

Approved for tabling. *RD*

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4/12/18

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION, 2018

PARLIAMENT
OF KENYA
LIBRARY

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE PETITION ON THE COMPENSATION OF PARENTS/
GUARDIANS OF VICTIMS AND SURVIVORS OF THE KYANGULI
SECONDARY SCHOOL FIRE TRAGEDY

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2018	
DAY: <i>WED</i>	
TABLED BY:	<i>CHAIR, JUSTICE & LEGAL AFFAIRS COMMITTEE</i>
CLERK-AT-THE-TABLE:	<i>Moses Lemunye</i>

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

DECEMBER, 2018

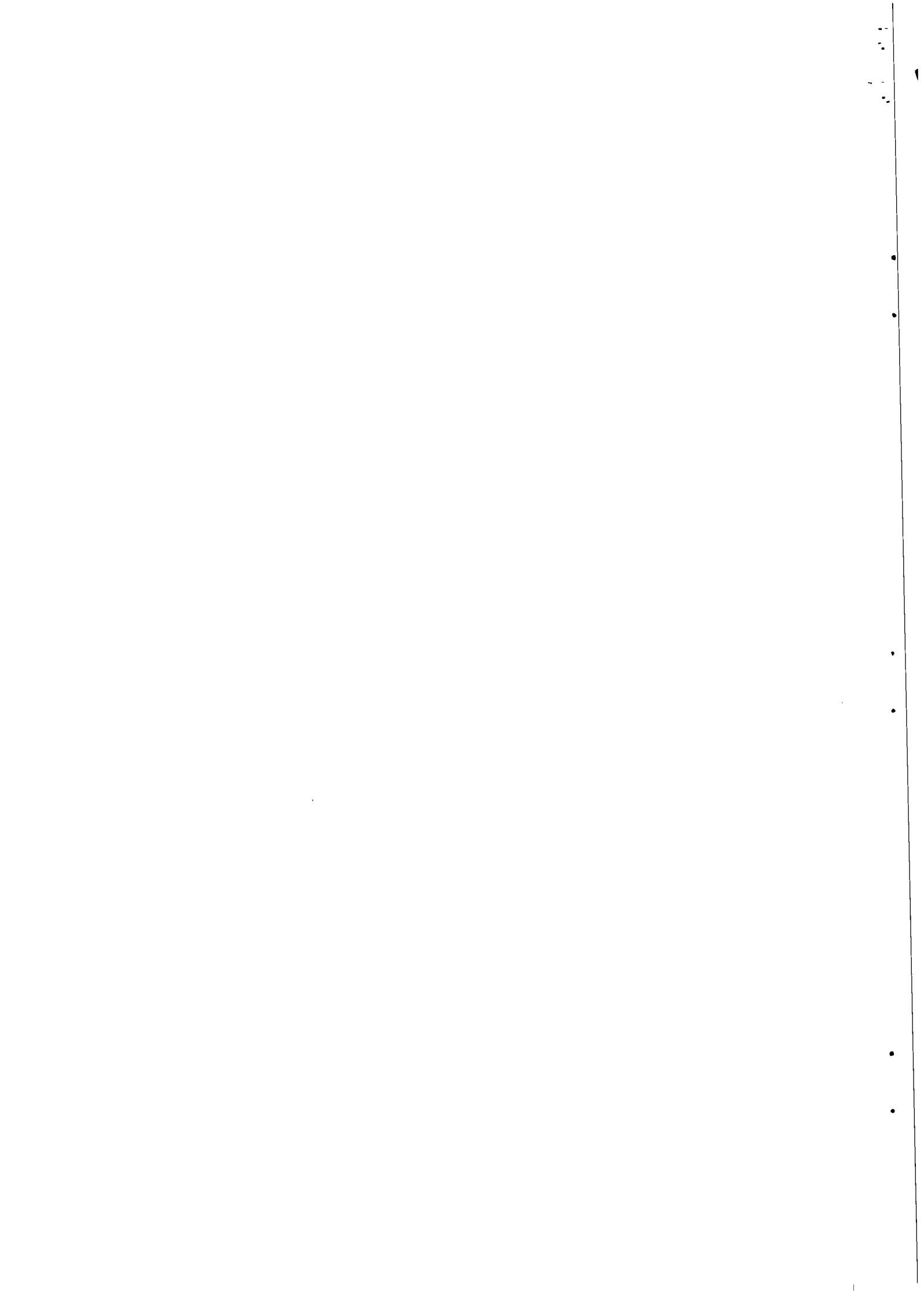


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ABBREVIATIONS AND ACRONYMS

Hon- Honourable

M.P. - Member of Parliament

NA -National Assembly

Ref- Reference

CHAIRMAN'S FOREWORD

The Petition was presented to the House by Hon. Robert Mbui, M.P. on 24th October, 2018 on behalf of parents/ guardians of victims and survivors of the Kyanguli Secondary School fire tragedy, in accordance with the provisions of Standing Order No. 225 (2) (a). The petitioners pray that the National Assembly through the Departmental Committee on Justice and Legal Affairs-

- (i) Intervenes through relevant Government Agencies to ensure that the Petitioners are paid their compensation rightfully awarded to them by the Court including interests accrued thereto as ordered by the Court; and
- (ii) Makes any other order or direction that it deems fit in the circumstances of this matter.

The Petition was thereafter referred to the Departmental Committee on Justice and Legal Affairs for consideration and preparation of a report within sixty days in line with the requirements of Standing Order 227.

In considering the Petition, the Committee, during one of its sitting on 13th November 2018, held a meeting with the petitioner Hon. Robert Mbui, M.P. The meeting was aimed at inquiring into the issues raised in the Petition.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table on the Floor of the House the Report of the Committee on the petition.

Hon. William Cheptumo, MP

Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

PREFACE

1.1. Mandate of the Committee

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.*

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

The Committee was constituted on Thursday, 14th 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. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Gladys Boss Shollei, CBS, 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.		
Hon. Zuleikha Hassan, M.P.		

1.3. Committee Secretariat

Mr. George Gazemba	-	Senior Clerk Assistant and Head of Secretariat
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
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 Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang	-	Serjeant-at-Arms

CHAPTER TWO

CONSIDERATION OF THE PETITION

The Committee commenced its consideration of the Petition by meeting the Petitioner on 13th November 2018. During the meeting, written and oral evidence was adduced as noted hereunder:-

2.1 Submissions by Hon. Robert Mbui, M.P.

In the petition, Hon. Robert Mbui, M.P., on behalf of the parents/ guardians of victims and survivors of the Kyanguli Secondary School Fire tragedy sought to draw the attention of the House to the following-

THAT, in March 2001, Kyanguli Secondary School experienced one of the worst cases of student unrest in the country when riotous students locked their colleagues in a dormitory, sprayed it with petrol and set it ablaze;

THAT, the resultant inferno gutted down the entire dormitory, caused horrific deaths of sixty-three (63) young budding lives while scores of others were maimed and school property of immense value was decimated;

THAT, investigations into the incident revealed massive negligence on the part of the school management where it was established that whereas glaring signs of impending students' strike had been identified, the school administration never took measures to deter the unrest;

THAT, further, whereas the capacity of the ill-fated dormitory was ninety- six (96) students, the school administration had congested it with one hundred and thirty-nine (139) students at the time of the inferno, thereby increasing the casualties;

THAT, in 2002, parents and guardians of the victims and survivors sought compensation from the Courts, in which the Courts granted;

THAT, the High Court ruling on 3rd March, 2016 , the Court awarded Kshs. 40,950,000 as compensation to the victims and survivors of the Kyanguli dormitory fire, jointly and severally and broken down as follows:-

- | | |
|--|---------------|
| i. Pain and suffering Kshs.150, 000x63 | =9,450,000/= |
| ii. Loss of expectation of life Kshs.200, 000x63 | =12,600,000/= |
| iii. Loss of dependency Kshs. 300,000x63 | =18,900,000/= |

THAT, to-date, there is no indication that the affected families who have been living in trauma of the loss of their loved ones and survivors of the tragedy will receive compensation awarded to them by the High Court;

THAT, if the matter is left unresolved, the Petitioners risk being victims of justice delayed which is tantamount to justice denied.

The petitioners confirmed that the issues in respect of which the petition was made were not before any court of law of law or any legal body.

The petitioners therefore pray that Parliament

- (i) Intervenes through relevant Government Agencies to ensure that the Petitioners are paid their compensation rightfully awarded to them by the Court including interests accrued thereto as ordered by the Court; and
- (ii) Makes any other order or direction that it deems fit in the circumstances of this matter.

CHAPTER THREE

COMMITTEE FINDINGS AND RECOMMENDATIONS


3.1 Committee Findings

The Committee made the following observations from the evidence adduced in the meetings-

- (i) There had been an unnecessary delay in the payment of the compensation noting that it had been seventeen (17) years since the Kyanguli Secondary School fire tragedy had occurred. Further, it was now two (2) years since the High Court had ordered that the survivors and victims' families be compensated;
- (ii) The Committee and the Member agreed that the matters in petition should be addressed through a Question in the House in line with Standing Order 42A. Thereafter, the Attorney-General would appear before the Committee and the Member, on behalf of the Petitioners, would have an opportunity to prosecute these issues.

3.2 Committee Recommendations

In response to the prayers by the Petitioner, the Committee recommends that the matters in the petition be addressed by way of a Question in line with Standing Order 42A.

Sign.......... Date..... 4.12.18

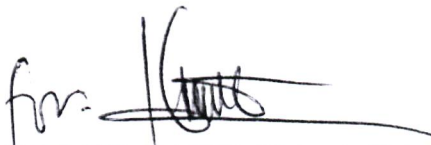
Hon. William Cheptumo, MP

Chairman, Departmental Committee on Justice and Legal Affairs

ADOPTION LIST



13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	<i>K. A. Kiai</i>
16.	Hon. Jennifer Shamalla, MP.	<i>Jennifer Shamalla</i>
17.	Hon. Beatrice Adagala, MP.	<i>Beatrice Adagala</i>
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	<i>Boss Shollei</i>

for 
GEORGE GAZEMBA, ACIArb
For: CLERK OF THE NATIONAL ASSEMBLY

KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

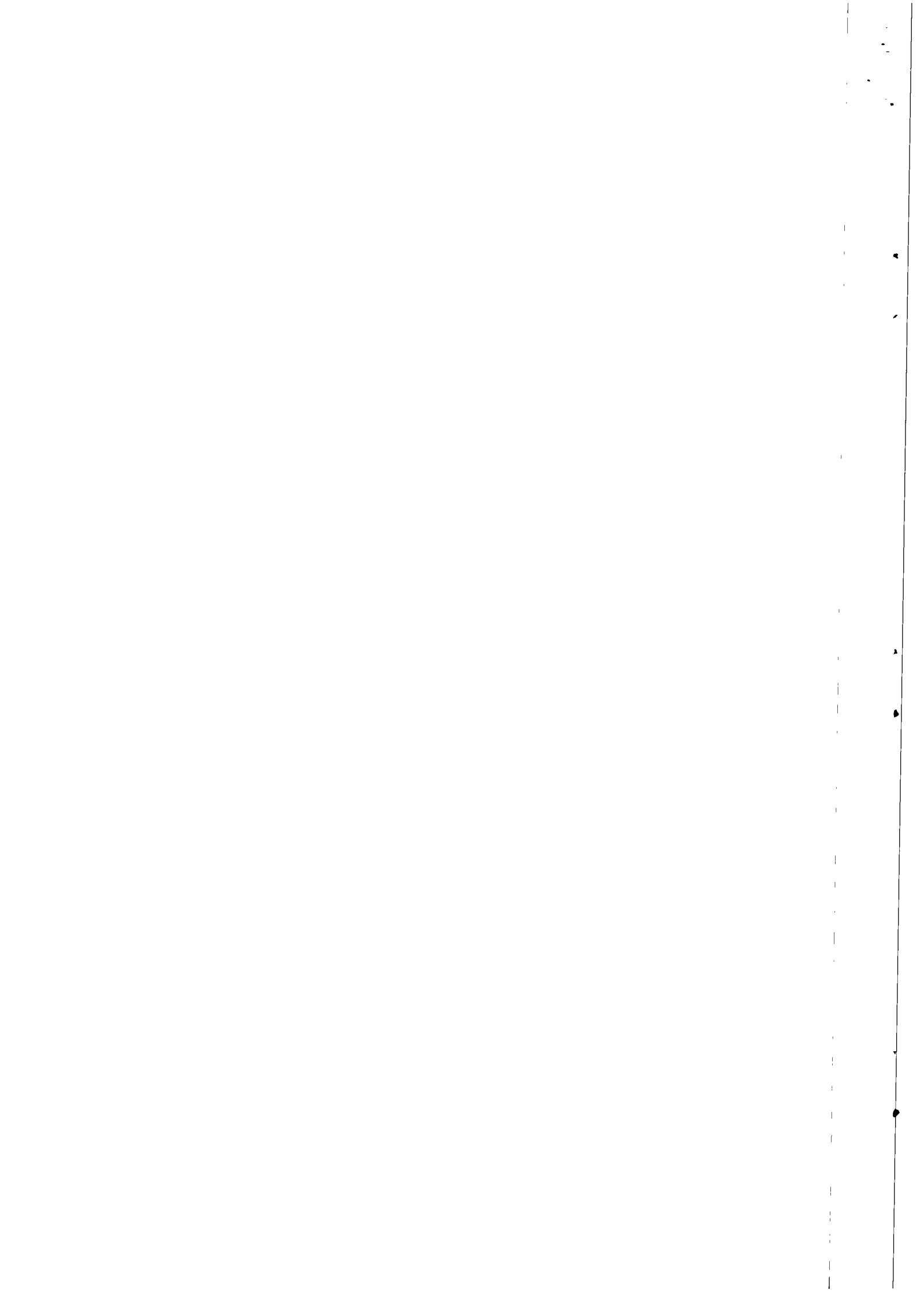
ATTENDANCE REGISTER FOR MEMBERS

DATE...27/11/2018... TIME...11:30.....

VENUE...CPA ROOM.....

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. – Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	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.	

**MINUTES OF THE
COMMITTEE SITTINGS**



MINUTES OF THE NINETY - FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 27TH NOVEMBER, 2018 AT 11.30 A.M. IN CPA ROOM, MAIN PARLIAMENT BUILDINGS

PRESENT-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Ben Momanyi, MP.
3. Hon. John Olago Aluoch, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. Charles Gimose, M.P.
6. Hon. Jennifer Shamalla, M.P.
7. Hon. Anthony G. Kiai, M.P.
8. Hon. George G. Murugara, M.P
9. Hon. Beatrice Adagala, M.P
10. Hon. Gladys Boss Shollei, CBS, M.P
11. Hon. John Kiarie Waweru, M.P.

ABSENT WITH APOLOGIES

1. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
2. Hon. Peter O. Kaluma, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John M. Wambugu, M.P.
6. Hon. Adan Haji Yussuf, M.P.

ABSENT

1. Hon. Zuleikha Hassan, M.P.
2. Hon. Johana Ng'eno, M.P.

IN ATTENDANCE

1. Ms. Halima Hussein
2. Ms. Fiona Musili

COMMITTEE SECRETARIAT

- Third Clerk Assistant
- Researcher Officer III

MIN No. 349/2018

PRELIMINARIES

The chairperson called the meeting to order at 11.30 A.m. which was followed by a word of prayer from Hon Beatrice Adagala, MP.

MIN No. 350/2018

CONFIRMATION OF PREVIOUS MINUTES

The following Minutes of the previous Sittings were confirmed as below;

1. Minutes of the 93rd Sitting held on Wednesday 14th November, 2018 at 11.00 am in Committee Room 9 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.
2. Minutes of the 92nd Sitting held on Tuesday 13th November, 2018 at 10.00 am in Commission Boardroom were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P and seconded by Hon. Charles Gimose, MP.
3. Minutes of the 91st Sitting held on Monday 12th November, 2018 at 3.00 pm in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
4. Minutes of the 90th Sitting held on Monday 12th November, 2018 at 9:30 am in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
5. Minutes of the 89th Sitting held on Thursday 8th November, 2018 at 11:55 am in Committee Room 7 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. George G. Murugara, MP.
6. Minutes of the 88th Sitting held on Thursday 1st November, 2018 at 7:30 am in Maria Room, Hotel Intercontinental were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Beatrice Adagala, MP.
7. Minutes of the 87th Sitting held on Saturday 27th October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
8. Minutes of the 86th Sitting held on Saturday 27th October, 2018 at 10:00 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
9. Minutes of the 85th Sitting held on Friday 26th October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Charles Gimose, MP

10. Minutes of the 84th Sitting held on Friday 26th October, 2018 at 9:50 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.

11. Minutes of the 83rd Sitting held on Tuesday 23rd October, 2018 at 10:00 am in Boardroom, second Floor, Protection House were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP

MIN No. 351/2018

MATTERS ARISING

Under Min.No.314/2018 – Any Other Business

Hon Jennifer Shamalla's concerns over the difficulties she encountered while surrendering her imprest were not captured.

MIN No. 352/2018

**CONSIDERATION AND ADOPTION OF THE
DRAFT REPORTS ON LEGISLATIVE
PROPOSALS AND PETITIONS**

The Committee considered and unanimously adopted the following draft reports.

1. Report on the legislative proposal for the Institute of Directors of Kenya Bill, 2018 by Hon. (Dr). Chris Wamalwa, MP that seeks to establish the Institute of Directors to provide for the registration and regulation of the standard and practice of members of Boards
2. Report on the legislative proposal for the Law of Contract (Amendment) Bill, 2018 by Hon. Waititu Francis Munyua, MP that seeks to amend the Law of Contract Act, CAP 23 to require a creditor to first realise the security of a principal debtor in case of default payment of a loan.
3. Report Of the legislative proposal for the Anti-Corruption and Economic Crimes (Amendment) Bill, 2018 that seeks to amend Section 48 of the Anti-Corruption and Economic Crimes Act, 2003 to impose a life sentence on any person convicted of corruption or any other economic crimes.
4. Report on the petition to introduce a new National Peace Day on 9th March by Mr. Petr Mugo Mukua
5. Report on the petition on the compensation of the parents/guardians of victims and survivors of the Kyanguli Secondary School fire tragedy by Hon Robert Mbui, MP

6. Report of the petition to amend Article 171 (2) (f) of the Constitution of Kenya to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as member of the Judicial Service Commission representing the Law Society of Kenya by Law Society of Kenya
7. Report on the petition to amend Section 18 of the La Society of Kenya Act to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as President or Vice President of the Law Society of Kenya Council by Law Society of Kenya
8. Report on the petition for the enactment of the admiralty court act by Mr. Derrick Otieno Okadia.

MIN No. 353/2018

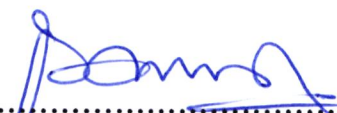
ANY OTHER BUSINESS

Members raised concerns over the consistent absence of some Committee Members. The Chairperson undertook to follow up on the matter and update the Committee in its subsequent meeting

MIN No.354/2018:

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 12.50 p.m.

Signed.....

Chairperson

Date..... 4.12.18

MINUTES OF THE NINETY-SECOND SITTING OF THE
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
HELD ON TUESDAY, 13TH NOVEMBER, 2018 AT 10.00 A.M. IN THE
COMMISSION BOARDROOM ON FIRST FLOOR, COUNTY HALL,
PARLIAMENT BUILDINGS

PRESENT-

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

ABSENT WITH APOLOGIES-

1. Hon. Gladys Boss Shollei, CBS, M.P.
2. Hon. Roselinda Soipan Tuya, M.P.

ABSENT-

1. Hon. Zuleikha Hassan, M.P.
2. Hon. Johana Ng'eno, M.P.
3. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT

1. Michael Sialai - Clerk of the National Assembly

- | | | |
|-----------------------|---|---------------------------------|
| 2. Michael Karuru | - | Deputy Director, Legal Services |
| 3. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 4. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 5. Ms. Fiona Musili | - | Research Officer III |
| 6. Mr. Hakeem Kimiti | - | Audio Officer |
| 7. Mr. Simon Maina | - | Library/ Office Superintendent |

MIN No. 341/2018:-

PRELIMINARIES

The chairperson called the meeting to order at 10.00 a.m. which was followed by a word of prayer by Hon. Charles Gimose.

MIN No. 342/2018:-

CONSIDERATION OF PETITIONS

- (i) **Consideration of Petition by Mr. Peter Mugo Munya seeking to amend Article 9(3) of the constitution of Kenya to declare 9th March, as the national peace day**

Mr. Peter Mugo Munya submitted as follows in support of his petition-

- (i) His decision to petition the House was informed by the 9th March, 2018 handshake between President Uhuru Kenyatta and former Prime Minister Raila Odinga after the hotly contested 2017 Presidential elections and the best gift Kenyans could give them would be the declaration of 9th March a national peace day for commemoration;
- (ii) The handshake marked a renaissance in the country's history after several years of elusive peace occasioned by disputed presidential election results and would be a gateway to greater cohesion, peaceful co-existence, tranquillity and sense of nationhood;
- (iii) The aftermath of the handshake would be a key pillar to social economic growth as the country endeavours to achieve Vision 2030; and
- (iv) He had studied the Public Holidays Act, Cap 110 and concluded that 9th March could only be declared national holiday through a constitutional amendment by Parliament and not by the Cabinet Secretary.

The Committee observed as follows-

- (i) The Petitioner had a noble idea but was of the view that it was still too early to celebrate results of the handshake; and
- (ii) There were many holidays in Kenya which was not in the best interest of the business community thus no need for declaration of more holidays. The Petitioner however argued that China had many holidays some running for as long as one (1) month yet it excelled economically compared to Kenya.
- (ii) Consideration of Petition by Mr. Derrick Otieno Okadia to legislate on Admiralty Courts

Mr. Derrick Otieno Okadia introduced himself as an Advocate of the High Court of Kenya practising in Shipping and Maritime Law under the firm name of Julu Okadia Advocate domiciled in Nairobi. He submitted as follows in support of his Petition-

- (i) The Admiralty Court in Kenya as currently constituted relied heavily on the United Kingdom's jurisdiction by dint of the Judicature Act. This had caused confusion amongst practitioners as to what position to adopt in the Kenyan constitution given the prevailing circumstantial context in the United Kingdom and Kenya.
- (ii) His concerns had been raised by Judges in their various pronouncements in court but relevant authorities had not taken action to address the situation.

The Committee observed that shipping and maritime was one area with a lot of potential for the legal practitioners and found it necessary for the country to have in place proper legislation for the purposes of administration of justice.

The Committee directed the Petitioner as follows-

- (i) To submit to the Committee precedents pointing to the gaps in the United Kingdom and Kenyan maritime laws;
- (ii) Develop draft legislation to jumpstart the process of enacting legislation to enact an Admiralty Court and repeal of sections of statutes that confer jurisdiction to the Admiralty Court based on the United Kingdom laws or any other jurisdiction not being Kenyan jurisdiction.
- (iii) Identify stakeholders in the shipping and maritime industry for the purposes of legislation making and share with the Committee.

(iii) Consideration of Petition by Hon. Robert Mbui on compensation to victims and survivors of the Kyanguli Secondary School fire tragedy

The Member submitted that despite a court judgement in 2016, the Government was yet to compensate victims and survivors of the Kyanguli Secondary School fire tragedy which occurred in the year 2000, an amount of Kshs.40,000,000.00 whereas there was no pending appeal against the judgement.

It was agreed between the Committee and the Member that the petition be addressed through a question in the House whereby the Attorney-General would appear before the Committee and the Member prosecutes the question.

MIN No. 343/2018: ANY OTHER BUSINESS

(i) The Parliamentary Service Bill, 2018

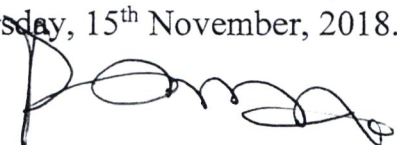
Whereas Members were concerned that the Bill did not make any provision on their welfare, the Clerk of the National Assembly informed the Committee that there was a pending court case relating to the subject, the judgement of which was to be delivered on 4th December, 2018 and that it would be prudent for the provision to be made depending on the outcome of the court case.

The Clerk was of the view that provision on monitoring and evaluation of constituency programmes and activities by Members of the National Assembly be made in the Bill. He was also of the view that further provision be made on the establishment of a tribunal to be making recommendations on Members' Welfare as opposed to the Salaries and Remuneration Commission (SRC) determining.

The Committee resolved that the Chairperson should consult the House leadership on whether or not to delay the tabling of the report pending further proposed amendments based on the outcome of the court case.

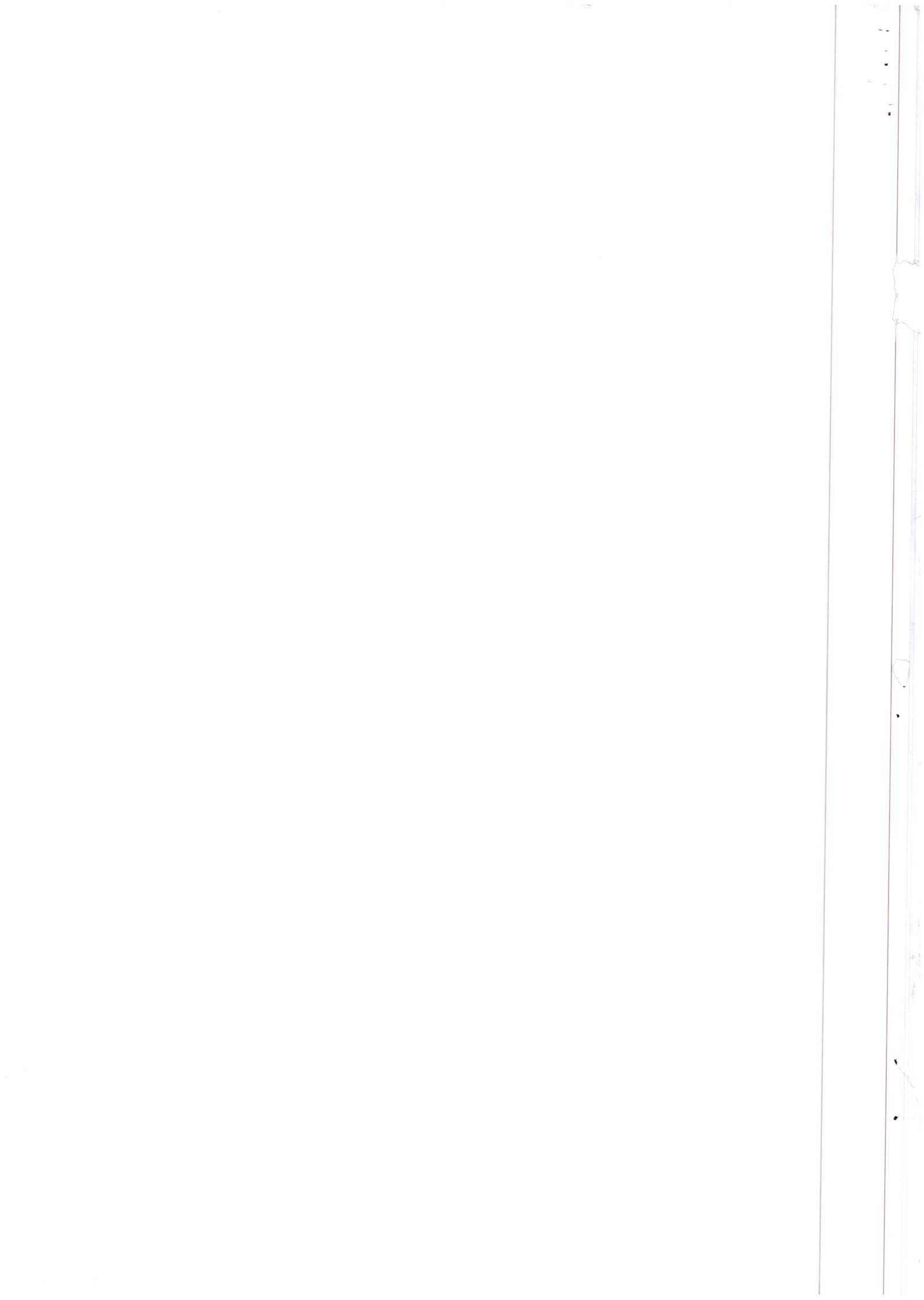
MIN No. 344/2018: ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 1.00 p.m. till Thursday, 15th November, 2018.

Signed.....

Chairperson

Date..... 27.11.18

**COPY OF THE
PETITION**



PARLIAMENT OF KENYA



NATIONAL ASSEMBLY

12TH PARLIAMENT- SECOND SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

BRIEFING NOTES

PETITION REGARDING COMPENSATION TO VICTIMS AND SURVIVORS
OF THE KYANGULI SECONDARY SCHOOL FIRE TRAGEDY

Introduction

1. The Petition was presented to the House by Hon. Robert Mbui, M.P. on behalf of parents/ guardians of victims and survivors of the Kyanguli Secondary School fire tragedy, in accordance with the provisions of Standing Order No. 225 (2) (a). The petitioners pray that the National Assembly through the Departmental Committee on Justice and Legal Affairs-
 - (i) Intervenes through relevant Government Agencies to ensure that the Petitioners are paid their compensation rightfully awarded to them by the Court including interests accrued thereto as ordered by the Court; and
 - (ii) Makes any other order or direction that it deems fit in the circumstances of this matter.

2. The Petition was referred to the Departmental Committee on Justice and Legal Affairs for consideration and preparation of a report within sixty days in line with the requirements of Standing Order 227.

3. The Kyanguli Fire Tragedy occurred on the night of 24 March 2001 when a dormitory at Kyanguli Secondary School in Machakos County, Kenya, was set on fire. Sixty- seven (67) pupils died in the incident. On 9 April 2001 Felix Ngumbao and Davis Opiyo (who were students at the school) were arraigned in court and charged with murder in a trial

that lasted for almost two years. However, in 2003 during the vetting of Judges and Magistrates exercise the presiding Judge, Justice Robert Mutitu, resigned from office. Thereafter, Justice Nicholas Ombija who took over from him terminated the case on 4 December 2006 terming it a mistrial noting that Justice Mutitu was being probed for corruption.

Court Ruling on Compensation to Victims and Survivors of the Kyanguli Secondary School Fire Tragedy

4. On 8th March 2002, Daniel Kiamba Kimithi and 62 others (1st to 63rd Plaintiffs) sued David Mutiso Kiilu, Stephen Kasyoka Makau, the Teachers Service Commission, the Board of Governors, Kyanguli Mixed Secondary School and the Hon. Attorney General (1st to 5th Defendants).

5. On 3rd day of March, 2016 Hon. Justice Joseph K. Serگون entered judgment in favour of the Plaintiffs and against the Defendants jointly and severally as follows:

i. Pain and suffering Kshs.150, 000x63	=9,450,000/=
ii. Loss of expectation of life Kshs.200, 000x63	=12,600,000/=
iii. Loss of dependency Kshs. 300,000x63	=18,900,000/=
Net total	=40,950,000/=

iv. Cost of the suit

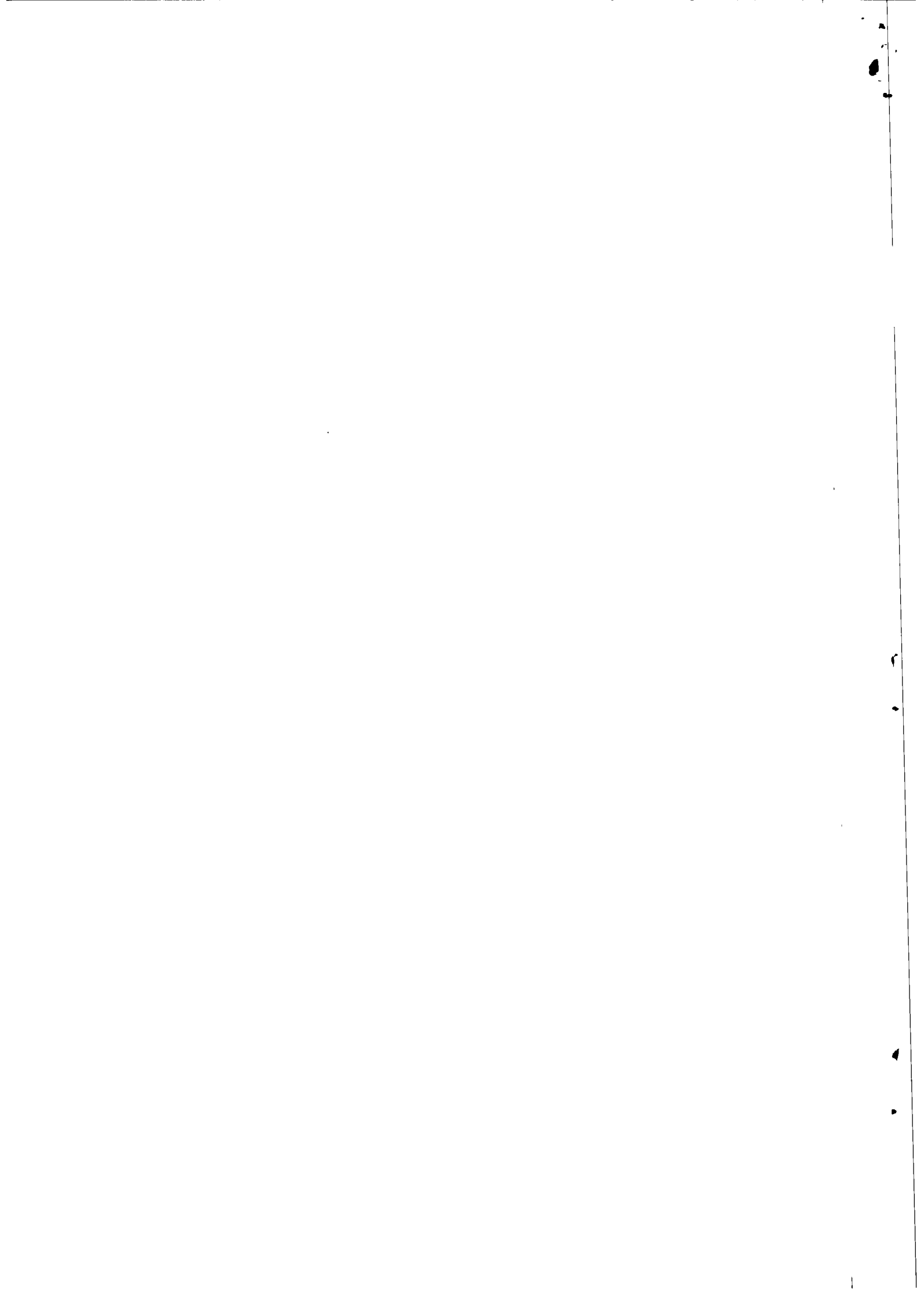
v. Interest on (i), (ii), (iii) and (iv) above at court rates from the date of judgment until full payment.¹

Budget for payment of court awards

6. In its Report on the Budget Policy Statement for the Financial Year 2018/2019 for the Agencies under Governance, Justice, Law and Order Sector, the Departmental Committee on Justice and Legal Affairs observed that-

The Attorney General's Office litigates on behalf of the State agencies. However, when the Courts award claims against these agencies, they don't promptly settle the claims due to failure to budget for these awards in the Ministerial budgetary allocations for the specific agencies.

¹Daniel Kiamba Kimithi & 62 others v David Mutiso Kiilu & 4 others [2016] eKLR. High Court Civil Suit No. 415 of 2002. Available on <http://kenyalaw.org/caselaw/cases/view/119342>



7. To address this, the Committee recommended that-

- a) *As a matter of priority, the Committee should consider setting up a Fund, under an enabling parent statute, for settling court awards against the Government. In this regard, the Committee recommends the allocation of Kshs 1 billion in FY 2018/19 to the Attorney General Office as initial funds for the Fund.*
- b) *In setting up the Fund, the Committee should consider effecting budgetary cuts against State agencies that lost cases and have claims to settle in order to raise funds for the kitty.*

Conclusion

8. In the course of the considering the Petition, the Committee should invite the Attorney General to explain the delay in the payment of this and other court awards by various State Agencies.

