
- (ii) The Judiciary should submit to Parliament for consideration draft legislation increasing the timeline within which the Presidential Election Petition should be heard from fourteen (14) to thirty (30) days.
- (iii) Parliament should enact legislation on assumption to office by the Deputy Governor and filling of vacancies as and when they arise;
- (iv) Parliament should enact legislation to clearly delineate the jurisdiction of the Supreme Court.

Under Chapter five of the reports on Human Resource Management and Development jurisprudence the Committee made the following recommendations;

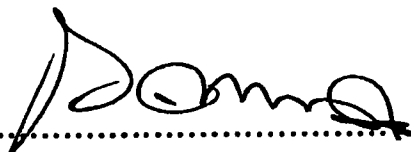
- (i) The Judiciary should fast track the implementation of the new organizational structure to guard against delays in service delivery;
- (ii) The National Assembly should allocate 300 million Kenya Shillings towards the implementation of the new organizational structure with regard to recruitment of new staff; upgrading, promotion and re-designation of staff; transfers and staff movements; and skills and audit documentation as required.

MIN No. 529/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at One O'clock.

Signed.....



Chairperson

Date.....

09.05.19.....



**MINUTES OF THE ONE HUNDRED AND THIRTY-FOURTH SITTING OF  
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON THURSDAY, 4<sup>TH</sup> MAY, 2019 AT 3.00 P.M. IN WILDON ROOM,  
TAMARIND VILLAGE, MOMBASA**

**PRESENT-**

- |                                    |   |                  |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P.     | - | Chairperson      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P.    |   |                  |
| 4. Hon. William K. Mwamkale, M.P.  |   |                  |
| 5. Hon. Peter Opondo Kaluma, M.P.  |   |                  |
| 6. Hon. Zuleikha Hassan, M.P.      |   |                  |
| 7. Hon. Charles Gimose, M.P.       |   |                  |
| 8. Hon. Japheth Mutai, M.P.        |   |                  |
| 9. Hon. John M. Wambugu, M.P.      |   |                  |
| 10. Hon. Beatrice Adagala, M.P.    |   |                  |
| 11. Hon. Anthony G. Kiai, M.P.     |   |                  |
| 12. Hon. George G. Murugara, M.P.  |   |                  |
| 13. Hon. Jennifer Shamalla, M.P.   |   |                  |
| 14. Hon. Adan Haji Yussuf, M.P.    |   |                  |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                   |   |                              |
|-------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai   | - | Principal Legal Counsel      |
| 3. Halima Hussein | - | Clerk Assistant III          |
| 4. Fiona Musili   | - | Research Officer             |
| 5. Omar Abdirahim | - | Fiscal Analyst               |
| 6. Hakeem Kimiti  | - | Audio Recording Officer      |
| 7. Simon Maina    | - | Support Staff                |

**IN ATTENDANCE-**

**JUDICIAL SERVICE COMMISSION-**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi       | - | Chief Register, Judiciary   |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary   |
| 3. Ms. Irene Oman       | - | Programme Coordinator       |
| 4. Mr. Joseph M. Were   | - | Senior Principal Magistrate |

**MIN No. 530/2019:-**

**PRELIMINARIES**

The meeting commenced at 3.00 p.m with a word of prayer by Hon. Anthony Kiai, MP

**MIN No. 531/2019:-**

**EXAMINATION OF THE JUDICIARY AND THE  
ADMINISTRATION OF JUSTICE REPORTS  
FOR THE YEARS 2017-2018**

The Committee considered and unanimously adopted its report on the State of Judiciary and Administration of Justice report for the years 2017/2018 after being proposed by Hon. John Munene and seconded Hon. Beatrice Adagala with the following recommendations;

Under Chapter six of the reports on Training and Capacity Building within the Judiciary: The Judiciary Training Institute the Committee made the following recommendations;

- (i) The Judiciary Training Institute should pursue accreditation with the relevant agencies to ensure that the certificates issued are recognized and may be used for employment or promotion;
- (ii) The National Treasury should provide funding in the next financial year to the Judiciary to purchase the Postbank premises currently being used by the Judiciary Training Institute;
- (iii) Agencies and institutions under the umbrella body of National Council on Administration of Justice such as EACC, ODPP, and OAGDJ should have one

training institute to be spearheaded by the Judiciary to save on costs as opposed to each agency proposing to have its own school.

Under chapter seven of the reports on Infrastructure the Committee made the following recommendations;

- (i) The Judiciary should ensure proper project planning and implementation to ensure projects are implemented to acceptable standards, in good time and there is value for money;
- (ii) The Judiciary should ensure that old and ongoing projects are completed before embarking on new ones;
- (iii) The National Treasury should ensure timely disbursement of exchequer to the Judiciary and other agencies to ensure timely undertaking of projects to avoid possible litigation and escalation of costs as a result of delay;
- (iv) The Judiciary should take necessary action to ensure that it has title documents for all its land.

Under chapter eight of the reports on Digital Strategy the Committee made the following recommendations;

- (i) The Judiciary should ensure that the remaining six (6) court stations are connected with reliable internet to facilitate improved service delivery;
- (ii) There should be continuous training of ICT officers to ensure implementation of the Digital Strategy.

Under chapter nine of the reports on Finance and Accounts Strategy the Committee made the following recommendations;

- (i) The National Assembly and National Treasury should allocate adequate resources to the Judiciary to address financial issues emerging under this Chapter;
- (ii) The Judiciary should come up with a legislative proposal to amend the PFM Act to enable all monies held in bank accounts maintained by the Judiciary to earn interest.

Under chapter ten of the reports on the State of the Agencies and Collaboration in the Justice Sector the Committee made the following recommendations;

- (i) The National Assembly and National Treasury should ensure adequate resource allocation to the National Council on Administration of Justice to enable it carry out its programmes;
- (ii) The National Council on Administration of Justice should take necessary action to ensure all agencies and Court User Committees prepare and submit annual reports to the council for further action;
- (iii) The National Council on Administration of Justice should ensure that the draft Bail and Bond Bill and the Children's Bill are finalized and submitted to the National Assembly for enactment as a matter of urgency;
- (iv) There is need to consider whether the National Council on Administration of Justice should be established as a body corporate;
- (v) There is need to establish the proper domicile for the National Council for Law Reporting (NCLR) in view of its primary mandate.

MIN No. 532/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Four O'clock.

Signed.....  
Chairperson

Date.....09.05.19.....

# **ANNEXURE 2**

**(List of Members who attended the Sitting that  
adopted the report)**

# KENYA NATIONAL ASSEMBLY



## DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

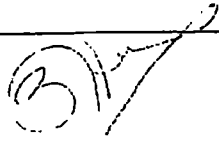
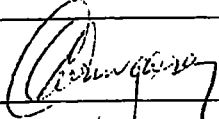
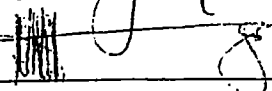


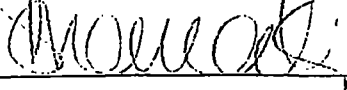
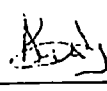
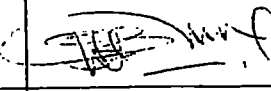
### ATTENDANCE REGISTER FOR MEMBERS

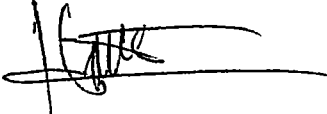
DATE 4/5/2019..... TIME 9:30AM

VENUE Heldan Room, Tamarind Hotel

AGENDA.....

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. – Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuyu, MP.	
5.	Hon. Ben Momanyi, MP.	
6.	Hon. Mwamkale William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Charles Gimose, MP.	

9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Zuleikha Hassan, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	
13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	
16.	Hon. Jennifer Shamalla, MP.	
17.	Hon. Beatrice Adagala, MP.	
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	

*for* 

**GEORGE GAZEMBA, ACI Arb**

**For: CLERK OF THE NATIONAL ASSEMBLY**