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REPUBLIC OF KENYA



Paper laid by
vice chairperson
A.C on Health
Wednesday
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NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION - 2017

THE DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE PETITION REGARDING THE VIOLATION OF THE
NUTRITIONISTS AND DIETICIANS ACT AND AMENDMENT TO THE
NUTRITIONISTS AND DIETICIANS ACT 2007

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

MAY 2017

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ACRONYMS

AGM	-	Annual General Meeting
CEO	-	Chief Executive Officer
CS	-	Cabinet Secretary
FA	-	Finance and Accounts
HR	-	Human Resource
KNDI	-	Kenya Nutritionists and Dieticians Institute
SAGAs	-	Semi Autonomous Government Agencies

CHAIRPERSON'S FOREWORD

The Petition regarding the violation of the Nutritionists and Dieticians Act and Amendment to the Nutritionists and Dieticians Act 2007, was conveyed to the House pursuant to National Assembly Standing Order No. 225 (2)(a) by the Speaker, on 26th November, 2016 and consequently was committed to the Departmental Committee on Health for consideration.

In considering the petition, the Committee invited and held meetings with the petitioners, the Chairperson of the Kenya Nutritionists and Dieticians Institute and the Ministry of Health on 23rd and 28th March 2017, respectively. The witnesses responded to issues raised by the petitioners.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, and pursuant to National Assembly Standing Order No, 227 it is my pleasant duty to table the Report on the Petition regarding the Violation of the Nutritionists and Dieticians Act and Amendment to the Nutritionists and Dieticians Act, 2007.



HON. DR. RACHAEL NYAMAI, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON HEALTH

EXECUTIVE SUMMARY

This report details the consideration and response to the prayers sought by the petition regarding the violation of the Nutritionists and Dieticians Act and Amendment to the Nutritionists and Dieticians Act, 2007.

The petition was referred to the Departmental Committee on Health on 26th November, 2016 for consideration and preparation of a report within 60 days pursuant to the provisions of the National Assembly Standing Order No. 227 (1) and (2).

From the evidence adduced, the Committee observed that the Kenya Nutritionist and Dieticians Institute Council (hereinafter referred to as KNDI Council) was gazetted on 9th February 2010, to serve for a three year term which expired on February 2013. The current office bearers (hereinafter referred to as the council members) were serving their third term yet Section 5(3) of the Act provides for a three year term renewable once. The Council was never reappointed for a second term and was therefore in office illegally. This puts into question the legality of the allowances paid to them and any appointments they made for officers at the institute upon the expiry of their term. The Committee noted with concern that the Ministry of Health had failed to take action on the Council despite being aware that the term of office of the Board members had expired. The Ministry has therefore failed in its role with respect to establishment of the Council and general monitoring of a regulatory authority under its mandate.

The Committee further noted that there was an urgent need to amend the Nutritionists and Dieticians Act, 2007 to align it to the Constitution. It also took note of a legislative proposal, containing amendments to the Act, which was sponsored by the Hon. Mary Emaase, M.P. The Committee had already considered the bill beforehand, and the Bill was awaiting publication. The Committee noted that due to the significance of the amendments required to align the Act to the Constitution, there was need for the Bill to be introduced to Parliament as a government Bill and that all the stakeholders be engaged in the process.

The Committee also noted that since the Nutritionists and Dieticians Act, 2007 came into force, the Kenya Nutritionists and Dieticians Institute has never held an Annual General Meeting neither has it submitted audited accounts to members in an AGM as provided for in Section 31(3) of the Act. This is in violation of the Act. The KNDI Council should ensure that an AGM is held and the accounts presented to the AGM as provided for in the Act.

The Committee further opined that there is need for the Ministry to review the internship policy with respect to nutritionists/dieticians and provide guidance on the same.

1.0 PREFACE

The petition regarding the violation of the provisions of the Nutritionists and Dieticians Act and proposed Amendment to the Nutritionists and Dieticians Act, 2007 was conveyed to the House on 26th November, 2016 by the Speaker of the National Assembly. The House, pursuant to National Assembly Standing Order No 227 referred the Petition to the Departmental Committee on Health for preparation of the Report and reporting within 60 days as set out in National Assembly Standing order No 227(2).

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Committee on Health is one of the Departmental Committees of the National Assembly established under National Assembly Standing Order No 216 and mandated to, inter alia—

1. Investigate and inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments’.
2. Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
7. Make reports and recommendations to the House as often as possible, including recommendation or proposed legislation.

1.2 OVERSIGHT

The Committee is mandated to cover the functions of the Ministry in accordance with the provisions of the Fourth Schedule of the Constitution. As such, the Committee exercises oversight role on the work and administration of the Ministry of Health alongside the following Semi-Autonomous Government Agencies (SAGAs):- The Kenyatta National Hospital; Moi Teaching and Referral Hospital; Kenya Medical Training College; Kenya Medical Supplies Authority; National Hospital Insurance Fund; Kenya Medical Research institute and National Aids and Control council.

1.3 COMMITTEE MEMBERSHIP

The Committee comprises the following Members:-

Hon. Dr. Rachel Nyamai, M.P. - Chairperson

Hon. Dr. Robert Pukose, M.P. - Vice Chairperson

Hon. Dr. Naomi Shaban, M.P.

Hon. Dr. Enock Kibunguchy, M.P.

Hon. Dr. James Nyikal, M.P.

Hon. Dr. James Gesami, M.P.

Hon. Dr. Eseli Simiyu, M.P., CBS
Hon. Fred Outa, M.P.
Hon. Alfred Sambu, M.P.
Hon. John Nyaga Muchiri, M.P., HSC
Hon. Alfred Agoi, M.P.
Hon. David Karithi, M.P.
Hon. Dr. Dahir Mohamed, M.P.
Hon. Dr. James Murgor, M.P.
Hon. Dr. Patrick Musimba, M.P.
Hon. Eng. Stephen Mule, M.P.
Hon. Dr. Stephen Wachira, M.P.
Hon. Dr. Susan Musyoka, M.P.
Hon. Hassan Aden Osman, M.P.
Hon. James Gakuya, M.P.
Hon. Kamande Mwangi, M.P.
Hon. Leonard Sang, M.P.
Hon. Michael Onyura, M.P.
Hon. Mwinga Gunga, M.P.
Hon. Paul Koinange, M.P.
Hon. Raphael Milkau Otaalo, MP
Hon. Zipporah Jesang, MP
Hon. Robert Mbui, MP
Hon. Jared Opiyo, MP

1.4 COMMITTEE SECRETARIAT

Ms. Esther Nginyo	-	Clerk Assistant III
Mr. Dennis Mogare Ogechi	-	Clerk Assistant III
Ms. Ruth Mwihaki Gakuya	-	Clerk Assistant III
Ms. Sande Marale	-	Senior Research & Policy Analyst
Ms. Marlene Ayiro	-	Legal Counsel I
Mr. Joash Kosiba	-	Fiscal Analyst I

1.5 ADOPTION OF THE REPORT

We, the Members of the Departmental Committee on Health have, pursuant to National Assembly Standing Order No 199, adopted this Report on the Petition regarding the Violation of the provisions of the Nutritionists and Dieticians Act and proposed Amendment to the Nutritionists and Dieticians Act 2007 and affix our signatures (Annex 1) to affirm our approval and confirm its accuracy, validity and authenticity today Friday 12th May 2017.

1.6 LIST OF RECOMMENDATIONS

From the evidence adduced and the observations made, the Committee made the following determinations on the prayers of the petitioners:

i. The term of office of the Chairperson and the KNDI Council

The Ministry should as a matter of urgency set up a properly instituted council in line with the provisions of the law; as the current Council was in office illegally due to the expiry of its term. The Ministry to further report progress to the Committee within 90 days.

ii. The Office of Director of Nutrition and Dietetic Services in the Ministry of Health as created by the Nutritionists and Dietetics Act Cap 253, Breast Milk Substitutes (regulation and Control) Act No.34 of 2012 and the nutrition and Dieticians Scheme of Service

The Committee notes that the Ministry of Health has made provision for the recruitment of the Director of Nutrition and Dietetic Services at the Ministry following the completion of the Job Evaluation Exercise by the Salaries and Remuneration Commission in 2016. The Ministry has since made provision for the office to be filled in the 2017/2018 financial year. The Ministry should therefore ensure that the recruitment is done as planned and the position filled.

iii. Amendments to the Nutritionists and Dieticians Act, 2007 to align it with the Constitution

The Committee notes that there is an urgent need to amend the Act to align it with the Constitution, in order to remove ambiguities and contradictions in the law.

The Committee recommends that the Ministry of Health should take leadership in the process and ensure that amendments to the Act, are forwarded to Parliament for consideration. The Ministry should further ensure proper stakeholder engagement in the process.

iv. Violation of Part IV- financial Provisions of the Nutrition and Dietetics Act, 2007

The Committee notes that the Council has been in violation of the existing provisions of the Law and recommends that as soon as the Ministry of Health gazettes a new Council, an Annual General Meeting be held in accordance with the existing Law.

v. Proposal by KNDI to introduce a One year unpaid Internship

The Committee notes that Internship placement is a function of the Ministry of Health and recommends that the Ministry should within 90 days review KNDI's internship policy and gives guidance to the Council.

2.0 BACKGROUND INFORMATION

The Nutritionists and Dieticians Act, 2007 (Cap. 253B) provides for the training, registration and licensing of nutritionists and dieticians as well as the regulation of the standards, and practice of the profession in order to ensure their effective participation in matters relating to nutrition and dietetics, and for connected purposes. The Act was assented to on the 22nd October 2007, and gazetted on 30th October 2008, making Kenya the first Country in the African region to enact such an important law in the field of Nutrition & Dietetics.

The objectives of the KNDI Council are:

1. Determine and set a framework for the professional practice of Nutritionists and Dieticians;
2. Set and enforce standards of professional practice and ethics of Nutrition and Dietetics;
3. Enforce a programme of quality assurance for the Nutrition and Dietetics profession;
4. Approve institutions for the purpose of training persons seeking registration under the Act;
5. Research into and provide public education on Nutrition and Dietetics;
6. Maintain the competence of members by updating their knowledge through publications and the conduct of continuing professional education;
7. Provide training for Nutritionists and Dieticians;
8. Design programs and methods for sensitization on suitable dietary and nutritional habits; and
9. Perform other functions as may be necessary for the proper administration of the Act.

The first Annual General Meeting that provided the forum for the election of the first Chairperson and an eligible KNDI full Council was held on 3rd October 2009 and the elected council members were gazette in the Kenya Gazette on 19th February 2010. Subsequently the Council was commissioned on 20th April 2010.

3.0 SUBMISSIONS AND EVIDENCE

3.1 Presentation by Chairperson and Secretary, Nutritionists Association of Kenya

Ms. Stella Wanjiru Kimani and Mr. Henry M. Ng'ethe, the Chairperson and Secretary of the Nutritionists Association of Kenya, respectively, appeared before the Committee on 23rd March, 2017 and informed the Committee as follows—

1. Clause 5 (3) of the Nutritionist and Dieticians Act, 2012 (2007) provides that the chairperson and every member elected under the Act shall hold office for a term of 3 years and shall be eligible for reappointment for a further term of three years. However, the current Council that was gazetted on 19th February, 2010 for a three (3) year term that was to expire in February, 2013 continued to be in office for a third term. This was irregular since no re-appointment had been done for the second term and serving a third term is in contravention to the provisions of the Act. Further, the Kenya Nutritionists

and Dietitians Institute Council had not provided any justification for being in office illegally.

2. The Breast Milk Substitutes (Regulation and Control) Act No. 34 of 2012, the Nutrition and Dietetics Act Cap. 253 B and the Nutritionists and Dietitians Scheme of Service provide for the office of the Director of Nutrition and Dietetic Services. However, the same had not been created despite the matter being raised in Parliament in February, 2014 and recommendations for creation of the office being made by the Public Service Commission and the then Ministry of State for Public Service. If created, the directorate would deal with the challenges facing the profession in the Ministry and the country at large. It was therefore important to have the Office of the Director of Nutrition and Dietetic Services created and as a matter of urgency and the positions of Director of Nutrition and the Deputy Directors advertised.
3. There was need to amend the Nutritionists and Dieticians Act, 2007 to align it to the Constitution. However, the Amendments to the Nutritionists and Dietitians Act, 2007 currently before Parliament ought to be halted until a new Council is properly constituted. Equally the amendments should be presented for concurrence with the members in an AGM, with representation of members from all Counties and other stakeholders like Educational Institutions, Non-Governmental Organizations and the Private Sector.
4. The proposed amendments to the Act in 2012 were not consultative and were geared to serve the selfish interests of serving council members. For instance the amendments sought to:
 - i) Remove the requirement for an AGM
 - ii) Remove recognition of associations that are currently recognized under the Act.
 - iii) Revise qualifications of the Chairperson which seem to favor the current chairperson
5. Clause 31 (3) of the Nutritionists and Dietitians Act, 2007 provides that “Within a period of four months from the end of the financial year, the Council shall submit to the members of the Institute at an Annual General Meeting or Special General meeting convened for that purpose the audited accounts of the Institute together with—
 - a. A statement of the income and expenditure of the Institute on the last day of that year; and
 - b. A statement of the assets and liabilities of the Institute on the last day of that year.

However, this had not happened since the Act came into force. Instead, the Council published accounts in the newspapers after a letter complaining about the same was sent to the Senate. Further, the published accounts were not compliant with international reporting standards as they were not audited or even signed. Furthermore, the years under which the accounting was done were lumped together from year 2010 to 2015. Equally they were not presented before an AGM as envisaged by the Act.

6. The curriculum, legal status and accounting for the funds accrued through students' remittances at the Agenga Postgraduate Academy run by the Institute in Busia County, the home county of the Institute's Chairperson were not clear. The insistence by the council that all professionals must graduate from the academy was neither provided for in law nor agreed upon in a consultative forum.
7. The Nutritionists Association of Kenya proposed that the association be engaged in the auditing process of the accounts of the Kenya Nutritionists and Dieticians Institute

accounts and the suspension of collection and registration of new members and renewal fees pending the said audit.

8. The conduct of the council members fell short of the provisions of the Constitution and the provisions of the Public Officers' Ethics Act and it was proposed that the council members be investigated under the provisions of the aforesaid laws.
9. The Association was opposed to the introduction of one year unpaid internship after college until consultations were done with the Ministry of Health and stakeholders. The association proposed that the expansion of internship slots and further that the Ministry of Health should posts the interns and that the interns should be paid.

3.2 Presentation by the Chairperson, Kenya Nutritionists and Dieticians Institute

The Chairperson, Hon. Prof. Julia Ojiambo, appeared before the Committee on 28th March, 2017 and submitted as follows—

1. The Nutritionists and Dieticians Act (Cap. 253B) was enacted on 22nd October 2007 and came into effect on 21st October 2008. It is an Act of Parliament to provide for the training, registration and licensing of nutritionists and dieticians, to provide for the regulation of the standards and practice of the profession, to ensure their effective participation in matters relating to nutrition and dietetics and for connected purposes. Largely, KNDI council was set up as a regulator.
2. To this end, KNDI council as a regulator has bagged various achievements in compliance with the Act—
 - a) Set a register of all persons trained in nutrition and or dietetics in line with the Act;
 - b) Approved institutions of higher learning offering courses in nutrition and Dietetics after inspection of their facilities and manpower;
 - c) Developed a minimum core curriculum to be used in the training of nutritionists and dieticians at certificate, diploma and degree levels;
 - d) Developed a system of indexing of all students enrolled for courses in nutrition and dietetics;
 - e) Prepared guidelines for internship for newly qualified persons to facilitate their registration in line with the Act;
 - f) Developed a programme for continuing Professional development to ensure members keep themselves up to date with new developments in the field. The program is tied to renewal of licenses
 - g) Developed institutional performance appraisal guidelines for public non-governmental entities;
 - h) Developed a communication policy document, resource mobilisation policy, reserve fund policy, examination policy , and standard operating procedures for disciplinary Actions and has also instituted FA and HR committee for internal controls;
3. The KNDI council and council committees had consistently held their statutory meetings on a regular basis since inception of the institute.
4. In terms of office bearers, the manner of change of office bearers was provided for in the first schedule which provided that at each Annual General Meeting, the chairperson and eleven provincial representatives shall be elected.
5. This schedule posed serious challenges to the implementation of the Act in that:-
 - a) Section 5(3) of the main Act provided that officials shall hold office for a term of three year renewable. To this end there was a contradiction.

- b) The spirit of the law was to create a regulator. It was not customary that officials of a regulatory body be elected.
 - c) Schedule 1 (3) (b) provided for provincial representatives. The Act came to effect on 21st October 2008. On 27th August 2010; the new Constitution came into force effectively abolishing provinces. It was and is still difficult to hold elections based on non-existent provinces.
6. After noticing some of the contradictions, the council wrote to the Attorney General seeking advice, and was advised to seek private legal counsel. The Council sought private legal counsel and was advised *as follows*-
- a) That the 1st schedule was inconsistent with the overall purpose of the Act - whereas the Act created a regulator, the first schedule treated it as a membership association.
 - b) That members of the council of KNDI were to hold office for three years yet the first schedule made it appear as if elections would be held every year.
 - c) That whereas the first schedule provided for composition of the Council to be determined by nominations from some membership associations:-
 - i. Membership to such associations was voluntary and could not capture all qualified nutritionists and dieticians
 - ii. Such membership associations were conceptualised along the previous provincial boundaries and therefore became redundant when counties were set up
 - iii. Such membership would compromise the functions of KNDI so as to make KNDI ineffective
 - d) That the better view was to conceptualise KNDI as a regulator and give it that effect.
 - e) That it was necessary to align the Act to the Constitution of Kenya 2010.
 - f) That it was necessary for the membership to clearly understand the difference between an association and a regulator.
 - g) That the Act should be amended to align it with the Constitution, Mwongozo guidelines (particularly to reduce the size of the council membership to nine) and to clearly highlight the role of KNDI as a regulator.
7. The Council was gazetted on 19th February 2010 for three years renewable. KNDI was aware of the provisions of the law and had requested the Cabinet Secretary in writing to de-gazette the current council.

3.2.1 Status of the amendment Bill

- 8. KNDI council undertook a comprehensive audit of the Act and highlighted areas that needed to be amended. Additionally, KNDI wrote to the Cabinet Secretary (CS) requesting re-appointment of the current council as regulations and amendments to the Act were prepared. The CS asked for an assessment of the council members which was forwarded to him.
- 9. KNDI further wrote to the CS reminding him among other things of the need to re-appoint council officials and enclosed therein the proposed amendments to the Act as well as the draft regulations.
- 10. A draft amendment Bill and regulations were subjected to stakeholders on 19th September, 2014 and for validation on 24th November 2014. KNDI had consistently engaged with, and reported to the Ministry on the progress of the proposed amendments

to the Nutritionists and Dieticians Act, and at no point did the Ministry indicate nor propose it should bring the amendments as a government Bill before the House.

11. Hon. Emaase, M.P caused the same to be published. This amendment Bill was subjected to the National Assembly Committee on Health for consideration. Additionally, the same was discussed by the National Assembly Committee on Agriculture and Health on 5th October, 2016 in Nairobi. KNDI awaits the introduction of the same as a Bill
12. KNDI presumed that some of the main petitioners may have participated at the stakeholder meetings that approved the draft amendment Bill.
13. KNDI further held several meetings with the CS Health highlighting the difficulties and also sought guidance on how to implement the said Act and proposed the renewal of the term of the council as the amendment Bill was being processed.

3.2.2 Audited Accounts

14. KNDI started operations in 2010. Audited accounts for the FY 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015 were available.
15. KNDI was not on exchequer funding and depended on council resources to operate. The current council members received Ksh. 5000 sitting allowance when they attend meetings compared to Kshs. 20,000 paid to council members of other regulatory boards. Meetings are held quarterly

3.2.3 Position of Director of Nutrition Services

16. With the devolution of health services, the position of Director of Nutrition Services was devolved and is supposed to be instituted at county government's level. KNDI has already developed a job description which was shared by the County Public Service Boards. Kisumu has already instituted it and Bomet has already advertised for the position

3.2.4 KNDI internship policy

17. While the petitioners were opposed to KNDI unpaid internship programme, KNDI had worked in partnership with other regulatory Boards and Councils on a national internship policy document that would provide for a stipend once implemented. The document was currently in the custody of the Cabinet Secretary, Ministry of Health. Meanwhile, KNDI had been advised by the PS to continue posting interns as advised by the KNDI council as the process awaited implementation.
18. The lead petitioners Ms. Stella Wanjiru and Mr. Henry Ng'ethe were not in the current register, and therefore in violation of the law if they were nutritionists and Dieticians. Petitioners Nos 17- Grace Kihagi and 18- Faith K. Munoru, however, were currently actively participating in the KNDI internship program as preceptors and drawing allowances from the program. Members representing associations, including the petitioners and the Nutrition Association of Kenya, were supposed to attend council meetings regularly. However, these members chronically missed meetings and therefore did not access minutes of meetings circulated during the meetings.
19. The implementation of Breast milk substitute did not fall under the mandate of KNDI.
20. It was submitted to the Committee that "Ageng'a Postgraduate Academy" was a site where the KNDI was running an internship program for community and public health Nutrition. KNDI has other 14 such centres concentrating on clinical nutrition, clinical dietetics, food preparation and food therapy, and food science. The difference with

Ageng'a Postgraduate Academy was that the interns there stay in one place and concentrate on one community. The reason for moving the program to Ageng'a Postgraduate Academy was that there was an existing facility running community based nutrition programs which were available for use by KNDI but the Council did not finance the institution.

21. KNDI did not charge money for internship programs. Nutrition students however do pay Kshs. 10,000 as indexing fee upon joining universities for bachelor's degrees or diploma.

3.3 Presentation by the Ministry of Health

Dr. Izaq Odongo, Deputy Director of Medical Services representing the Ministry of Health informed the Committee as follows—

1. The Nutritionists and Dieticians Act, 2007 established the Nutrition Institute and the Council that oversees the institute. According to the Act, the Council is supposed to hold office for three years after which elections should be conducted at an annual general meeting. The last Annual General Meeting was held in 2009 and no elections have been conducted ever since.
2. The Ministry had written to all Chief Executive Officers of Parastatals and regulatory bodies in the Ministry to declare the tenures of their respective Board members and emphasized the need for adherence to the Mwongozo code.
3. The Proposed amendments to the Nutrition Act would therefore be best conducted when the legitimate council office bearers are in place. The new Chair of the Council would then immediately call for an AGM so that the office bearers can be elected. He further stated that it was a requirement that stakeholders are consulted on the proposed amendments and consensus achieved.
4. Internship placement was a function of the national government. However, the current internship program was started without involvement of the National office of the affected stakeholders, KNDI begun dealing with counties directly
5. In line with Parliament's mandate, the Ministry had no objection to the Health Committee scrutinizing the budget and expenditure of KNDI with a view to strengthening the realization of the economic and social cultural rights now enshrined in the Constitution
6. The Council was not duly constituted as per the Act and the Ministry would rectify this.
7. The Position of the Director of Nutrition within the Ministry was still vacant. This was because the Ministry was awaiting the conclusion of the job evaluation exercise and approval of a new proposed staff establishment, creating the position of the Director of Nutrition amongst others. This was approved in November 2016. The Ministry was planning to fill the vacant positions in the financial year 2017/2018.

4.0 COMMITTEE OBSERVATIONS

The Committee having considered the petitioners' prayers, their submissions and the submissions of various stakeholders, observes, that:-

1. The KNDI Council was gazzeted on 9th February 2010, for a three year term which expired on February 2013. The current office bearers (council members) were serving their third term yet Section 5(3) of the Act provides for a three year term renewable once. The Council was never re-appointed for a second term and was therefore in office

illegally. This further puts into question the legality of functions of the Council, the allowances paid to them and any appointments they made for officers at the institute upon the expiry of their term.

2. There is a need to amend the Nutritionists and Dietitians Act, 2007 to align it to the Constitution. The Committee, however, notes that a legislative proposal proposing amendments to the Act, sponsored by the Hon. Mary Emaase, M.P was forwarded to the Committee, and the Committee subsequently made its recommendations. The Committee opines that due to the significance of the Bill, the Bill ought to have been brought as a government Bill as opposed to a Private Members Bill. It is also important that all the stakeholders be engaged in amending the Act. The Ministry, however, requested that the current legislative proposal be withdrawn for the Ministry to bring it forward as a government Bill.
3. Since the Nutritionists and Dietitians Act, 2007 came into force, the Kenya Nutritionists and Dieticians Institute has never held an AGM nor submitted audited accounts to members in an AGM as provided for in Section 31(3) of the Act. The only AGM conducted was the one that put the current council members in office on interim basis.
4. The Ministry had failed to take action on the Council despite being aware that the term of office of the Board members had expired. The Ministry therefore failed in its role with respect to establishment of the Council and general monitoring of a regulatory authority under its mandate.
5. There is a need to review the internship policy with respect to nutritionists/dieticians in consultation with the Ministry of Health.

5.0 COMMITTEE RECOMMENDATIONS

i. The term of office of the Chairperson and the KNDI Council

The Ministry should as a matter of urgency set up a properly instituted council in line with the provisions of the law; as the current Council was in office illegally due to the expiry of its term. The Ministry to further report progress to the Committee within 90 days.

ii. The Office of Director of Nutrition and Dietetic Services in the Ministry of Health as created by the Nutritionists and Dietetics Act Cap 253, Breast Milk Substitutes (regulation and Control) Act No.34 of 2012 and the nutrition and Dieticians Scheme of Service

The Committee notes that the Ministry of Health has made provision for the recruitment of the Director of Nutrition and Dietetic Services at the Ministry following the completion of the Job Evaluation Exercise by the Salaries and Remuneration Commission in 2016. The Ministry has since made provision for the office to be filled in the 2017/2018 financial year. The Ministry should therefore ensure that the recruitment is done as planned and the position filled.

iii. Amendments to the Nutritionists and Dieticians Act, 2007 to align it with the Constitution

The Committee notes that there is an urgent need to amend the Act to align it with the Constitution, in order to remove ambiguities and contradictions in the law.

The Committee recommends that the Ministry of Health should take leadership in the process and ensure that amendments to the Act, are forwarded to Parliament for consideration. The Ministry should further ensure proper stakeholder engagement in the process.

iv. Violation of Part IV- financial Provisions of the Nutrition and Dietetics Act, 2007

The Committee notes that the Council has been in violation of the existing provisions of the Law and recommends that as soon as the Ministry of Health gazettes a new Council, an Annual General Meeting be held in accordance with the existing Law.

v. Proposal by KNDI to introduce a One year unpaid Internship

The Committee notes that Internship placement is a function of the Ministry of Health and recommends that the Ministry should within 90 days review KNDI's internship policy and gives guidance to the Council.

Signed:.....

**HON. DR. RACHAEL NYAMAI, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON HEALTH**

Date:..... 30 / 05 / 2017

MINUTES OF THE 28TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON FRIDAY 12TH MAY, 2017 AT THE SHIMBA CONFERENCE ROOM, PRIDE INN RESORT AND CONVENTION CENTRE, MOMBASA AT 9.30AM.

PRESENT

1. The Hon. Mwinga Gunga, M.P. - **Chairing**
2. The Hon. Dr. Robert Pukose, M.P. (Vice-Chairperson)
3. The Hon. Dr. James Murgor, M.P.
4. The Hon. Raphael Milkau Otaalo, M.P.
5. The Hon. Zipporah Jesang, M.P.
6. The Hon. Robert Mbui, M.P.
7. The Hon. Alfred Agoi, M.P.
8. The Hon. Kamande Mwangi, M.P.
9. The Hon. Dr. Stephen Wachira, M.P.
10. The Hon. Dr. Susan Musyoka, M.P.
11. The Hon. Paul Koinange, M.P.
12. The Hon. David Karithi, M.P.
13. The Hon. Dr. James Nyikal, M.P.
14. The Hon. Jared Opiyo, M.P.
15. The Hon. John Nyaga Muchiri, M.P.
16. The Hon. Fred Outa, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Eseli Simiyu, CBS, M.P.
3. The Hon. Stephen M. Mule, M.P.
4. The Hon. Dr. Dahir D. Mohamed, M.P.
5. The Hon. Leonard Sang, M.P.
6. The Hon. Michael Onyura, M.P.
7. The Hon. Dr. James O. Gesami, M.P.
8. The Hon. Dr. Naomi Shaban, M.P.
9. The Hon. Dr. Enoch Kibunguchy, M.P.
10. The Hon. Hassan Aden Osman, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Dr. Patrick Musimba, M.P.
13. The Hon. Alfred Sambu, M.P.

NATIONAL ASSEMBLY SECRETARIAT

1. **Ms. Esther Nginyo** - **Third Clerk Assistant.**
2. Mr. Dennis Mogare - Third Clerk Assistant.
3. Ms. Ruth Mwhaki - Third Clerk Assistant.

4. Ms. Marale Sande - Research and Policy Analyst
5. Ms. Merlene Ayiro - Legal Counsel
6. Mr. Joash Kosiba - Fiscal Analyst
7. Mr. John Nganga - Audio Officer
8. Mr. Albert Atunga - Serjeant At Arms

MIN.NO. DCH 126/2017: PRELIMINARIES.

The Chairperson called the meeting to order at 9.45am and said a prayer.

MIN.NO. DCH 127 /2017: CONSIDERATION AND ADOPTION OF REPORTS

The Committee deliberated on the following reports:

i. REPORT ON THE MATTER OF IRREGULAR SPECIALIST RECOGNITION OF DR.SAMIRA SONI

The report was adopted with amendments after being proposed by the Hon. Dr. James Nyikal, M.P, and Seconded by the Hon. Kamande Mwangi, M.P.

ii. REPORT ON THE PETITION BY THE CHILDREN SICKLE CELL FOUNDATION OF KENYA ON ENACTMENT OF LEGISLATION ON PREVENTION, CONTROL AND MANAGEMENT OF SICKLE CELL ANAEMIA

The report was adopted after being proposed by the Hon. Paul Koinange, M.P. and seconded by the Hon. David Karithi, M.P.

iii. REPORT ON THE CONSIDERATION OF THE PETITION REGARDING THE VIOLATION OF THE NUTRITIONISTS AND DIETICIANS ACT AND AMENDMENT TO THE NUTRITIONISTS AND DIETICIANS ACT 2007

The report was adopted with amendments to recommendation (i) after being proposed by the Hon. Alfred Agoi, M.P. and seconded by the Hon. Dr. James Murgor, M.P.

The recommendation to read as follows: *‘The Ministry should as a matter of urgency set up a properly instituted council in line with the provisions of the law; as the current Council was in office illegally due to the expiry of its term. The Ministry to further report progress to the Committee within 90 days.’*

iv. REPORT ON THE CONSIDERATION OF THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT) BILL (SENATE BILL NO. 4 OF 2015).

The report was adopted after being proposed by the Hon. Hon. Dr. James Nyikal, M.P., and seconded by the Hon. Alfred Agoi, M.P.

v. REPORT ON THE CANCER PREVENTION AND CONTROL AMENDMENT BILL, 2016 (SENATE BILL NO.3 OF 2015)

The report was adopted after being proposed by the Hon. Raphael Otaalo, M.P., and seconded by the Hon. Stephen Wachira Karani, M.P.

vi. REPORT ON THE PRE-PUBLICATION SCRUTINY OF THE MEDICAL FUND BILL, 2016

The report was adopted after being proposed by the Hon. Raphael Otaalo, M.P., and seconded by the Hon. Robert Mbui, M.P.

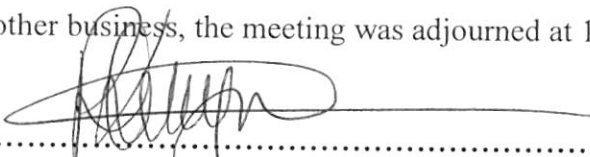
vii. REPORT ON THE PRE-PUBLICATION SCRUTINY OF THE MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) BILL, 2016

The report was adopted after being proposed by the Hon. David Kariithi, M.P., and seconded by the Hon. Paul Koinange, M.P.

MIN.NO. DCH 128/2017: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.57pm.

SIGNED:



**HON. (DR.) RACHAEL NYAMAI, M.P.
CHAIRPERSON**

DATE: 30/5/2017

DC-H: DEPARTMENTAL COMMITTEE ON HEALTH

Morning
Session

ATTENDANCE REGISTER

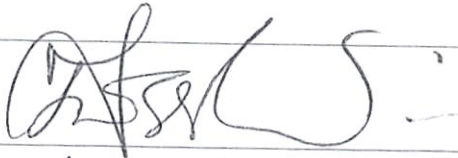
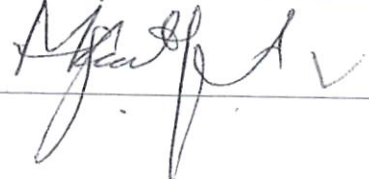
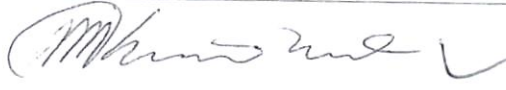
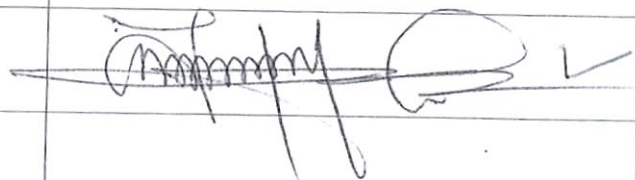
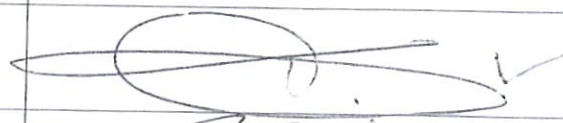
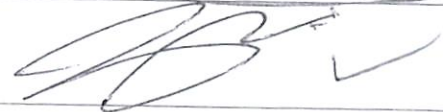
REPORT WRITING RETREAT FOR THE DEPARTMENTAL COMMITTEE
ON HEALTH

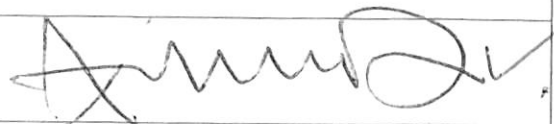
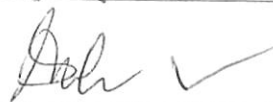

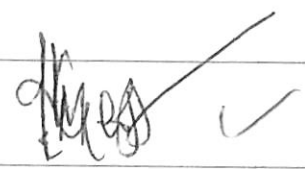
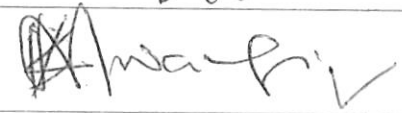
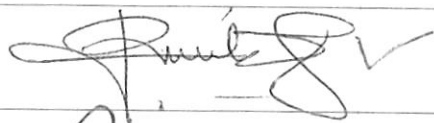
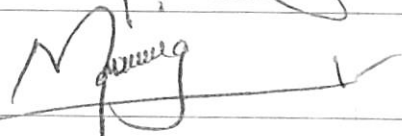
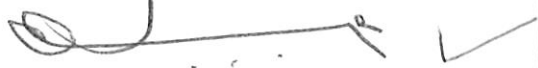

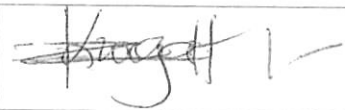
11TH - 14TH MAY 2017.

PRIDE INN PARADISE HOTEL, MOMBASA.

DATE: Friday 12th May 2017

VENUE: SHIMBA CONF. HALL

	HON. MEMBER	SIGNATURE
1.	The Hon. Dr. Rachel Nyamai, M.P. Chairperson	
2.	The Hon. Dr. Robert Pukose, M.P. Vice Chairperson	
3.	The Hon. Alfred Agoi, M.P.	
4.	The Hon. Alfred Sambu, M.P.	
5.	The Hon. David Karithi, M.P.	
6.	The Hon. Dr. Dahir D. Mohamed, M.P.	
7.	The Hon. Dr. Eseli Simiyu, CBS, M.P,	
8.	The Hon. Jared Opiyo, M.P.	
9.	The Hon. Dr. Enoch Kibunguchy, M.P.	
10.	The Hon. Dr. James Murgor, M.P.	
11.	The Hon. Dr. James Nyikal, M.P.	
12.	The Hon. Dr. James O. Gesami, M.P.	
13.	The Hon. Dr. Naomi Shaban, M.P.	
14.	The Hon. Dr. Patrick Musimba, MP	

	HON. MEMBER	SIGNATURE
15.	The Hon. Dr. Stephen Wachira, M.P.	
16.	The Hon. Dr. Susan Musyoka, M.P.	
17.	The Hon. Fred Outa, M.P.	
18.	The Hon. Hassan Aden Osman, M.P.	
19.	The Hon. James Gakuya, M.P.	
20.	The Hon. John Nyaga Muchiri, HSC, M.P.,	
21.	The Hon. Kamande Mwangi, M.P.	
22.	The Hon. Leonard Sang, M.P.	
23.	The Hon. Michael Onyura, M.P.	
24.	The Hon. Robert Mbui, M.P.	
25.	The Hon. Mwinga Gunga Chea, M.P.	
26.	The Hon. Paul Koinange, M.P.	
27.	The Hon. Raphael Milkau Otaalo, M.P.	
28.	The Hon. Stephen M. Mule, MP	
29.	The Hon. Zipporah Jesang, M.P.	

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

~~ELEVENTH PARLIAMENT~~
(FOURTH SESSION)

PETITION

(No.25 of 2016)

CONVEYANCE OF A PETITION REGARDING VIOLATION OF THE NUTRITIONISTS
AND DIETICIANS ACT AND AMENDMENT TO THE NUTRITIONISTS AND DIETICIANS
ACT 2007

Honourable Members,

Pursuant to the provisions of Standing Order 225(2)(b), I wish to convey to the House that I am in receipt of a petition, signed by forty two citizens regarding irregularities at the Kenya Nutrition and Dietetics Institute.

Honourable Members,

The Petitioners are challenging the occupancy of the office of Chairperson of the Kenya Nutrition and Dietetics Institute Council beyond statutory term of three (3) years, noncompliance with the obligation to prepare of financial statements and administration of the national internship programme by the Council. The Petitioners request National Assembly through the Departmental Committee on Health, to urgently consider proposing amendments to the Nutritionists and Dieticians Act of 2007 so as to align it with the new Constitution particularly provisions relating to incorporation of requirements of Chapter Six on Leadership and Integrity. In addition the Petitioners also request the National Assembly to scrutinize the budget and accounts of the Kenya Nutrition and Dietetics Institute with a view to enhancing accountability and efficiency.

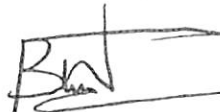
Honourable Members,

In this regard the Petition is referred to the Departmental Committee on Health for consideration. The Committee may thereafter introduce a Bill in accordance to the Standing Orders to propose amendments to the Nutritionists and Dieticians Act of 2007, as prayed.

Honourable Members,

Since the concerns and prayers relating to the audited Accounts of the Institute fall under the mandate of Public Investment Committee, I request the Committee to confirm the claims made by the Petitioners relating to audited accounts of the Institute with a view to examining their accounts if any, or causing a specialized audit of the same in accordance with the Public Audit Act, 2015.

I thank you!



THE HON. JUSTIN B. N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, 16th November, 2016

To: National Assembly of Kenya
C/O The Clerk Kenya National Assembly
Parliament Buildings P.O Box 41842 - 00100, Nairobi, Kenya



~~PETITION TO PARLIAMENT UNDER ARTICLE 119 OF THE CONSTITUTION~~
~~AND STANDING ORDERS 202 OF THE NATIONAL ASSEMBLY ON~~
SUITABILITY OF THE OFFICE BEARERS AS PER THE ACT AND THE
AMENDMENTS TO THE NUTRITIONISTS AND DIETICIANS ACT
No. 18 of 2007

WE, the undersigned,

Citizens of Kenya, representing no less than one thousand 1000 nutritionists and dietitians members of Kenya Nutrition and Dietetics Institute (KNDI).

DRAW the attention of the House to the following:

1. The Constitution of Kenya 2010 acknowledges all sovereign authority in the People of Kenya;
2. The People of Kenya have delegated legislative authority to Parliament as the representatives of the People;
3. We appreciate the work parliament has done in passing laws in compliance with the Constitution
4. On 22nd October, 2007, was the date of assent of The Nutritionists and Dieticians Act, 2007. An Act of Parliament to provide for the training, registration and licensing of nutritionists and dieticians; to provide for the regulation of the standards, and practice of the profession; to ensure their effective participation in matters relating to nutrition and dietetics, and for connected purposes.
5. We are concerned that the Council of the Institute negates the very constitutional principles put in place by being in office illegally and abusing the same office as a person who holds the office of Chairperson is eligible for reelection for only one more term of three years as per the FIRST SCHEDULE of Nutritionists and Dieticians Act, 2007. The Chairperson's term expired in 2014.
6. The Nutrition and dietetics act Cap 253B, Breast milk Substitutes (regulation and control) act no 34 of 2012 and the Nutrition and dietitians scheme of service provide for the office of Director of Nutrition and Dietetic Services in the Ministry of Health which we want created and known to Kenyans and nutritionists alike;
7. We strongly suggest an amendment to The Nutritionists and Dieticians Act, 2007, to ensure the Act is in accordance with the constitution. However, the proposed amendments currently in parliament do not represent the opinion of Nutritionists in the country. We therefore urge Parliament to halt the process until new members are elected to office and the participation of all relevant stakeholders is sought.

8. PART IV-FINANCIAL PROVISIONS 31(3) of the Nutrition and Dietetics Act 2007 provides that within a period of four months from the end of the financial year, the Council shall submit to the members of the Institute at an Annual General Meeting or Special General meeting convened for that purpose the audited accounts of the Institute together with-

- ~~(a) a statement of the income and expenditure of the Institute on the last day of that year; and~~
- (b) a statement of the assets and liabilities of the Institute on the last day of that year.

This has never been done since the inception of KNDI in 2007. We kindly request the house to engage the office of the auditor general to conduct an audit on the Kenya Nutrition and Dietetics Institute (KNDI) accounts now that they have never accounted for the money as per the Law and to suspend collection and registration of new members and renewal fees pending the said audit.

9. The Constitution and the Public Officers Ethics Act is clear that the Public officials including the Council of the institute shall not confer advantages upon themselves and must not make decisions that favor them by extending their illegitimate term and continuing to illegally earn taxpayer money through salaries and allowances. We propose that the conduct of the Council members be investigated in accordance with the Public Officers Ethics Act.

10. We are strongly opposed to the proposal by KNDI to introduce 1 year unpaid internship after college until consultations are done with the Ministry of Health and we suggest that interns be posted by the Ministry as in the case of nurses and doctors.

THEREFORE, your humble Petitioners **PRAY** that Parliament and the Government of the Republic of Kenya:

- a) That this Petition be dealt with immediately in view of the urgency of this matter;
- b) That all proposed amendments that are of a substantive nature that have the effect of changing the import of the relevant law be halted pending public participation on the veracity and necessity of the amendment;
- c) That the Speaker of the House invokes his mandate and duty through the health committee and investigate the conduct and the composition of the Council of the Kenya Nutrition and Dietetics Institute so as to enforce Chapter six of the Constitution, on Leadership and Integrity; and
- d) That Parliament (committee on health) scrutinizes the budget and expenditures of KNDI with a view of strengthening the realization of the economic and socio-cultural rights now enshrined in the Constitution since they have not made a financial report to the members as per the law.

Dated at Nairobi this 10th day of October 2016.