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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM

REPORT ON THE CONSIDERATION OF PUBLIC PETITION SEEKING LEAVE OF
THE HOUSE TO INTRODUCE A PRIVATE BILL ENTITLED THE MAU MAU
LIBERATION STRUGGLE, MOVEMENT BILL PRESENTED BY THE MAU MAU
WAR VETERANS ASSOCIATION

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 APR 2019	Day: Wed.
TABLED BY:	Majority Party Whip Hon. Benjamin W.
CLERK AT THE TABLE:	Miriam Mado.

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2019

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CHAIRPERSON'S FOREWORD

The Public Petition seeking leave of the House to introduce a Private Bill entitled the Mau Mau Liberation Struggle Movement Bill by the Mau Mau War Veterans Association was reported to the House by the Speaker in accordance with Standing Order 225 (2) (b) on 14th February, 2019. The Petition dated 1st November, 2018 prays “that the National Assembly through the Departmental Committee on Sports, Culture and Tourism:

- (i) Consider and appreciate the Mau Mau Liberation Struggle Movement whose leaders, activists and adherents through struggle bearing tears, sweat and blood, recovered our independence from the terrifying jaws of colonial power, at midnight on 12th December, 1963.
- (ii) Considers the need for Mau Mau Liberation Struggle Movement to a source of National history and the movement's useful information to generations to come; and
- (iii) To grant leave to the Petitioners to introduce a Private Bill to the Kenya National Assembly, in accordance with the National Assembly Standing Orders Part XX on Private Bills.”

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules, which enabled us to complete the tasks within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Sports, Culture and Tourism to present this report to the House pursuant to the provisions of Standing Order 227 (2).

Hon. (Dr.) Victor Munyaka, M.P.

EXECUTIVE SUMMARY

This report contains the Committee's proceedings during the hearing of the Public Petition seeking leave of the House to introduce a private Bill entitled the Mau Mau Liberation Struggle, Movement Bill presented to the National Assembly by the Mau Mau War Veterans Association and reported to the House by the Speaker on 14th February, 2019. While considering the Petition, the Committee noted the following:

1. THAT the Mau Mau War Veterans Association is a fellowship of Mau Mau Freedom fighters from the Republic of Kenya, who consistently and persistently participated in the heroic Mau Mau freedom struggle.
2. THAT, the Matters in respect of which the Petition is made are not pending in any court of law or constitutional or legal body.
3. THAT, Petitioners have enclosed their Private Bill titled The Mau Mau Liberation Struggle Movement Bill, 2018. In the Memorandum of Objects and Reasons, the Petitioners indicate that the objective of the Bill is to provide a legal framework for the recognition of the Mau Mau Liberation Struggle Movement and the declaration that the pre-independence resistance by the Mau Mau Freedom fighters was legitimate course that led to the independence of Kenya.
4. THAT, the objects and purpose of the Bill are as follows:
 - a) Provide for the recognition of the Mau Mau Liberation Struggle Movement;
 - b) Provide for declaration that the pre-independence struggle by the Mau Mau veterans was a legitimate course that led to the independence of Kenya; and
 - c) Provide a framework to facilitate public knowledge on the role of the Mau Mau liberation struggle movement in the liberation of Kenya from colonialism.
5. THAT, there exist the Mau Mau Governing Council of Kenya, registered on 13th November, 2013 under the Societies Act to front their agenda on recognition and advance their interest.
6. THAT, the Bill addresses the issue of recognition and declaration that the pre-independence struggle by the Mau Mau was legitimate course that led to the independence of Kenya and to provide for a framework to facilitate knowledge on their

role during pre-independence period which has been sufficiently addressed in other Acts.

Having considered the Petition and the proposed Bill, the Committee notes that the objectives of the private Bill have been sufficiently catered for through other legislations including the Constitution of Kenya 2010, the Kenya Heroes Act, 2014, the National Honours Act, 2013, the Public Archives and Documentation Service Act and the National Museums and Heritage Act.

1.0 MANDATE OF THE COMMITTEE

The Departmental Committee on Sports, Culture and Tourism is one of the fifteen departmental committees of the House established pursuant to Article 124 of the Constitution of Kenya 2010 and Standing Order 216 of the National Assembly and mandated to:

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - (b) Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
 - (c) study and review all legislation referred to it;
 - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
 - (f) 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*); and
- Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.1 COMMITTEE MEMBERSHIP

The committee comprises of the following members:-

The Hon. (Dr.) Victor Kioko Munyaka, M.P.

Member of Parliament for Machakos Town Constituency

Chairperson Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. (Dr.) Korei Ole Lemein, M.P.

Member of Parliament for Narok South Constituency

Vice-Chairperson Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Christopher Omulele, M.P.

Member of Parliament for Luanda Constituency

Member Departmental Committee on Sports, Culture and Tourism

Orange Democratic Movement Party (ODM)

The Hon. (Dr.) Christine Ombaka, M.P.

Member of Parliament for Siaya County

Member Departmental Committee on Sports, Culture and Tourism

Orange Democratic Movement Party (ODM)

The Hon. Cyprian Kubai Iringo, M.P.

Member of Parliament for Igembe Central Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Jones Mlolwa, M.P.

Member of Parliament for Voi Constituency

Member Departmental Committee on Sports, Culture and Tourism

Orange Democratic Movement Party (ODM)

The Hon. Daniel Wanyama Sitati, M.P.

Member of Parliament for Webuye West Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Benard Masaka Shinali, M.P.

Member of Parliament for Ikolomani Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. (Prof.) Jacqueline Oduol, M.P.

Nominated Member of Parliament

Member Departmental Committee on Sports, Culture and Tourism

Orange Democratic Movement Party (ODM)

The Hon. (Dr.) Tecla Chebet Tum, M.P.

Member of Parliament for Nandi County

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P.

Member of Parliament for Elgeyo Marakwet County

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Lydia Haika Mnene Mizighi, M.P.

Member of Parliament for Taita Taveta County

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. George Risa Sunkuyia, M.P.

Member of Parliament for Kajiado West Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Annie Wanjiku Kibeh, M.P.

Member of Parliament for Gatundu North Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Sylvanus Maritim, M.P.

Member of Parliament for Ainamoi Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

The Hon. Jeremiah Lomorukai, M.P.

Member of Parliament for Loima Constituency

Member Departmental Committee on Sports, Culture and Tourism

Orange Democratic Movement Party (ODM)

The Hon. Charles Ngusya Nguna, M.P.

Member of Parliament for Mwingi West Constituency

Member Departmental Committee on Sports, Culture and Tourism

Wiper Democratic Party (WDP)

The Hon. Titus Mukhwana Khamala, M.P. (Bishop)

Member of Parliament for Lurambi Constituency

Member Departmental Committee on Sports, Culture and Tourism

Amani National Congress Party (ANC)

The Hon. Charles Kamuren, M.P.

Member of Parliament for Baringo South Constituency

Member Departmental Committee on Sports, Culture and Tourism

Jubilee Party

1.1 COMMITTEE SECRETARIAT

Second Clerk Assistant	-	Helen Kina
Third Clerk Assistant	-	Fredrick Otieno
Legal Counsel II	-	Salem Lorot
Research Officer III	-	Vitus Okech
Fiscal Analyst	-	Catherine Gati
Media Relations Officer	-	Martin Mutua
Sergeant At-Arms	-	Sheila Chebotibin

1.2 Observations

Having thoroughly considered the Petition and the proposed Bill, together with the submissions by the State Department for Heritage, Kenya Law Reform Commission and the Office of the Attorney General, the Committee observed that:

1. The Government through the Ministry of Sports, Culture and Heritage has undertaken several initiatives to ensure national heroes and heroines, including Mau Mau freedom fighters, are honoured and the role they played remains in the minds of Kenyans who now enjoy enormous freedoms as a result.
2. The Bill lacks in substance as it does not have any provision that seeks to substantially provide for the Mau Mau Liberation Struggle Movement. Throughout the Bill, there is no provision that outlines any special interests or any form of award to the Mau Mau veterans other than a simple declaration that the struggle was a just means of liberating Kenya from colonial occupation and subjugation. It would have been more fulfilling if the Bill contained provisions on interests accrued to the Mau Mau Veterans that comes with declarations.
3. The objectives of the Bill have been sufficiently catered for through other legislations including the Constitution of Kenya 2010, the Kenya Heroes Act, 2014, the National Honours Act, 2013, the Public Archives and Documentation Service Act and the National Museums and Heritage Act. However, if the Petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws to be incorporated.

4. The Kenya Heroes Act, 2014 and the National Honours Act, 2013 sufficiently cater for the recognition, appreciation and to a large extent financial assistance to heroes and heroines at a national level. The National Heroes' Fund under the Kenya Heroes Act when operationalized will benefit the Mau Mau and other freedom fighters and Heroes.

1.3 Recommendation

After considering the Petition and the proposed Bill and having made the above observations, the Committee made the following recommendations:

1. The objectives of the Bill have been sufficiently catered for through existing legislations hence there is no need of Private Bill. However, if the Petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws.
2. Under the Petitioners prayer on appreciating the Mau Mau Liberation Struggle Movement whose leaders, activists and adherents through struggle bearing tears, sweat and blood, recovered our independence from the terrifying jaws of colonial power, at midnight on 12th December, 1963, the Committee recommends that this has been substantially provided for by the preamble of the Constitution of Kenya 2010, the Kenya Heroes Act, 2014 and the National Honours Act, 2013; hence there is no need for another legislation.
3. On the Prayer to consider the need for Mau Mau Liberation Struggle Movement to a source of National history and the movement's useful information to generations to come, the Committee recommends that this prayer has been catered for by the provisions of the Public Archives and documentation Service Act and the National Museum and Heritage Act; hence no need for another legislation.
4. On the prayer to grant leave to the Petitioners to introduce a Private Bill to the Kenya National Assembly, in accordance with the National Assembly Standing Orders Part XX on Private Bills, the Committee recommends that the House does not grant leave for the Petitioners to introduce the Private Bill.
5. The Committee further recommends that the Kenya Heroes Act No. 5 of 2014 be operationalized to be able to address the needs of heroes.

2.0 INTRODUCTION

2.1 Background Information

Article 119(1) of the Constitution provides that every person has a right to Petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. This particular provision is operationalized by the Petitions to Parliament (Procedure) Act, 2012 and Standing Orders 219 and 220.

The Public Petition seeking leave of the House to introduce a private Bill entitled the Mau Mau Liberation Struggle, Movement Bill by the Mau Mau War Veterans Association was reported to the House by the Speaker in accordance with Standing Order 225 (2) (b) and Standing Order 159 on 14th February, 2019 and the Petition to Parliament (Procedure) Act, 2012. In accordance with Standing Order 227, the Petition was referred to the Departmental Committee on Sports, Culture and Tourism for consideration and reporting to the House.

2.2 The Petition

The Petitioners wished to draw the attention of the House to the following:-

- i) **THAT**, the Mau Mau War Veterans Association is a fellowship of Mau Mau Freedom Fighters from the Republic of Kenya, who consistently and persistently participated in the heroic Mau Mau freedom struggle;
- ii) **THAT**, the notable resistance against colonial domination, was bravely started by our forefathers, triggering the real independence recovery struggle for the people of Kenya, by the Mau Mau Liberation Struggle Movement;
- iii) **THAT**, without the gallant dedication of the patriotic heroes and heroines through tears, sweat and blood, Kenyans would not have got freedom and justice they enjoy today;
- iv) **THAT**, many freedom fighters around the land of Kenya, were imprisoned with hard labour, detained in remote islands, tortured and ill-treated, women were raped and denied sufficient food and medical facilities;
- v) **THAT**, the Mau Mau Heroic Liberations Struggle Mass Movement, which liberated Kenya, from colonial dictatorship and ill treatment, ushering in self-determination, social

economic and education freedoms, has never been officially appreciated, recognized and declared, that it was the just legitimate means of liberating Kenya from colonial occupation and subjugation;

- vi) **THAT**, matters in respect of which the Petition is made are not pending before any court of law or constitutional or legal body;
- vii) **THAT**, the National Assembly, through the Departmental Committee on Sports, Culture and Tourism:-
 - a) Consider and appreciate the Mau Mau Liberation Struggle Movement whose leaders, activists and adherents through struggle bearing tears, sweat and blood, recovered our independence from the terrifying jaws of colonial power, at midnight on 12th December, 1963.
 - b) Considers the need for Mau Mau Liberation Struggle Movement to a source of National history and the movement's useful information to generations to come; and
 - c) To grant leave to the Petitioners to introduce a Private Bill to the Kenya National Assembly, in accordance with the National Assembly Standing Orders Part XX on Private Bills.

2.3 The Bill

It is important to note that a Private Bill can only be introduced in the House through a Petition. The Petition should be accompanied by a copy of the Bill in accordance with Standing Order 159. The Petitioners enclosed their Private Bill titled The Mau Mau Liberation Struggle Movement Bill, 2018. In the Memorandum of Objects and Reasons, the Petitioners indicate that the objective of the Bill is to provide a legal framework for the recognition of the Mau Mau Liberation Struggle Movement and the declaration that the pre-independence resistance by the Mau Mau Freedom fighters was legitimate course that led to the independence of Kenya.

The objects and purpose of the Bill are as follows:

- a) Provide for the recognition of the Mau Mau Liberation Struggle Movement;

- b) Provide for declaration that the pre-independence struggle by the Mau Mau veterans was legitimate course that led to the independence of Kenya; and
- c) Provide a framework to facilitate public knowledge on the role of the Mau Mau liberation struggle movement in the liberation of Kenya from colonialism.

3.0 SUBMISSIONS AND EVIDENCE

Having been seized of the Petition, the Committee invited the Petitioners, State Department of Heritage, Kenya Law Reform Commission and the Office of the Attorney General for consultative meetings and comments on the Petition and proposed Bill.

3.1 Petitioners – Mau Mau War Veterans Association

The Mau Mau War Veterans Association led by their Chairperson Shujaa Hon. (Dr.) Gitu Wa Kahengeri, OGW appeared before the Committee on 12th March, 2019 and made the following submissions:

1. **THAT**, the Mau Mau War Veterans Association is a fellowship of Mau Mau Freedom Fighters from the Republic of Kenya, who consistently and persistently participated in the heroic Mau Mau freedom struggle;
2. **THAT**, the notable resistance against colonial domination, was bravely started by our forefathers, triggering the real independence recovery struggle for the people of Kenya, by the Mau Mau Liberation Struggle Movement;
3. **THAT**, without the gallant dedication of the patriotic heroes and heroines through tears, sweat and blood, Kenyans would not have got freedom and justice they enjoy today;
4. **THAT**, many freedom fighters around the land of Kenya, were imprisoned with hard labour, detained in remote islands, tortured and ill-treated, women were raped and denied sufficient food and medical facilities;
5. **THAT**, the Mau Mau Heroic Liberations Struggle Mass Movement, which liberated Kenya, from colonial dictatorship and ill treatment, ushering in self-determination, social economic and education freedoms, has never been officially appreciated, recognized and declared, that it was the just legitimate means of liberating Kenya from colonial occupation and subjugation;
6. **THAT**, matters in respect of which the Petition is made are not pending before any court of law or constitutional or legal body;
7. **THAT**, the National Assembly, through the Departmental Committee on Sports, Culture and Tourism:-
 - d) Consider and appreciate the Mau Mau Liberation Struggle Movement whose leaders, activists and adherents through struggle bearing tears, sweat and blood,

recovered our independence from the terrifying jaws of colonial power, at midnight on 12th December, 1963.

- e) Considers the need for Mau Mau Liberation Struggle Movement to a source of National history and the movement's useful information to generations to come; and
- f) To grant leave to the Petitioners to introduce a Private Bill to the Kenya National Assembly, in accordance with the National Assembly Standing Orders Part XX on Private Bills.

Shujaa Hon. Dr. Gitu further reiterated that they don't deny that other Kenyans participated in the liberation struggle and that Mau Mau Movement was a representative liberation struggle. Since it was an Association, it was possible to get the distribution of membership.

On the title of the Bill, the Petitioner indicated that the Mau Mau movement was widely recognized and that despite the name, all communities are included. The Mau Mau movement was the one that liberated the country.

The Petitioners indicated that several countries have recognized their heroes. For instance, in Zimbabwe, the ZANU-PF had been recognized; in Angola, FRELIMO Movement had been recognized; in South Africa, the ANC had been recognized and in Uganda, NRM had been recognized.

3.2 Submissions by the State Department of Heritage

The Principal Secretary State Department of Heritage, Ms. Josephtha O. Mukobe, CBS appeared before the Committee and made the following submissions:

1. The Government through the Ministry of Sports, Culture and Heritage has undertaken several initiatives to ensure national heroes and heroines, including Mau Mau freedom fighters, are honoured and the role they played remains in the minds of Kenyans who now enjoy enormous freedoms as a result.
2. In 2003, the government issued Legal Notice No. 148 dated 29th August, 2003, which lifted the ban on the Mau Mau movement. This made it possible to recognize and honour the freedom fighters.

3. Some of the undertakings by the Ministry in regard to recognizing and honoring freedom fighters include:

- i. Recognition of the Kapenguria six, namely – Mzee Jomo Kenyatta, Paul Ngei, Bildad Kaggia, Achieng’ Oneko, Kungu Karumba and Fred Kubai.
- ii. The Ministry has constructed mausoleums for the late Paul Ngei, Bildad Kaggia, Achieng’ Oneko and Kisoi Munyao who hoisted the Kenyan flag on top of Mt. Kenya on the eve of independence.
- iii. Monuments have been constructed for Dedan Kimathi and Tom Mboya in Nairobi
- iv. Construction of Koitale Arap Samoei Cultural Education Centre and development of the Heroes Corner at Uhuru Gardens in Langata.
- v. The Ministry has provided state burial to some heroes like the late Kisoi Munyao and Achieng’ Oneko.

4. The Ministry developed the National Heroes Bill which was later enacted to Kenya Heroes Act No. 5 of 2014. This Act provides for the recognition of heroes, establishes a criteria for the identification, selection and honouring of heroes. It also provides for the establishment of the National Heroes Council.

5. Mashujaa Day creates an opportunity to honour heroes by presenting them and highlighting the role they played before the citizens of this nation and the world, for this day I set aside for that purpose. Over 200 freedom fighters have so far been honoured over the past Mashujaa Days. The freedom fighters are usually allocated more slots on this day. Though the Mau Mau’s are in different factions, the ministry considers representatives from all factions. The Ministry has also made some effort to consolidate the various factions of Mau Mau with a view to bringing harmony and avoid more disintegration.

6. A number of freedom fighters have been decorated with Presidential Honours and Awards. During the 2018 Madaraka Day celebrations, the President awarded some veterans with the Order of the Grand Warrior (OGW) for their role in the fight against colonialism.

7. The Statutory provisions that provide for recognition of heroes include:

a) Constitution of Kenya 2010

The Constitution as the supreme law acknowledges the national heroes. In the Preamble, the Constitution declares honour for those who heroically struggled to bring freedom and justice to our land. It further sets aside Mashujaa Day as one of the country’s National days. Article 132

(4) (c), under functions of the President, gives power to confer honours in the name of the people and the Republic.

b) Kenya Heroes Act No. 5 of 2014

This Act was enacted to provide for the recognition of heroes; to establish criteria for the identification, selection and honouring of national heroes; to provide for the categories of heroes; to provide for the establishment of the National Heroes Council and for connected purposes. It defines who a hero is and provides for the identification and declaration of heroes under Sections 2 and 22 respectively.

The strength of this Act is that, it provides an avenue for nomination on the suitable persons, who may be recommended for declaration as heroes and involves public participation and such nominations are put through a vetting process by the National Heroes Council. This ensures that recognition of heroes is not arbitrarily awarded or conferred to undeserving persons.

The Act provides for the establishment of a National Heroes' Fund, which may be used for the benefit of national heroes who are in need of financial assistance and their dependants. When operationalized, the fund will address the needs of heroes.

c) The National Honours Act No. 11 of 2013

The Act was enacted to give effect to and establish procedures and mechanisms for conferring of national honours by the President. While the Act confers recognition by the President to certain persons, not all heroes may be conferred national honour. Under **Section 2(1)** "national honour" is defined to mean an official recognition, decoration, status or award conferred by the President in terms of Article 132 (4) (c) of the Constitution.

Both Acts, sufficiently cater for the recognition, appreciation and to a large extent financial assistance to heroes and heroines on a national level. The Kenya Heroes Act when operationalized will benefit the Mau Mau, other freedom fighters and Heroes.

8. The Ministry's considered opinion is that, the existing laws are adequate in addressing the prayers sought in the Petition. However, if the Petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws and the Ministry can incorporate them.

The National Heroes Council once operationalized will cater for identification, nomination and vetting of proposed heroes (Mau Mau veterans inclusive) and ways of recognizing, awarding and compensating all national heroes.

9. The Ministry is of the opinion that, introduction of the Mau Mau Liberation Struggle Movement Bill 2018, will cause fragmentation of the Kenya Heroes Act No. 5 of 2014. The Ministry notes that the Bill has been submitted by one of the many Mau Mau factions thus, raising a likelihood of other factions presenting other Bills or even heroes in other categories presenting similar proposals.

3.3 Submissions by the Office of the Attorney General

The Office of the Attorney General submitted the following comments to the Committee, that:

1. The applicable law for the recognition of heroes and the identification, selection and honouring of national heroes, is contained in the National Honours Act (No. 11 of 2013) and the Kenya Heroes Act (No. 5 of 2014).
2. The object of the **National Honours Act, 2013** is to give effect to, and establish procedures and mechanisms for, conferring of national honours by the President under Article 132 (4) (c) of the Constitution and for connected purposes. Section 4 (a) of the Act provides that a person who has exhibited or exhibits exemplary qualities, actions or achievements of heroism, sacrifice, bravery, patriotism or leadership for the defence, benefit or betterment of the country or a country shall merit the conferment of a national honour.
3. Sections 5, 6 and 7 of the Act provide for the establishment and membership of advisory committees, while section 8 provides for the functions of the committees including receiving and considering representations from any person, body, unit, association of persons or corporation recommending a person for the conferment of a national honour under the Act; and recommending to the President persons, bodies, units, associations of persons or corporations that may be considered for conferment of a national honour under the Act.
4. The Kenya Heroes Act, 2014 was assented to by the President on the 29th April, 2014. It was to be commenced by Gazette Notice. To date, it is yet to be commenced in the manner

contemplated under section 1 of the Act. The object of the Act is the recognition of heroes; to provide for the categories of heroes; to provide for the establishment of the National Heroes Council and for connected purposes. It provides for the establishment of the National Heroes Council an section 4 (1) and the Council's functions at section 5 including the identification and recommendation of national heroes, and the conduct and facilitating of civic education in order to stimulate public discussion and awareness on pertinent issues relating to national heroes.

5. With respect to the substance of the Petition by the Mau Mau War Veterans Association, both statutes provide for the appreciation, recognition and declaration of Mau Mau War Veterans as national heroes who merit the conferment of national honours by the President. However, in view of the fact that the Kenya Heroes Act, 2014 has not been commenced, it is not applicable in this instance.
6. From the foregoing, therefore, although the Petitioners have properly approached the National Assembly and the matter can be addressed through a Private Bill, the Petitioners' objectives as set out in the proposed Mau Mau Liberation Struggle Movement Bill can be addressed under the provisions of the National Honours Act, 2013.

3.4 Submissions by the Kenya Law Reform Commission

Mr. Mathew Kimanzi, Deputy Director Legislative Services, Kenya Law Reform Commission accompanied by Ms. Juliet Ajwang, Legal Officer, appeared before the Committee and made the following submission:

Overall outlook and object of the Bill

Generally the Bill lacks in substance as it does not have any provision that seeks to substantially provide for the Mau Mau Liberation Struggle Movement. This is illustrated as follows:

- (i) Under the interpretation clause, the Bill vaguely defines ‘Mau Mau Liberation Movement’ and ‘Mau Mau Veteran’ in an attempt to spotlight what or whose interests it seeks to address. It does not establish the Movement hence making it appear as an indistinct concept rather than a group of people seeking recognition.
- (ii) Throughout the Bill, there is no provision that outlines any special interests or any form of award to the Mau Mau veterans other than a simple declaration that the struggle was a just means of liberating Kenya from colonial occupation and subjugation. It would have been more fulfilling if the Bill contain provisions on interests accrued to the Mau Mau Veterans that comes with declarations.
- (iii) The Object of the Bill is to:
 - (a) Provide for the recognition of the Mau Mau Liberation Struggle Movement;
 - (b) Provide for declaration that the pre-independence struggle by the Mau Mau veterans was legitimate course that led to the independence of Kenya; and
 - (c) Provide a framework to facilitate public knowledge on the role of the Mau Mau liberation struggle movement in the liberation of Kenya from colonialism.

The objectives of the Bill have been sufficiently catered for through other legislations such as the Constitution of Kenya 2010, the Kenya Heroes Act, 2014, the National Honours Act, 2013, the Public Archives and Documentation Service Act and the National Museums and Heritage Act.

- (iv) The Bill under clause 5 on application states that, *the Kenya National Heroes Act shall apply to this Act with the necessary modification*. The recognition of this Act under the Bill is well-intentioned and confirms that the Mau Mau Veterans acknowledges the existence of legislation that caters for such matters and that there is no ostensible legal gap in addressing the recognition of efforts of the freedom fighters. If there is an aspect that they would wish to address through legislation, it is advisable to amend the Kenya Heroes Act.
- (v) The provisions of clause 6 of the Bill are a replica of what is provided for under the Kenya Heroes Act, 2014 and the National Museums and Heritage Act, No. 6 of 2006 hence serves no purpose.

4.0 COMMITTEE'S OBSERVATIONS

Upon analyzing the Petition and through interaction with the Petitioners, State Department for Heritage, Office of the Attorney General and the Kenya Law Reform Commission, the Committee makes the following observations:

1. The Government through the Ministry of Sports, Culture and Heritage has undertaken several initiatives to ensure national heroes and heroines, including Mau Mau freedom fighters, are honoured and remembered for the role they played by Kenyans who now enjoy enormous freedoms as a result.
2. The Bill lacks in substance as it does not have any provision that seeks to substantially provide for the Mau Mau Liberation Struggle. In the entire Bill, there is no provision that outlines any special interests or any form of award to the Mau Mau veterans other than a simple declaration that the struggle was a just mean of liberating Kenya from colonial occupation and subjugation. It would have been more fulfilling if the Bill contained provisions on interests accrued to the Mau Mau Veterans that come with declarations.
3. The objectives of the Bill have been sufficiently catered for through other legislations including the Constitution of Kenya 2010, the Kenya Heroes Act, 2014, the National Honours Act, 2013, the Public Archives and Documentation Service Act and the National Museums and Heritage Act. However, if the Petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws to be incorporated.
4. The Kenya Heroes Act, 2014 and the National Honours Act, 2013 sufficiently cater for the recognition, appreciation and to a large extent financial assistance to heroes and heroines on a national level. The National Heroes' Fund established under the Kenya Heroes Act when operationalized will benefit the Mau Mau, other freedom fighters.

5.0 COMMITTEE RECOMMENDATION

After considering the Petition and the proposed Bill, the Committee made the following recommendations:

1. The objectives of the Bill have been sufficiently catered for through existing legislations hence there is no need of Private Bill. However, if the Petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws.
2. Under the Petitioners Prayer on appreciating the Mau Mau Liberation Movement whose leaders, activists and adherents led to gaining of our independence from the colonialists, on 12th December, 1963, the Prayer has been substantially provided for by the preamble of the Constitution of Kenya 2010, the Kenya Heroes Act, 2014 and the National Honours Act, 2013; hence there is no need for another legislation.
3. On the Prayer to consider the need for Mau Mau Liberation Movement to a source of National history and the movement's useful information to generations to come, the Prayer has been catered for by the provisions of the Public Archives and documentation Service Act and the National Museum and Heritage Act; hence no need for another legislation.
4. On the Prayer to grant leave to the Petitioners to introduce a Private Bill to the Kenya National Assembly, in accordance with the National Assembly Standing Orders Part XX on Private Bills, the Committee recommends that the House does not grant leave for the Petitioners to introduce their Private Bill.
5. The Kenya Heroes Act No. 5 of 2014 be operationalized to be able to address the needs of heroes.

Signed: Date: 02.04.19



(THE HON. (DR.) VICTOR KIOKO MUNYAKA, M.P.)

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND
TOURISM**

**MINUTES OF THE 22ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
SPORTS, CULTURE AND TOURISM HELD ON TUESDAY 2ND APRIL, 2019 IN
COMMITTEE ROOM 12, NEW WING, MAIN, PARLIAMENT BUILDINGS AT 12:15
PM**

PRESENT

1. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
2. The Hon. Christopher Omulele, MP
3. The Hon. Kubai Iringo, MP.
4. The Hon. Daniel Wanyama Sitati, MP.
5. The Hon. Jones Mlolwa, MP.
6. The Hon. (Dr.) Tecla Chebet Tum, MP.
7. The Hon. Titus Mukhwana Khamala, MP.
8. The Hon. Charles Ngusya Nguna, MP.
9. The Hon. Sylvanus Maritim, MP.
10. The Hon. George Risa Sunkuyia, MP.

APOLOGY

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. Dr. Christine Ombaka, MP.
3. The Hon. Benard Masaka Shinali, MP.
4. The Hon. (Prof.) Jacqueline Oduol, MP.
5. The Hon. Lydia Haika Mnene Mizighi, MP.
6. The Hon. Jeremiah Lomorukai, MP.
7. The Hon. Annie Wanjiku Kibeh, MP.
8. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
9. The Hon. Charles Kamuren, MP.

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Helen Kina - Second Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant

3. Mr. Martin Mutua - Media Relations Officer
4. Mr. Vitus Okech - Research Officer
5. Ms. Christine Maeri - Audio Officer
6. Mr. Onesmus Kiragu - Sergeant At-Arms

MIN.NO.NA/SCT/2019/087: PRELIMINARIES

The Vice Chairperson called the meeting to order at fifteen minutes past twelve O'clock followed by a prayer.

MIN.NO.NA/SCT/2019/088: CONFIRMATION OF MINUTES

1. Minutes of the 17th sitting held on 12th March, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. (Dr.) Tecla Chebet Tum, MP and Seconded by the Hon. George Sunkuyia, MP.
2. Minutes of the 18th sitting held on 13th March, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Jones Mlolwa, MP and Seconded by the Hon. (Dr.) Tecla Chebet Tum, MP.
3. Minutes of the 19th sitting held on 19th March, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Daniel Wanyama, MP and Seconded by the Hon. Kubai Iringo, MP.
4. Minutes of the 20th sitting held on 21st March, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Sylvanus Maritim, MP and Seconded by the Hon. George Sunkuyia, MP.
5. Minutes of the 21st sitting held on 26th March, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. George Sunkuyia, MP and Seconded by the Hon. Christopher Omulele, MP.

MIN.NO.NA/SCT/2019/089: CONSIDERATION AND ADOPTION OF THE REPORT ON CONSIDERATION OF THE PUBLIC PETITION SEEKING LEAVE OF THE HOUSE TO INTRODUCE A PRIVATE BILL BY THE MAU MAU WAR VETERANS ASSOCIATION

The Committee considered and unanimously adopted the report. The Secretariat were directed to prepare the report for tabling.

MIN.NO.NA/SCT/2019/091: SCHEDULE OF ACTIVITIES FOR THE MONTH OF APRIL

The Committee considered and adopted the following schedule for the month of April, 2019:

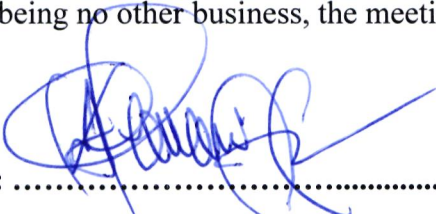


ACTIVITY	SUB-ACTIVITY	DATE
Pending Business before the Committee	i) Consideration of any Pending Business before the Committee	April, 2019
	ii) Tabling of inspection visit reports and report on consideration of Public Petition by Mau Mau Veterans	4 th April, 2019
	Adoption of the Mau Mau Petition Report	2 nd April 2019.
Budget Implementation Review	BUDGET IMPLEMENTATION REREAT	
	KICC, Bomas of Kenya KTB	8 th – 12 th April, 2019 Kisumu County
	Tourism Regulatory Authority Tourism Research institute board Tourism Finance Cooperation	18 th - 21 st April , 2019 Mombasa County
	Kenya Utalii College council Brand Kenya National Museums of Kenya	25 th – 28 th , 2019 Malindi County
		25 th – 29 th April, 2019
Reports	Tabling of the Reports	30 th April, 2019

MIN.NO.NA/SCT/2019/091: ANY OTHER BUSINESS

The Hon. Christopher Omulele, MP informed the meeting that the Hon. Lydia Haika, MP had lost her father and requested Members to stand with her in prayers and support. It was resolved that the Members contribute Kshs. 10,000 each in support of the Hon. Lydia Haika. Hon. Maritim was nominated to coordinate and contributions to be forwarded to Hon. Jones Mlolwa, MP.

MIN.NO.NA/SCT/2019/092: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past one O'clock.

SIGN:  DATE: 
 CHAIRPERSON

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
SPORTS, CULTURE AND TOURISM HELD ON WEDNESDAY 13TH MARCH, 2019 IN
THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10:30 AM

PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. Kubai Iringo, MP.
3. The Hon. Benard Masaka Shinali, MP.
4. The Hon. (Dr.) Tecla Chebet Tum, MP.
5. The Hon. Charles Ngusya Nguna, MP.
6. The Hon. Jones Mlolwa, MP.

APOLOGY

1. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
2. The Hon. Christopher Omulele, MP
3. The Hon. Lydia Haika Mnene Mizighi, MP.
4. The Hon. George Risa Sunkuyia, MP.
5. The Hon. Jeremiah Lomorukai, MP.
6. The Hon. Sylvanus Maritim, MP.
7. The Hon. (Prof.) Jacqueline Oduol, MP.
8. The Hon. Titus Mukhwana Khamala, MP.
9. The Hon. Daniel Wanyama Sitati, MP
10. The Hon. Annie Wanjiku Kibeh, MP
11. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
12. The Hon. Dr. Christine Ombaka, MP.

IN-ATTENDANCE - KENYA LAW REFORM COMMISSION

1. Mr. Mathew Kimanzi - Deputy Director, Legislative Services
2. Ms. Juliet Ajwang - Legal Officer

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Douglas Katho - Clerk Assistant III
2. Mr. Salem Lorot - Legal Counsel II
3. Ms. Jane Serem - Audio Officer

MIN.NO.NA/SCT/2019/071: PRELIMINARIES

The Chairperson called the meeting to order at five minutes to Eleven O'clock followed by a prayer.

MIN.NO.NA/SCT/2018/072: SUBMISSIONS BY MR. MATHWEW KIMANZI, THE DEPUTY DIRECTOR – LEGISLATIVE SERVICES AT KENYA LAW REFORM COMMISSION WITH REGARD TO THE PETITION ON THE WELFARE OF THE MAU MAU LIBERATION STRUGGLE MOVEMENT

The Deputy Director for Legislative Services at the Kenya Law Reform Commission appeared before the Committee and made submissions regarding the petition on the welfare of the Mau Mau Liberation Struggle Movement.

The Committee heard that the Mau Mau was accepted by the Colonialists since it did not have any academic connotations and that each community in Kenya in their own ways were had a description of the Mau Mau for instance Kambas used it as anti-destocking campaign way back in 1938; the coast understood it as an acronym of Mzungu Arudi Ulaya Mwafrika Apate Uhuru and many other Communities.

The Committee was informed that the Kenya Heroes Act of 2014; the constitutional provisions; the Public Archives and Documentation Act, the National honors Act, the Museum Act, the Society Act and many other statutes permits the petitioners to take more legalistic approach for recognitions rather than asking parliament to allow for a private Bill.

The Committee took cognisant that the Mau Mau has several factions and proposed that a general name be adopted to include all the liberation struggled to give it a national outlook for all the freedom fighters. This was because all the freedom fighters played a part in liberation of Kenya from the hands of the colonialists.

The Committee also resolved to invite the Attorney General to provide his submission on the Petition before making a final determination on the 20th March, 2019.

MIN.NO.NA/SCT/2018/073: ADJOURNMENT

There being no other business, the meeting was adjourned at fifty minutes past One O'clock.

SIGN: DATE: 02.04.19



CHAIRPERSON

MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
SPORTS, CULTURE AND TOURISM HELD ON WEDNESDAY 12TH MARCH, 2019 IN
THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10:30 AM

PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. George Risa Sunkuyia, MP.
3. The Hon. Kubai Iringo, MP.
4. The Hon. Benard Masaka Shinali, MP.
5. The Hon. (Dr.) Tecla Chebet Tum, MP.
6. The Hon. Titus Mukhwana Khamala, MP.
7. The Hon. Charles Ngusya Nguna, MP.
8. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
9. The Hon. Jones Mlolwa, MP.

APOLOGY

1. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
2. The Hon. Christopher Omulele, MP
3. The Hon. Lydia Haika Mnene Mizighi, MP.
4. The Hon. Jeremiah Lomorukai, MP.
5. The Hon. Sylvanus Maritim, MP.
6. The Hon. (Prof.) Jacqueline Oduol, MP.
7. The Hon. Daniel Wanyama Sitati, MP
8. The Hon. Annie Wanjiku Kibeh, MP
9. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
10. The Hon. Dr. Christine Ombaka, MP.

IN-ATTENDANCE - Ministry of Sports, Culture and Heritage

1. Ms. Josephta Mukobe, CBS- Principal Secretary State Department of Heritage
2. Ms. Juliet Ajwang - Legal Officer

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Benjamin Magut - Clerk Assistant I
2. Mr. Salem Lorot - Legal Counsel II
3. Ms. Jane Serem - Audio Officer

MIN.NO.NA/SCT/2019/067: PRELIMINARIES

The Chairperson called the meeting to order at five minutes to Eleven O'clock followed by a prayer. The Agenda of the meeting was adopted having being proposed by Hon. Kubai Iringo, MP and seconded by Hon. Benard Masaka Shinali, MP.

MIN.NO.NA/SCT/2018/068: SUBMISSIONS BY PETITIONERS

Shujaa Gitu Wa Kahengeri on behalf of the Petitioners submitted that:-

- a) Mau Mau War Veterans Association is a fellowship of Mau Mau freedom fighters from whole the republic who consistently and persistently participated in the heroic Mau Mau freedom struggle
- b) The resistance was against colonial domination which led to Kenya gaining independence
- c) The independence struggle was fought by many communities in the Country including inhabitants of Taveta , Turkana , Nandi counties among other communities
- d) Many freedom fighters in the country were imprisoned with hard labor, tortured and women raped.
- e) That Mau Mau Struggle movement which participate in liberating Kenya from the colonial masters has never being recognized nor appreciated
- f) What petitioners are requesting is the Mau Mau liberation movement be recognized as the movement that liberated Kenya from the colonial York.
- g) The Petitioners prayed that the House
 - I. Consider and appreciate the Mau Mau liberation struggle movement whose leaders and adherents through a struggle bearing tears and sweat recovered our independence from the colonial powers
 - II. Consider Mau Mau liberation movement to be a source of History for the country for the generation to come
 - III. Grant leave to the Petitioners to introduce a Private Members Bill to the National Assembly in accordance with Standing Orders Part XX

MIN.NO.NA/SCT/2018/069: SUBMISSIONS BY STATE DEPARTMENT HERITAGE

Ms. Josephtha Mukobe, CBS Principal Secretary State Department of Heritage while appearing before the Committee, submitted that:-

In 2003 the Government issued Legal Notice No. 148 dated 29th August 2003, which lifted the ban on the Mau Mau movement. This made it possible to recognize and honour the freedom fighters.

The Ministry Sports, Culture and Heritage in 2007 established a Taskforce to undertake data collection countrywide on the criteria and modalities of honouring national heroes and heroines. The taskforce recommended that the Government and Parliament put in place legislation on heroes and heroines.

As a result of the Taskforce, the Ministry developed the National Heroes Bill, which was later enacted to Kenya Heroes Act No. 5 of 2014. This Act provides for the recognition of heroes, establishes a criteria for the identification, selection and honouring of heroes. It also provides for the establishment of the National Heroes Council.

The Government through the Ministry of Sports, Culture and Heritage has undertaken several initiatives to ensure our national heroes and heroines, including Mau Mau freedom fighters, are honoured and the role they played remains in the minds of Kenyans who now enjoy enormous freedoms as a result.

Some of the undertakings by the Ministry in regard to recognizing and honoring freedom fighters:-

1. Recognition of the Kapenguria six, namely – Mzee Jomo Kenyatta, Paul Ngei, Bildad Kaggia, Achieng' Oneko, Kungu Karumba and Fred Kubai.
2. The Ministry has constructed mausoleums for the late Paul Ngei, Bildad Kaggia, Achieng' Oneko and Kisozi Muniyao who hoisted the Kenyan flag on top of Mt Kenya on the eve of independence.
3. Monuments have been constructed for Dedan Kimathi and Tom Mboya in Nairobi.
4. Construction of Koitalel arap Samoei Cultural Education Centre and development of the Heroes Corner at Uhuru Gardens in Langata.

5. The ministry has provided state burial to some heroes like the late Kiso Munyao and Achieng' Oneko.

The Constitution of Kenya 2010 provides for Mashujaa Day, a day created to solely honour our heroes by presenting them and highlighting the role they played before the citizens of this nation and the world, for this day is set aside for that purpose. Over 200 freedom fighters have so far been honoured over the past Mashujaa Days. The freedom fighters are usually allocated more slots on this Day. Though the Mau Mau's are in different factions the Ministry considers representatives from all factions.

The Ministry has also made some effort to consolidate the various factions of Mau Mau with a view to bringing harmony and avoid more disintegration.

During the commemorations of heroes, the Ministry offers logistical support including ensuring that the freedom fighters attend these functions by providing for the transport, especially during commemorations for the late Field Marshal Dedan Kimathi which is held annually in the month of February.

A number of freedom fighters have been decorated with Presidential Honours and Awards. During the 2018 Madaraka Day celebrations, the President awarded some veterans with the Order of the Grand Warrior (OGW) for their role in the fight against colonialism.

The Government believes that through the Constitution of Kenya 2010, Kenya Heroes Act No. 5 of 2014, The National Honours Act No. 11 of 2013 and Legal Notice No. 148 dated 29th August 2003, the Petitioners prayers will be answered adequately.

On the matter regarding the Proposals on whether the Petitioners' prayers can be addressed through a Private Bill. The Ministry is of the considered opinion that

- i. The existing laws are adequate in addressing the prayers sought in the Petition. However, if the petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws and the Ministry can incorporate them.

- ii. The National Heroes Council once operationalized will cater for identification, nomination and vetting of proposed heroes (Mau Mau veterans inclusive) and ways of recognizing, awarding and compensating all national heroes.
- iii. The introduction of the Mau Mau Liberation Struggle Movement Bill 2018, will cause fragmentation of the Kenya Heroes Act No. 5 of 2014. We note that the Bill has been submitted by one of the many Mau Mau factions thus, raising a likelihood of other factions presenting other Bills or even heroes in other categories presenting similar proposals
- iv. Once operationalized and sufficiently funded, the Kenya Heroes Act No. 5 of 2014 will adequately answer the Petitioner's prayers.

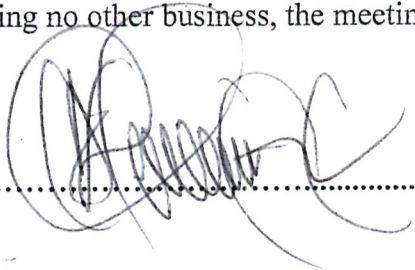
Committee Observation

- a) Mau Mau movement has several factions all claiming to be the authentic representation of the struggle movement
- b) There is need to adopt a general name to include all the liberation struggled to give it a national outlook for all the freedom fighters.
- c) There is need to amend the Heroes Act to accommodate the wishes of the Petitioners if the existing legislation are sufficient

MIN.NO.NA/SCT/2018/070: ADJOURNMENT

There being no other business, the meeting was adjourned at fifty minutes past One O'clock.

SIGN: DATE:



02.04.19



CHAIRPERSON

**MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
SPORTS, CULTURE AND TOURISM HELD ON TUESDAY 5TH MARCH, 2019 IN THE
BOARDROOM, 2ND FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS
AT 12:20 NOON**

PRESENT

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
3. The Hon. Dr. Christine Ombaka, MP.
4. The Hon. Kubai Iringo, MP.
5. The Hon. Benard Masaka Shinali, MP.
6. The Hon. Daniel Wanyama Sitati, MP.
7. The Hon. (Prof.) Jacqueline Oduol, MP.
8. The Hon. (Dr.) Tecla Chebet Tum, MP.
9. The Hon. George Risa Sunkuyia, MP.
10. The Hon. Titus Mukhwana Khamala, MP.
11. The Hon. Annie Wanjiku Kibeh, MP.
12. The Hon. Jeremiah Lomorukai, MP.
13. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP

APOLOGY

1. The Hon. Christopher Omulele, MP
2. The Hon. Jones Mlolwa, MP.
3. The Hon. Charles Ngusya Nguna, MP.
4. The Hon. Sylvanus Maritim, MP.
5. The Hon. Lydia Haika Mnene Mizighi, MP.
6. The Hon. Charles Kamuren, MP.

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Helen Kina - Second Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Salem Lorot - Legal Counsel II
4. Mr. Abdiqani - Audio Officer

MIN.NO.NA/SCT/2019/059: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past twelve O'clock followed by a prayer. He then thanked the Members who participated in the Marsabit inspection visit and assured the Committee that all the inspection visits that were cancelled will still be undertaken at appropriate date that will be chosen by the Committee.

MIN.NO.NA/SCT/2019/060: PRESENTATION BY THE LEGAL COUNSEL ON THE PUBLIC PETITION REGARDING THE WELFARE OF THE MAU MAU LIBERATION STRUGGLE MOVEMENT

The Legal Counsel briefed the Committee as follows:

1. The Petitioner's prayers are as follows:
 - a) That Parliament considers and appreciates the Mau Mau Liberation Struggle Movement whose leaders, activists and adherents through a struggle bearing tears, sweat and blood recovered our independence from the terrifying jaws of colonial power, at midnight on 12th December 1963;
 - b) That Parliament considers the need for Mau Mau Liberation Struggle Movement to be a source of national history and the movement's useful information, to generations to come;
 - c) That the Petitioners are granted leave to introduce a Private Bill to the Kenya National Assembly, in accordance with the National Assembly Standing Orders Part XX on Private Bills.
2. The Petitioners have enclosed their Private Bill titled The Mau Mau Liberation Struggle Movement Bill, 2018. In the Memorandum of Objects and Reasons, the Petitioners indicate that the objective of the Bill is to provide a legal framework for the recognition of the Mau Mau Liberation Struggle Movement and the declaration that the pre-independence resistance by the Mau Mau Freedom fighters was legitimate course that led to the independence of Kenya.
3. The objects and purpose of the Bill are stated as follows:
 - a) Provide for the recognition of the Mau Mau Liberation Struggle Movement;
 - b) Provide for declaration that the pre-independence struggle by the Mau Mau veterans was a legitimate course that led to the independence of Kenya; and

- c) Provide a framework to facilitate public knowledge on the role of the Mau Mau liberation struggle movement in the liberation of Kenya from colonialism.
4. It is important to note that a Private Bill can only be introduced in the House through a Petition. The Petition should be accompanied by a copy of the Bill. Standing Order 159 provides as follows—

Petition for leave

159. (1) No private Bill shall be introduced unless a Petition for the same, headed by the short title of the Bill, and signed by the parties, being promoters of the Bill, or some of them, has been previously presented to the House with a copy of the Bill annexed.

(2) The Clerk shall scrutinize petitions presented to the House and where, after such scrutiny, the Clerk is not satisfied that the provisions of this Part have been complied with, the Clerk shall so report to the Speaker.

(3) The promoters shall deposit with the Clerk a sufficient number of copies of the Petition with the Bill annexed, for distribution to Members and on receipt of such copies, the Clerk shall forthwith avail a copy to every Member.

(4) The Petition shall be read at the first sitting of the House after it is so deposited and thereupon the question "That, the promoters be granted leave to proceed" shall be put forthwith and decided without amendment or debate.

The role of the Committee

5. The role of the Committee in relation to this Petition has been spelt out by the Speaker in his Conveyance. The Committee is expected **to find out whether a Private Bill is the appropriate way to address the prayers of the Petitioners. If the Committee would have been satisfied that a Private Bill would be the appropriate way, then it should, upon tabling the Report, move a Motion asking the House to grant leave for the introduction of a Private Bill on the subject.**
6. A *Private Bill* is any Bill, which is intended to affect or benefit some particular person, association or corporate body whereas a *Public Bill* is a Bill which is intended to affect the public generally, or a section of the public.

7. In seeking to find out whether a Private Bill is the appropriate way the Petitioners would have used to address their prayers, the Committee will need to ask the following questions:
- i. Could the prayers have been addressed through other means other than a Private Bill?
 - ii. To what extent does the Kenya Heroes Act, 2014 address the concerns of the Petitioners in so far as their recognition is concerned?
 - iii. Are the provisions of the Private Bill adequate in addressing the concerns of the Petitioners?
8. The questions above are addressed below.

i. Could the prayers have been addressed through other means other than a Private Bill?

A Private Bill is any Bill, which is intended to affect or benefit some particular person, association or corporate body. In this respect, the Mau Mau Liberation Struggle Movement Bill, 2018 seeks to affect or benefit the Mau Mau veterans, although there is also a component of the Bill facilitating public knowledge on the role of the Mau Mau liberation struggle movement in the liberation of Kenya from colonialism. These issues would be better provided for in a Private Bill.

ii. To what extent does the Kenya Heroes Act, 2014 address the concerns of the Petitioners in so far as their recognition is concerned?

In the Bill, it is provided that the Kenya Heroes Act, 2014 shall apply with necessary modifications. Since some of the objects of the Bill are on the recognition of the Mau Mau war veterans, it will be of importance for the Committee to find out from the Mau Mau war veterans their views on the applicability of the Kenya Heroes Act, 2014 to their recognition and whether there are any gaps in that law.

iii. Are the provisions of the Private Bill adequate in addressing the concerns of the Petitioners?

Having looked at the Bill, it chiefly provides for the recognition of the Mau Mau Liberation Struggle Movement and provides for a framework to facilitate public knowledge on the role of the Mau Mau liberation struggle movement in the liberation of Kenya from colonialism. There will be need to enhance the Bill further. For instance, apart from the

declaration on the role and importance played by the Mau Mau veterans there is a need to further provide for the framework to facilitate public knowledge and similar issues.

Way forward for the Committee

9. In the Speaker's Conveyance, the Committee is expected to find out whether a Private Bill is the appropriate way to address the prayers of the Petitioners. If the Committee would have been satisfied that a Private Bill would be the appropriate way, then it should, upon tabling the Report, move a Motion asking the House to grant leave for the introduction of a Private Bill on the subject.

10. Before the Committee concludes its report, it should invite the Petitioners, the Cabinet Secretary for Sports and Heritage, and other stakeholders.

MIN.NO.NA/SCT/2019/061: COMMITTEE CONCERNS/OBSERVATIONS

The Committee made the following observations, that:

1. It was noted that the title of the Bill does not reflect the face of the Nation considering that Mau Mau was formed around Mount Kenya region and there are many Kenyans from other regions who fought for liberation and were not members of Mau Mau. The title of the Bill could have been drafted to be inclusive to cater for all those who fought for the country from all the regions in Kenya.
2. It was noted that the Bill itself is not comprehensive enough to address the interest of the petitioners, hence if deemed viable by the Committee, then there will be a need to enhance the Bill further. For instance, apart from the declaration on the role and importance played by the Mau Mau veterans there is a need to further provide for the framework to facilitate public knowledge and similar issues.
3. The Committee was concerned whether the Mau Mau Veterans were not catered for in the current Kenya Heroes Act and the motive of the petitioners since all the heroes and heroines were to be covered by the existing Act.
4. Further, the Committee was concerned know who are the exact Mau Mau Veterans if they still exist, how they would be identified and the inner interest that could have led to the proposal to have the Bill.
5. The Committee felt it was important to understand the motive of the Bill and whether the current Kenya Heroes Act has gaps and does not cover the Mau Mau Veterans.

The Committee resolved to invite the following institutions for further consultations on the petition and the Bill:

- i. The Petitioners
- ii. The Ministry of Sports and Heritage
- iii. The Office of the Attorney General
- iv. The Kenya Law Reforms Commission

MIN.NO.NA/SCT/2019/062: ADJOURNMENT

There being no other business, the meeting was adjourned at forty two minutes past one O'clock.

SIGN: DATE: 20.03.19



CHAIRPERSON

FEB 2019

COMMITTEE SERVICES

Directorate of Legislative & Procedural
Services (NA)
The Table Office

MEMO

TO : DIRECTOR, COMMITTEE SERVICES (NA)

FROM : THE HEAD OF TABLE OFFICE DEPARTMENT

DATE : FEBRUARY 14, 2019

SUBJECT : PUBLIC PETITION

The following Petition was conveyed to the House, today, Thursday, February 14, 2019: -

- Petition on the regarding the welfare of the Mau Mau Liberation Struggle Movement.

Enclosed please find the Petition for your necessary action.

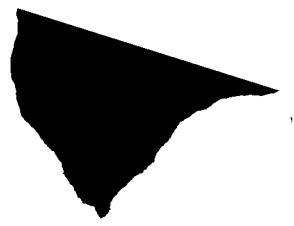

RANA K. TIAMPATI

(Encls.)

Copy to: -

1. Clerk of the National Assembly
2. Director of Legislative and Procedural Services
3. Director, Committee Services

KINA
pls deal
FA
14/2/19





REPUBLIC OF KENYA
TWELFTH PARLIAMENT – (THIRD SESSION)
THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No.002 of 2019)

ICE OF A PETITION SEEKING LEAVE OF THE HOUSE TO
A PRIVATE BILL ENTITLED THE MAU MAU LIBERATION
STRUGGLE, MOVEMENT BILL

Honourable Members,

Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office is in receipt of a Petition from members of the Mau Mau War Veterans Association seeking for leave of the House for the introduction of a Private Bill.

Honourable Members,

You may wish to note that this Petition is not an ordinary one as the Petitioners are asking for leave of the House to introduce a Private Bill aimed at providing for the recognition of the role of *Mau Mau Liberation Struggle Movement*. The draft legislation attached to the Petition is proposing to among other things, to acknowledge in law, the role of the *Movement* in the fight for Kenya's independence and to provide for the documentation of the history and activities of the *Movement* for posterity. The Petition does conform with the provisions of SO 159 (1) which states that "*No private Bill shall be introduced unless a Petition for the same, headed by the short title of*

*and signed by the parties, being promoters of the Bill, or some
been previously presented to the House with a copy of the Bill and*

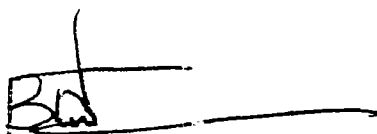
Honourable Members

You all appreciate that the Mau Mau Veterans played a key role in liberation of this country from colonialism. Therefore it would be appropriate to recognise and appreciate their efforts in the fight for the Country's independence.

Honourable Members,

Pursuant to the provisions of Standing Order 227, this Petition now stands committed to the Departmental Committee on Sports, Culture and Tourism for consideration. The Committee is advised to prioritize the Petition, accord hearing to the Petitioners and assist the House to determine whether the prayers by the Petitioners would properly be addressed by way of a Private Bill in terms Part Twenty (XX) of the Standing Orders. Should the Committee find that a Private Bill is the appropriate way to address the prayers, the Committee should, upon tabling the Report move a Motion asking the House to grant leave for the introduction of a Private Bill on the subject.

Thank you!



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

THURSDAY, 14TH FEBRUARY 2019

Mau Mau War Veterans Association



MASHUJAA

Mr. Karuru

Parliamentary Office
Your Representative

WE HAVE TO INTRODUCE A PRIVATE BILL IN ACCORDANCE WITH THE ASSEMBLY STANDING ORDERS PART XX PRIVATE BILLS.

Pse Stacey and

*request
CNA
18/12/18*

LEGISLATIVE ASSEMBLY OF KENYA.

WE, THE UNDERSIGNED CITIZENS OF KENYA, ON BEHALF OF 61330 MAU MAU WAR VETERANS, FROM ALL REGIONS OF THE REPUBLIC OF KENYA:-

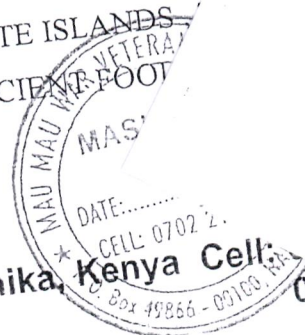
SUBMIT THE FOLLOWING MATTERS OF FACT, PERTAINING TO MAU MAU LIBERATION STRUGGLE MASS MOVEMENT.

2. THAT WE ARE A FELLOWSHIP OF MAU MAU FREEDOM FIGHTERS FROM THE WHOLE REPUBLIC OF KENYA, WHO CONSISTENTLY AND PERSISTENTLY PARTICIPATED IN HEROIC MAU MAU FREEDOM STRUGGLE.

3. THAT THE NOTABLE RESISTENCE AGAINST COLONIAL DOMINATION, WAS FIRST STARTED BY OUR FOREFATHERS, TRIGGERING THE REAL INDEPENDENT STRUGGLE FOR THE PEOPLE OF KENYA, BY THE MAU MAU LIBERATION MOVEMENT.

4. THAT WITHOUT THE GALLANT DEDICATION OF THE PARTIOTIC HEROES THROUGH TEARS, SWEAT AND BLOOD, KENYANS WOULD NOT HAVE JUSTICE, THEY ENJOY TODAY.

5. THAT MANY FREEDOM FIGHTERS AROUND THE LAND OF KENYA WITH HARD LABOUR, DETAINED IN REMOTE ISLANDS, AND WOMEN WERE RAPED AND DENIED SUFFICIENT FOOTWEAR.



P.O. Box 3782 - 01000 Thika, Kenya Cell: 0702 2 49866



Ma Mau War Veterans Association



MASHUJAA

Our Request: LIBERATION STRUGGLE MOVEMENT BILL 2018.

THE MAU MAU LIBERATION STRUGGLE MASS MOVEMENT, WHICH
EMERGED FROM COLONIAL DICTATORSHIP AND ILL TREATMENT, USHERING IN,
DEMOCRACY, SOCIAL ECONOMIC AND EDUCATION FREEDOMS, HAS NEVER
BEEN OFFICIALLY APPRECIATED, RECOGNISED AND DECLARED, THAT IT WAS THE
JUST LEGITIMATE MEANS OF LIBERATING KENYA FROM COLONIAL OCCUPATION AND
SUBJUGATION.

7. THAT MATTERS IN RESPECT OF WHICH WE MAKE THIS PETITION ARE NOT PENDING
BEFORE ANY COURT OF LAW OR CONSTITUTIONAL OR LEGAL BODY.

PETITION :

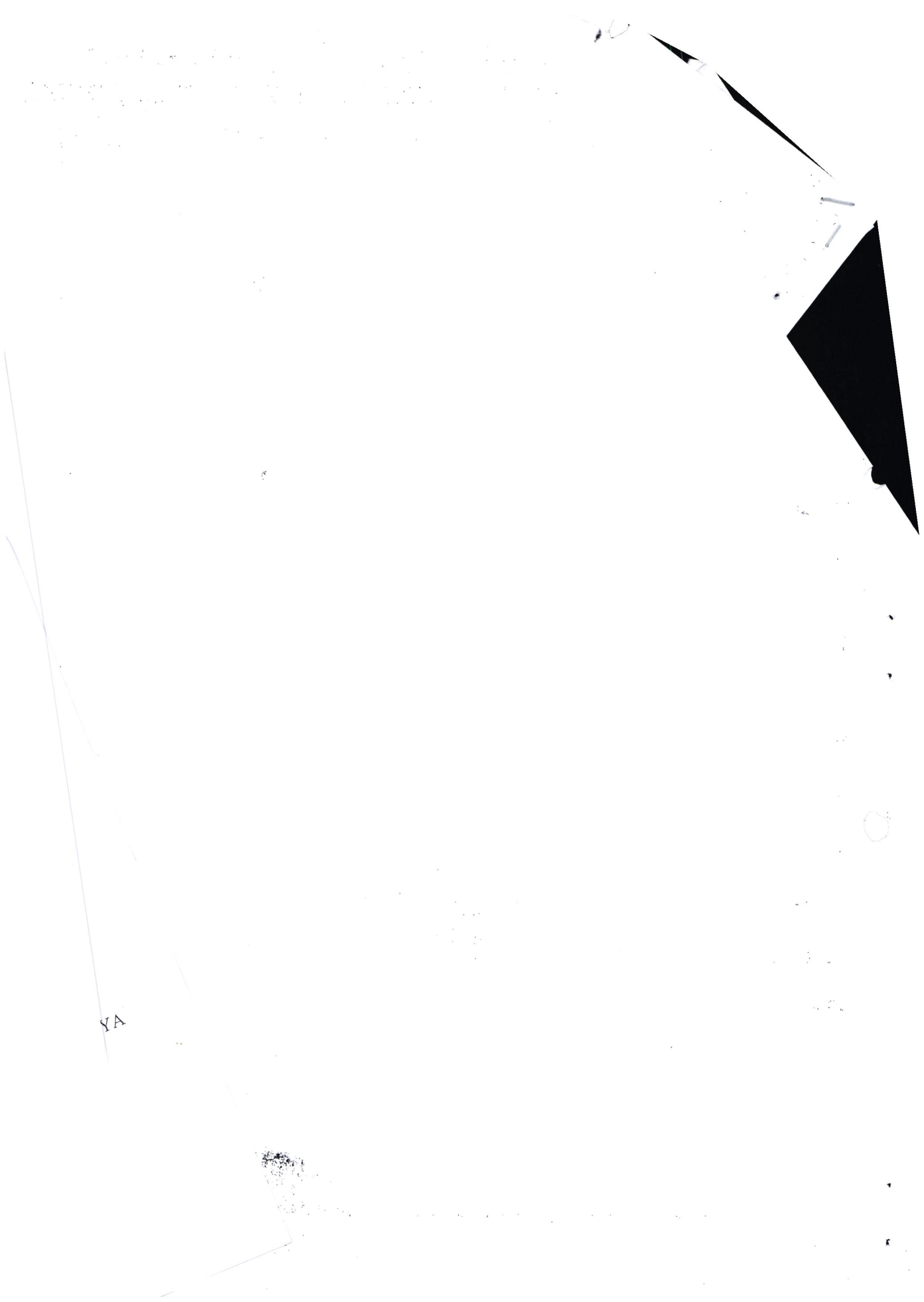
HEREFORE YOUR HUMBLE PETITIONERS PRAY PARLIAMENT.

CONSIDER AND APPRECIATE THE MAU MAU LIBERATION STRUGGLE MOVEMENT WHOSE
LEADERS, ACTIVISTS AND ADHERENTS THROUGH A STRUGGLE BEARING TEARS, SWEAT
AND BLOOD, RECOVERED OUR INDEPENDENCE FROM THE TERRIFYING JAWS OF
COLONIAL POWER, AT MIDNIGHT ON 12TH DECEMBER 1963.

CONSIDERING THE NEED FOR MAU MAU LIBERATION STRUGGLE MOVEMENT TO BE A
SOURCE OF NATIONAL HISTORY AND THE MOVEMENT'S USEFUL INFORMATION, TO
GENERATIONS TO COME, WE PRAY THE PARLIAMENT.

TO GRANT LEAVE TO THE PETITIONERS TO INTRODUCE A PRIVATE BILL TO THE KEN
NATIONAL ASSEMBLY, IN ACCORDANCE WITH THE NATIONAL ASSEMBLY STANDING
ORDERS PART XX PRIVATE BILLS.





YA

Mau Mau War Veterans Association



MASHUJAA

Our Ref:.....

Your Ref:.....

THE MAU MAU LIBERATION STRUGGLE MOVEMENT BILL 2018.

THE PROPOSED BILL IS HEREBY ANNEXED TO THIS PETITION.

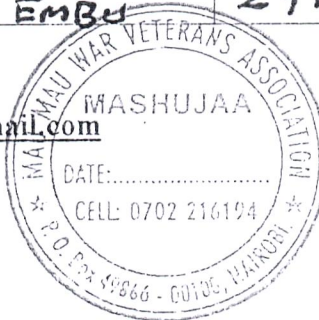
THE TITLE OF THE BILL SHALL BE: - "MAU MAU LIBERATION STRUGGLE MOVEMENT BILL 2018"

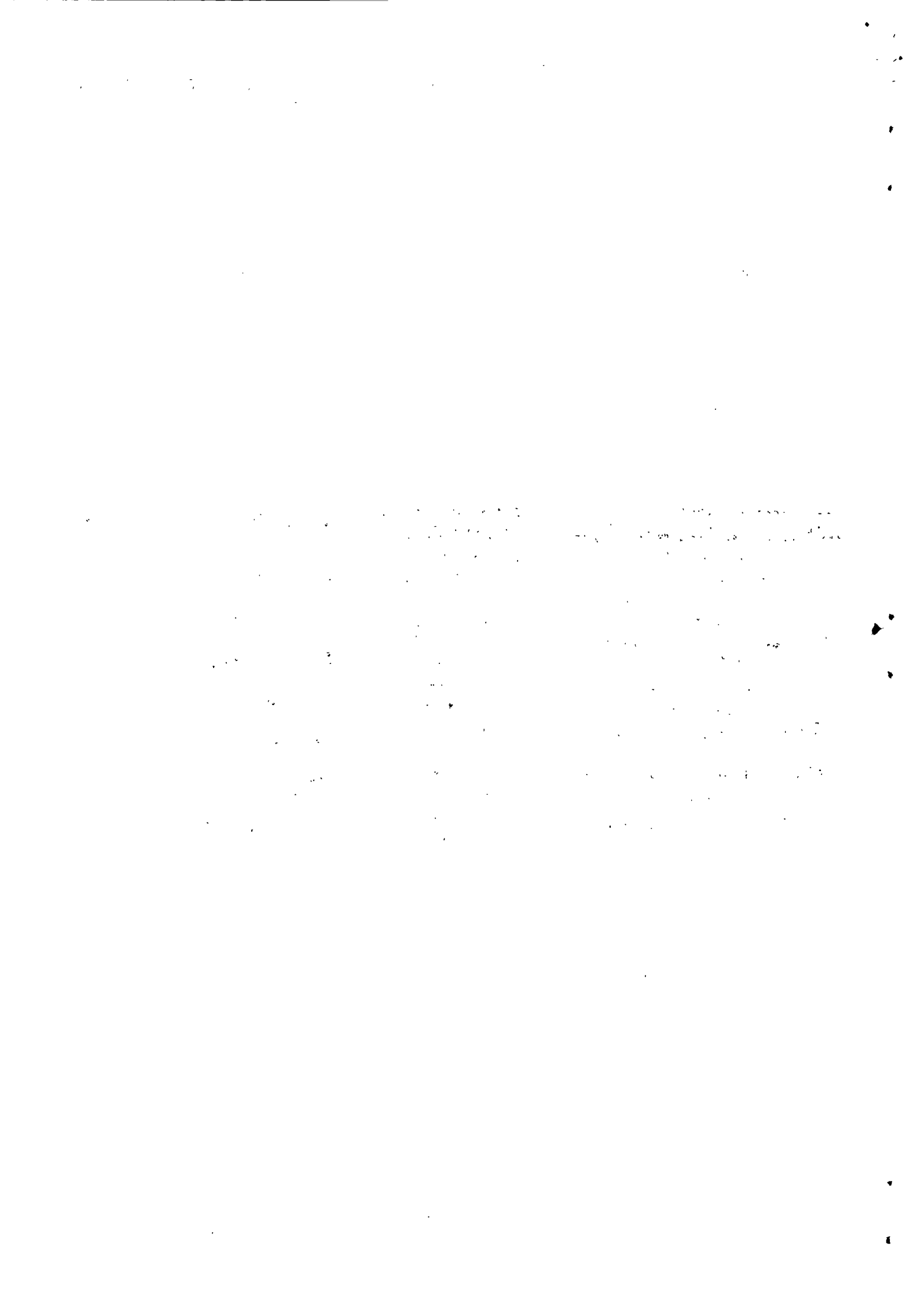
NAME OF PETITIONER	FULL ADDRESS	NATIONAL ID NO.	SIGNATURE
SHUJAA HON. DR. GITU WA KAHENGERI OGW	P.O. Box 3782 01000 THIKA	0352156	GITU
MICHAEL MUNGAI KIMANI	P.O BOX 115 WANGIGE.	11266283	<i>[Signature]</i>
JOSEPH NKAIWATEI OLELARUS	P.O BOX 117 NAROK	0095547	<i>[Signature]</i>
FRANCIS MUSYOKA MUTISO	P.O BOX 571- 9100 MACHAKOS	16046719	<i>[Signature]</i>
M'MBURUGU M MARETE	P.O BOX 11 TIMAV'	8884021	<i>[Signature]</i>
GRACE NYAMBURA NGUGI	P.O BOX 3782 THIKA	3067022	GRACE
ANSEELIMINA KWAMBA NYAGA	P.O BOX 148 MANYATTA	3523355	<i>[Signature]</i>
SAMUEL KANYUIRO	P.O BOX 779 EMBU	2919425	<i>[Signature]</i>

OFFICIAL CONTACT: email gituwakahengeri@gmail.com

SHUJAA HON. DR. GITU WA KAHENGERI OGW

P.O. BOX 3782 - 01000 THIKA





Mau Mau War Veterans Association



Our Ref:.....

MASHUJAA

Your Ref:.....

THE MAU MAU LIBERATION STRUGGLE, MOVEMENT BILL 2018

ARRANGEMENT OF CLAUSES

Clauses

- 1 – Short Title
- 2 – Interpretation
- 3 – Declaration
- 4 – Object and purpose of the Act.
- 5 – Application
- 6 – Regulations



P.O. Box 3782 - 01000 Thika, Kenya Cell: 0722 612 463

0702 216 194

Mau Mau War Veterans Association



MASHUJAA

Our Ref:.....

Your Ref:.....

THE MAU MAU LIBERATION STRUGGLE, MOVEMENT BILL, 2018

A Bill for

AN ACT of parliament to provide for the recognition of Mau Mau Liberation Struggle movement ; the declaration that the pre-independence liberation struggle by the Mau Mau freedom fighters was a legitimate course that led to the independence of Kenya and for connected purposes.

ENACTED by the Parliament of Kenya, as follows-

- Short title 1. This Act may be cited as the Mau Mau Liberation Struggle Movement Act, 2018
- Interpretation 2. In this Act, unless the context otherwise requires –
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for national heritage;
- “Mau Mau Liberation Struggle Movement” means the political or underground struggle waged against colonialism by Kenyans which resulted in the recovery of the independence of Kenya at midnight on 12th December 1963;
- “Mau Mau veteran” means any person who heroically participated consistently and persistently in the liberation struggle in order to bring about the independence of Kenya, notwithstanding that he or she was reallocated to other liberation struggle functions or duties including dependants;
- Declaration 3. That the Mau Mau wars of resistance in Kenya , From Namanga to Moyale and from The Indian Ocean Mombasa to Busia ,and the ultimate armed struggle was a just means of liberating Kenya from colonial occupation and subjugation.



Mau Mau War Veterans Association



MASHUJAA

Our Ref:.....

Your Ref:.....

THE MAU MAU LIBERATION STRUGGLE, MOVEMENT BILL, 2018

Objects and Purpose
of the Act

4. The object and purpose of this Act is to-

- a) Provide for the recognition of the Mau Mau liberation struggle movement.
- b) Provide for Declaration that the pre – independence struggle by the Mau Mau War Veterans was a legitimate course that led to the independence of Kenya; and
- c) Provide a framework to facilitate public knowledge on the role of the Mau Mau liberation struggle Movement in the liberation of Kenya from colonialism

Application

5. The Kenya National Heroes Act shall apply to this Act with the necessary modifications

REGULATIONS

18. (1) The cabinet Secretary in consultation with the petitioners shall make regulations for the better carrying out of the provisions of this Act;

(2) Without prejudice to the generality of subsection (1) the regulations may provide for --

- a) The nature of artifacts of the Mau Mau which are cultural and human interest;
- b) Mechanisms to facilitate research and dissemination of knowledge in the cultural heritage of Kenya and that of the Mau Mau Liberation Struggle.
- c) The forms and fees for the purposes of this Act



P.O. Box 3782 - 01000 Thika, Kenya Cell: 0722 612 463
0702 216 194

Mau Mau War Veterans Association



MASHUJAA

Our Ref:.....

Your Ref:.....

THE MAU MAU LIBERATION STRUGGLE, MOVEMENT BILL ,2018

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legal framework for the recognition of the Mau Mau Liberation Struggle Movement and declaration that the pre – independence resistance by the Mau Mau Freedom fighters was legitimate course that led to the independence of Kenya.

This will create public awareness on the pre-independence struggle by the Mau Mau Liberation Struggle Movement which liberated Kenya from colonialism and led to Kenya's independence

The Bill does not infringe or limit and fundamental rights or freedoms.

The Bill does not concern County governments

The enactment of this Bill shall not occasion additional expenditure of public funds

Dated 15th of October 2018





① D/comm d/e
13/03/14

**MINISTRY OF SPORTS, CULTURE AND HERITAGE
STATE DEPARTMENT FOR CULTURE AND HERITAGE**

Telegrams: "MOSCA" Kencom Hse, Nairobi
Tel: +254-020-2251164/005, 2250576
Fax: 254-020-316187
Website: www.sportculture.go.ke
Email: infor@sportculture.go.ke
When replying, please quote:

P.O. Box 49849 - 00100
Nairobi, Kenya

② Henson
KINA
pls deaf
FA
12/3/19

12th March 2019

REF. : REF : MSCA 1/29 Vol 1

Jeremiah W. Ndombi
National assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

③ Henson
pls note
FA
12/3/19

Dear *Jeremiah*

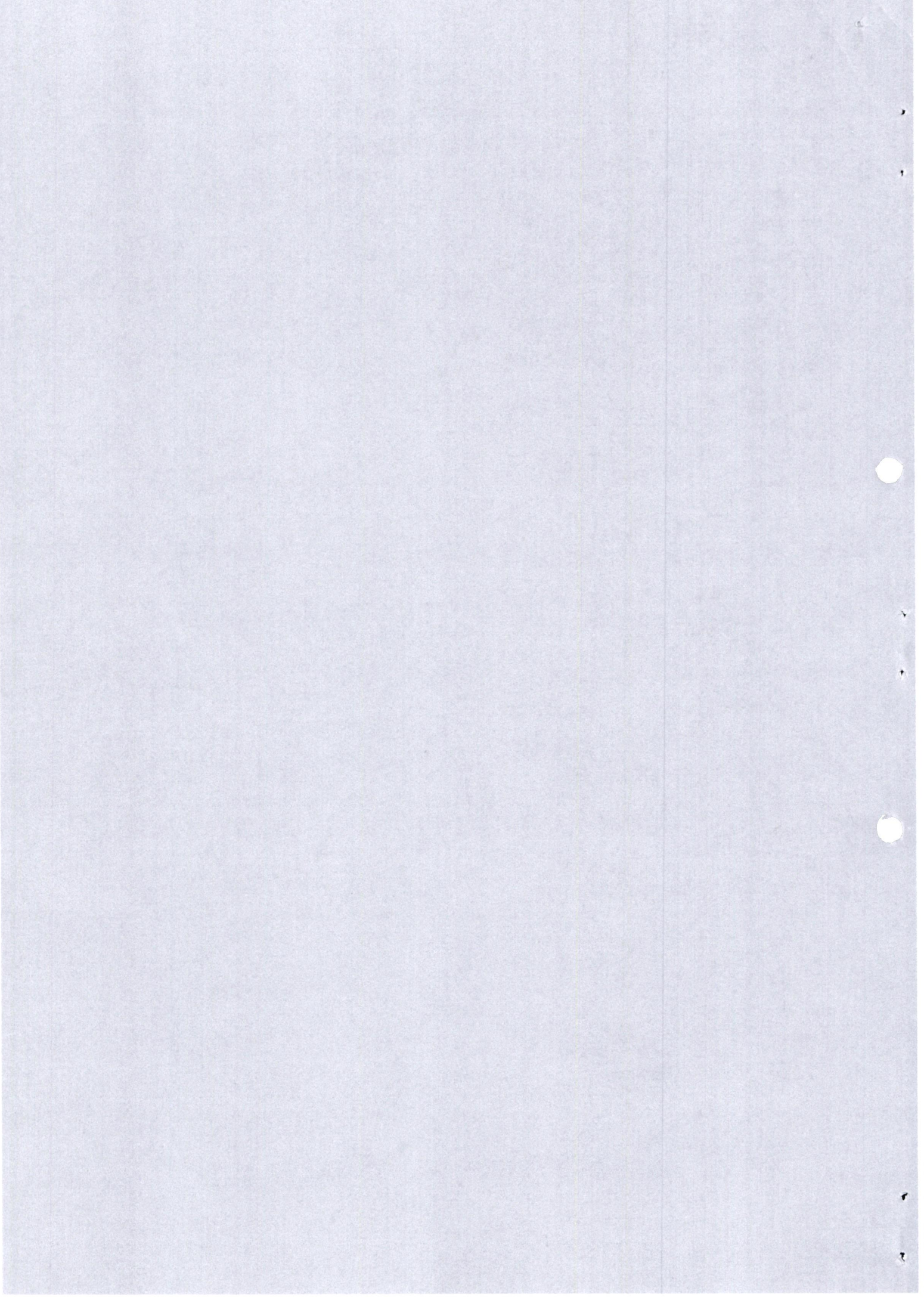
**PETITION BY MAU MAU WAR VETARANS ASSOCIAION TO INTRODUCE A
PRIVATE BILL ENTITLED THE MAU MAU LIBERATION STRUGGLE
MOVEMENT BILL 2018**

Reference is made to your letter Ref.NA/DCS/SCT/2019(022) dated 6th March, 2019 on the above subject matter.

Forwarded hereby please find our presentation for your perusal and further guidance.

Yours *Sincerely*

**Josephtha O. Mukobe, (Ms.), CBS
PRINCIPAL SECRETARY**



RESPONSE TO PETITION BY MAU MAU WAR VETERANS ASSOCIATION TO INTRODUCE A PRIVATE BILL ENTITLED THE MAU MAU LIBERATION STRUGGLE MOVEMENT BILL 2018

The Mau Mau War Veterans have submitted a Petition to the National Assembly seeking leave to introduce a Private Bill entitled The Mau Mau Liberation Struggle Movement Bill, 2018 in accordance to the provisions of Standing Order 159. The Parliamentary Departmental Committee on Sports, Culture and Tourism has invited this Ministry to give a presentation on the proposed Private Bill. The Ministry wishes to respond as follows:

a) INTRODUCTION

The Government through the Ministry of Sports, Culture and Heritage has undertaken several initiatives to ensure our national heroes and heroines, including Mau Mau freedom fighters, are honoured and the role they played remains in the minds of Kenyans who now enjoy enormous freedoms as a result.

In 2003 the Government issued Legal Notice No. 148 dated 29th August 2003, which lifted the ban on the Mau Mau movement. This made it possible to recognize and honour the freedom fighters.

Some of the undertakings by the Ministry in regard to recognizing and honoring freedom fighters:-

1. Recognition of the Kapenguria six, namely – Mzee Jomo Kenyatta, Paul Ngei, Bildad Kaggia, Achieng' Oneko, Kungu Karumba and Fred Kubai.
2. The Ministry has constructed mausoleums for the late Paul Ngei, Bildad Kaggia, Achieng' Oneko and Kisoi Munyao who hoisted the Kenyan flag on top of Mt Kenya on the eve of independence.
3. Monuments have been constructed for Dedan Kimathi and Tom Mboya in Nairobi.
4. Construction of Koitalel arap Samoei Cultural Education Centre and development of the Heroes Corner at Uhuru Gardens in Langata.
5. The ministry has provided state burial to some heroes like the late Kisoi Munyao and Achieng' Oneko.

The Ministry in 2007 established a Taskforce for country wide data collection on criteria and modalities of honouring national heroes and heroines. The taskforce recommended that the Government and Parliament put in place legislation on heroes and heroines.

As a result, the Ministry developed the National Heroes Bill which was later enacted to Kenya Heroes Act No. 5 of 2014. This Act provides for the recognition of heroes, establishes a criteria for the identification, selection and honouring of heroes. It also provides for the establishment of the National Heroes Council.

Mashujaa Day creates an opportunity to honour our heroes by presenting them and highlighting the role they played before the citizens of this nation and the world, for this day is set aside for that purpose. Over 200 freedom fighters have so far been

honoured over the past Mashujaa Days. The freedom fighters are usually allocated more slots on this Day. Though the Mau Mau's are in different factions the Ministry considers representatives from all factions. The Ministry has also made some effort to consolidate the various factions of Mau Mau with a view to bringing harmony and avoid more disintegration.

During the commemorations of heroes, the Ministry offers logistical support including ensuring that the freedom fighters attend these functions by providing for the transport, especially during commemorations for the late Field Marshal Dedan Kimathi which is held annually in the month of February.

A number of freedom fighters have been decorated with Presidential Honours and Awards. During the 2018 Madaraka Day celebrations, the President awarded some veterans with the Order of the Grand Warrior (OGW) for their role in the fight against colonialism.

b) Statutory provisions that provide for recognition of heroes, their strengths and weaknesses.

The Government has systems that answer to the needs of the Petitioners. These include;

- i. Constitution of Kenya 2010
- ii. Kenya Heroes Act No. 5 of 2014
- iii. The National Honours Act No. 11 of 2013
- iv. Legal Notice No. 148 dated 29th August 2003

1. Constitution of Kenya

The Constitution as the supreme law acknowledges the national heroes. In the Preamble the Constitution declares honour for those who heroically struggled to bring freedom and justice to our land. It further sets aside Mashujaa Day as one of the country's National days. Article 132 (4)(c), under Functions of the President, gives power to confer honours in the name of the people and the Republic.

By providing for heroes and heroines in the Country's supreme law, this is a clear indication that the country recognizes and honours all those who have sacrificed their lives for the betterment of the society.

2. Kenya Heroes Act No. 5 of 2014

This Act was enacted to provide for the recognition of heroes; to establish criteria for the identification, selection and honouring of national heroes; to provide for the categories of heroes; to provide for the establishment of the National Heroes Council

and for connected purposes. It defines who a hero is and provides for the identification and declaration of heroes under Sections 2 and 22 respectively.

The strength of this Act is that, it provides an avenue for nomination on the suitable persons, who may be recommended for declaration as heroes and involves public participation and such nominations are put through a vetting process by the National Heroes Council. This ensures that recognition of heroes is not arbitrarily awarded or conferred to undeserving persons.

The Act under section 4 provides for the establishment of a National Heroes Council which shall be a body corporate. Section 5 outlines the functions of the Council that include among others; to formulate and implement policy relating to national heroes and; identify and recommend national heroes. The Ministry is working towards the operationalization of the Council and there is a budgetary provision of Kshs. 50 Million in the FY 2019/2020. It is worth noting, that the proposed allocation will facilitate operationalization of the Council, but may not adequately cater for the needs of the heroes as envisaged in the Act.

The Act provides for the establishment of a National Heroes' Fund, which may be used for the benefit of national heroes who are in need of financial assistance and their dependants.

When operationalized, the fund will address the needs of heroes. However, it may be prone to mismanagement where the intended purpose to which it was created is abused. Stringent measures need to be exercised while dealing with this fund.

3. The National Honours Act No. 11 of 2013

The Act was enacted to give effect to and establish procedures and mechanisms for conferring of national honours by the President. While the Act confers recognition by the President to certain persons, not all heroes may be conferred national honour. Under **Section 2(1)** "national honour" is defined to mean an official recognition, decoration, status or award conferred by the President in terms of Article 132(4)(c) of the Constitution.

Both Acts, sufficiently cater for the recognition, appreciation and to a large extent financial assistance to heroes and heroines on a national level. The Kenya Heroes Act when operationalized will benefit the Mau Mau, other freedom fighters and Heroes.

c) Proposals on whether the Petitioners' prayers can be addressed through a Private Bill.

The Ministry's considered opinion is that, the existing laws are adequate in addressing the prayers sought in the Petition. However, if the petitioners opine that certain issues are not comprehensively provided for, they may propose amendments to the said existing laws and the Ministry can incorporate them.

The National Heroes Council once operationalized will cater for identification, nomination and vetting of proposed heroes (Mau Mau veterans inclusive) and ways of recognizing, awarding and compensating all national heroes.

The Ministry is of the opinion that, introduction of the Mau Mau Liberation Struggle Movement Bill 2018, will cause fragmentation of the Kenya Heroes Act No. 5 of 2014. We note that the Bill has been submitted by one of the many Mau Mau factions thus, raising a likelihood of other factions presenting other Bills or even heroes in other categories presenting similar proposals.

From the foregoing, the Ministry recommends that the Kenya Heroes Act No. 5 of 2014, be operationalized and sufficiently funded, since it addresses the Petitioner's prayers.

KENYA LAW REFORM COMMISSION



Kenyan Agency for responsive Law Reform
Telegrams: LAWREFORM NAIROBI
Telephone: Nairobi (254-20) 241186/2211201
Fax: (254-20) 2215786
www.klrc.go.ke

When replying please quote
KLRC/RES/45/VOL.
Ref. No.
and Date

KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
1ST FLOOR
TAIFA ROAD
PO Box 41999 00100
NAIROBI KENYA

27th March, 2019

The Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
NAIROBI

(Attn. Jeremiah Ndombi)

Dear *Jeremiah,*

RE: REVIEW OF THE MAU MAU LIBERATION STRUGGLE MOVEMENT BILL, 2018

Please refer to the above matter and your letter thereon.

Below please find the Commission's comments on the Mau Mau Liberation Struggle Movement Bill, 2018.

I. Background

The Kenya Law Reform Commission (the Commission) is in receipt of a letter from the National Assembly dated 6th March, 2019 inviting the Commission to attend a meeting with the Departmental Committee on Sports, Culture and Tourism. The purpose of the meeting was to consider a petition by the *Mau Mau* Veterans who had submitted a petition to the National Assembly seeking leave to introduce a Private Bill entitled the *Mau Mau Liberation Struggle Movement Bill, 2018* (the Bill) in accordance with the provisions of Standing Order 159.

This memorandum is issued in furtherance of the Commission's mandate, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The *Mau Mau* Veterans have proposed the Bill which seeks to provide a legal framework

the pre-independence resistance by the Mau Mau Freedom fighters was a legitimate course that led to the independence of Kenya.

Further, the Bill is meant to create awareness on the pre-independence struggle by the *Mau Mau* Liberation Struggle Movement which liberated Kenya from colonialism and led to Kenya's independence.

II. Analysis of the *Mau Mau* Liberation Struggle Movement Bill, 2018.

In our analysis, we shall limit our comments on—

- (a) overall outlook and object of the Bill; and
- (b) viability of the Bill *vis-a-vis* other statutory provisions on recognition of heroes, their strengths and weaknesses.

(a) Overall outlook and object of the Bill.

The Bill contains 6 clause: the Short title, Interpretation, Declaration, Object and purpose of the Act, Application and Regulations.

Generally, the Bill lacks in substance as it does not have any provision that seeks to substantially provide for the *Mau Mau* Liberation Struggle Movement. This is further illustrated below.

- (i) Under the interpretation clause, the Bill vaguely defines '*Mau Mau* Liberation Struggle Movement' and '*Mau Mau* Veteran' in an attempt to spotlight what or whose interests it seeks to address. It does not establish the Movement hence making it appear as an indistinct concept rather than a group of people seeking recognition.
- (ii) Throughout the Bill, there is no provision that outlines any special interests or any form of award to the *Mau Mau* veterans other than a simple *declaration that the struggle was a just means of liberating Kenya from colonial occupation and subjugation*. It would have been more fulfilling if the Bill contain provisions on interests accrued to the *Mau Mau* Veterans that comes with the Declaration.
- (iii) The object of the Bill is to –
 - (a) provide for recognition of the *Mau Mau* liberation struggle movement;
 - (b) provide for declaration that the pre-independence struggle by the *Mau Mau* Veterans was a legitimate course that led to the independence of Kenya; and
 - (c) provide a framework to facilitate public knowledge on the role of the *Mau Mau* liberation struggle Movement in the liberation of Kenya from colonialism.

The objectives of the Bill have been sufficiently catered for through other legislation as discussed below.

- (iv) The Bill under clause 5 on application states that, *the Kenya National Heroes Act shall apply to this Act with the necessary modification*. The recognition of this Act under the Bill is well-intentioned and confirms that the *Mau Mau* veterans acknowledges the existence of legislation that caters for such matters and that there is no ostensible legal gap in addressing the recognition of efforts of the freedom fighters. If there is an aspect that they would wish to address through legislation, it is advisable to amend the Kenya Heroes Act.
- (v) Clause 6 provides for the power of the cabinet secretary to make regulations. It states that, the regulations may provide for –
- (a) the nature of artefacts of the *Mau Mau* which are cultural and human interest;
 - (b) mechanisms to facilitate research and dissemination of knowledge in the cultural heritage of Kenya and the *Mau Mau* Liberation Struggle.
 - (c) the forms and fees for the purpose of the Act.

These provisions are a replica of what is provided for under the Kenya Heroes Act, 2014 and the National Museum and Heritage Act, No. 6 of 2006 hence serves no purpose.

- (b) Viability of the Bill *vis-a-vis* other statutory provisions on recognition of heroes, their strengths and weaknesses.

The object of the Bill is to –

- (a) provide for recognition of the *Mau Mau* liberation struggle movement;
- (b) provide for declaration that the pre-independence struggle by the *Mau Mau* Veterans was a legitimate course that led to the independence of Kenya; and
- (c) provide a framework to facilitate public knowledge on the role of the *Mau Mau* liberation struggle Movement in the liberation of Kenya from colonialism.

From the above, the purpose of the Bill has already been addressed through other legislation, these include –

No.	Legislation	Provision
1.	Constitution of Kenya, 2010	<p>The preamble <i>We, the people of Kenya— HONOURING those who heroically struggled to bring freedom and justice to our land:’</i></p> <p>By virtue of this provision in the Constitution, <i>Mau Mau</i> veterans have been recognized and honoured.</p>

		<p><i>Article 9 - National symbols and national days</i> <i>(3) The national days are--</i> <i>(b) Mashujaa Day, to be observed on 20th October.</i></p> <p>Mashujaa Day is meant for celebrating, remembering and honouring heroes including <i>Mau Mau</i> and other Kenyans who participated in the independence struggle.²</p>
2.	The Kenya Heroes Act, 2014 ³	<p>The purpose of this Act is to provide for the <i>recognition of heroes</i>; to establish criteria for the identification, selection and honouring of national heroes; to provide for the categories of heroes; to provide for the establishment of the National Heroes Council and for connected purposes</p> <p>The <i>Mau Mau</i> veterans may apply to the Council for further recognition.</p>
3.	The National Honours Act, 2013 ⁴	<p>This Act seeks to give effect to and establish procedures and mechanisms for conferring of national honours by the President under Article 132(4)(c) of the Constitution.</p> <p>The Act provides that A person shall merit the conferment of a national honour if the person is —</p> <ul style="list-style-type: none"> a. a person who exhibited or exhibits exemplary qualities, <i>actions or achievements of heroism, sacrifice, bravery, patriotism or leadership for the defense, benefit or betterment of the country or a county;</i> b. a person who has made <i>an exemplary contribution to the country or a county in the economic, social, scientific, academic, public administration, governance, sports, journalism, business, security or other fields;</i> (d) <i>A person who has otherwise brought honour, glory or pride to the Republic.</i> <p>By all means, the <i>Mau Mau</i> veterans fall under this</p>

² Chapter Two, Constitution of Kenya 2010; Article 9

³ No. 5 of 2014

		description and qualify for recognition under this Act
4.	The Public Archives and Documentation Service Act ⁵	<p>This Act establishes the Kenya National Archives and Documentation Service and provides for the preservation of public archives and public records.</p> <p>The Act empowers the Director or an officer of the Kenya National Archives and Documentation Service to acquire, or accept gifts or testamentary bequests or loans of, any document, book, record, or other material of any <i>description of historical or other value, or any copy or replica thereof which he considers should be added to the public archives.</i></p> <p>The objective of the Bill on facilitation of public knowledge on the role of <i>Mau Mau</i> veterans in the liberation of Kenya from colonialism, has been taken care by this provision since the National Archives preserves this information for purposes of historical heritage.</p>
5.	The National Museum and Heritage Act ⁶	<p>This Act provides for the identification, protection, conservation and transmission of the cultural and natural heritage of Kenya.</p> <p>The knowledge on the role of <i>Mau Mau</i> liberation struggle movement in the liberation of Kenya from colonialism may also be preserved under this Act.</p>

Additionally, the *Mau Mau* Governing Council of Kenya, registered on 13th November, 2013 under the Societies Act to front their agenda on recognition and advance their interests.

III. Conclusion


Having looked at the provisions of the proposed Bill against the Acts discussed above, our opinion is as follows –

- (a) The contents of the Bill lacks in substance. There is no real issue the Bill seeks to address.

(b) The Bill only addresses the issue of recognition and declaration that the pre-independence struggle by the *Mau Mau* Veterans was a legitimate course that led to the independence of Kenya and to provide for a framework to facilitate knowledge on their role during pre-independence period. These issues have been sufficiently addressed by the above mentioned Acts

As always, we thank you for your continued support to the Commission.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to read "Joash Dache", written over a circular stamp or mark.

Joash Dache, MBS
Secretary/CEO

(2) HON.
pls deal
FA
20/3/19



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

OD/cmts

19/3/19

AG/LDD/206/1/13

18th March, 2019

Mr. Michael Sialai EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



3 Answer
pls note
FA
20/3/19

RE: THE MAU MAU LIBERATION STRUGGLE MOVEMENT BILL, 2018

This has reference to your letter dated the 6th March, 2019 and Ref. No. NA/DCS/SCT/2019 (022) regarding the invitation by the Departmental Committee on Sports, Culture and Tourism to address the Committee on the proposed Mau Mau Liberation Struggle Mass Movement Bill, 2018 scheduled for the 13th March, 2019.

First and foremost, I convey my apologies for my inability to appear before the Committee as scheduled. The proposed meeting coincided with one before the Senate Standing Committee on Justice, Legal Affairs and Human Rights that had been scheduled earlier and which ran from 10:00 a.m. to about 1:00 p.m. We had requested the Committee Clerk for additional time but unfortunately, this request was not granted. Consequently, I hereby submit my views on the proposed petition for your consideration.

We have considered the contents of your letter and the annexures thereon and arrive at the following issues to be determined and examine them as hereunder:

- (a) What is the applicable law in respect of the recognition of heroes, and what are the strengths and weakness of the applicable law?

The applicable law for the the recognition of heroes and the identification, selection and honouring of national heroes, is contained in the National Honours Act (No. 11 of 2013) and the Kenya Heroes Act (No. 5 of 2014).

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The National Honours Act, 2013 was assented to by the President on the 14th January, 2013 and commenced on the 25th January, 2013. The object of the Act is to give effect to, and establish procedures and mechanisms for, conferring of national honours by the President under Article 132 (4) (c) of the Constitution and for connected purposes. Section 4 (a) of the Act provides that a person who has exhibited or exhibits exemplary qualities, actions or achievements of heroism, sacrifice, bravery, patriotism or leadership for the defence, benefit or betterment of the country or a county shall merit the conferment of a national honour.

Sections 5, 6 and 7 of the Act provide for the establishment and membership of advisory committees while section 8 provides for the functions of the committees, including receiving and considering representations from any person, body, unit, association of persons or corporation recommending a person for the conferment of a national honour under the Act; and recommending to the President persons, bodies, units, associations of persons or corporations that may be considered for conferment of a national honour under the Act 3.

Section 11 provides for the posthumous conferment of national honours while section 15 (2) provides that until regulations contemplated under section 14 of the Act are made, the President may confer national honours of the types, categories or classes existing prior to commencement of this Act and the procedures applicable to such conferment shall continue to apply.

The Kenya Heroes Act, 2014 was assented to by the President on the 29th April, 2014. It was to be commenced by Notice in the *Gazette*. To date, it is yet to be commenced in the manner contemplated under section 1 of the Act.

The object of the Act is the recognition of heroes; to establish criteria for the identification, selection and honouring of national heroes; to provide for the categories of heroes; to provide for the establishment of the National Heroes Council and for connected purposes. It provides for the establishment of the National Heroes Council at section 4 (1) and the Council's functions at section 5 including the identification and recommendation of national heroes, and the conduct and facilitating of civic education in order to stimulate public discussion and awareness on pertinent issues relating to national heroes.

Part IV of National Heroes Act, 2014 also provides for the procedure for the identification and declaration of national heroes and the criteria for the identification, selection and honouring of national heroes as set out in the First Schedule to the Act.

With respect to the substance of the petition by the Mau Mau War Veterans Association, both statutes provide for the appreciation, recognition and declaration of Mau Mau War Veterans as national heroes who merit the conferment of national

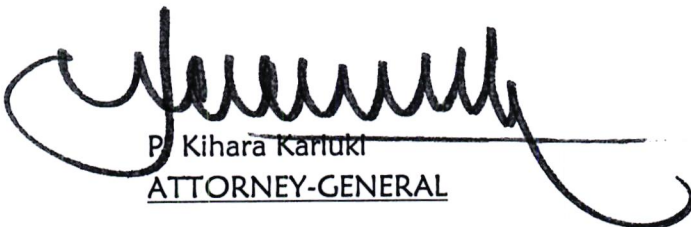
honours by the President. However, in view of the fact that the Kenya Heroes Act, 2014 has not been commenced, it is not applicable in this instance.

(b) Can the petitioners' prayers be addressed through a Private Bill?

The petitioners have approached the National Assembly under the provisions of Part XX of its Standing Orders which provides for Private Bills. A "Private Bill" is defined in Standing Order 2 (1) as any Bill which is intended to affect or benefit some particular person, association or corporate body. To the extent that the petitioners have approached the National Assembly in the form of the Mau Mau War Veterans Association, on behalf of all Mau Mau War veterans, in our considered opinion, the petition is properly before the National Assembly and petitioners' proposal can be addressed through a Private Bill.

We consulted the Ministry of Sports and National Heritage regarding this matter and were informed that the Ministry had constituted a team to address the issues raised by the Mau Mau War Veterans Associations. Among the matters the Ministry intended to address was the operationalisation of the Kenya Heroes Act, 2014, with a view to establishing the National Heroes Council to address the issues raised by the petitioners.

From the foregoing, therefore, although the petitioners have properly approached the National Assembly and the matter can be addressed through a Private Bill, the petitioners' objectives as set out in the proposed Mau Mau Liberation Struggle Movement Bill can be addressed under the provisions of the National Honours Act, 2013. The petitioners enjoy the opportunity to petition the relevant advisory committee regarding the appreciation, recognition and declaration of all Mau Mau War Veterans as national heroes. Furthermore, as clause 5 of the petitioners' Bill provides, the petitioners recognise the adequacy of the National Honours Act, 2013 by extending its application, with the necessary modifications, to the proposed Bill. In our considered opinion, the provisions of the Act are adequate to address the issues raised by the petitioners and the objectives of the Mau Mau Liberation Struggle Movement Bill.



P. Kihara Kartuki
ATTORNEY-GENERAL

Copies to: Mr. Kennedy Ogeto EBS
Solicitor-General


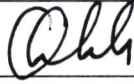
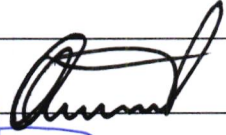
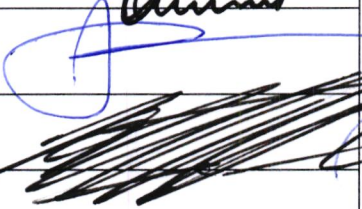

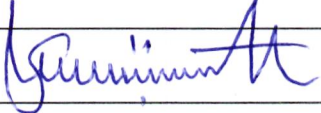


The Principal Secretary
State Department for National Heritage
Ministry of Sports and National Heritage
NAIROBI




DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM

ADOPTION OF THE REPORT ON CONSIDERATION OF THE PUBLIC PETITION SEEKING LEAVE OF THE HOUSE TO INTRODUCE A PRIVATE BILL BY THE MAU MAU WAR VETERANS ASSOCIATION

We, the undersigned Hon. Members of the Departmental Committee on Sports, Culture and Tourism, today 2nd April, 2019 do hereby affix our signatures to this **Report on the Consideration of the Public Petition seeking leave of the House to introduce a Private Bill by the Mau Mau War Veterans Association** to affirm our approval and confirm its accuracy, validity and authenticity:-

1.	The Hon. (Dr.) Victor Kioko Munyaka, MP.	
2.	The Hon. (Dr.) Korei Ole Lemein, MP.	
3.	The Hon. Christopher Omulele, MP.	
4.	The Hon. (Dr.) Christine Ombaka, MP.	
5.	The Hon. Cyprian Kubai Iringo, MP.	
6.	The Hon. Jones Mlolwa, MP.	
7.	The Hon. Daniel Wanyama Sitati, MP.	
8.	The Hon. Benard Masaka Shinali, MP.	
9.	The Hon. (Prof.) Jacqueline Oduol, MP.	
10.	The Hon. (Dr.) Tecla Chebet Tum, MP.	
11.	The Hon. Jane Jepkorir Kiptoo Chebaibai, MP.	
12.	The Hon. Lydia Haika Mnene Mizighi, MP.	
13.	The Hon. George Risa Sunkuyia, MP.	
14.	The Hon. Annie Wanjiku Kibeh, MP.	
15.	The Hon. Sylvanus Maritim, MP.	
16.	The Hon. Jeremiah Lomurukai, MP.	
17.	The Hon. Charles Ngusya Nguna, MP.	

18.	The Hon. Titus Mukhwana Khamala, MP.	
19.	The Hon. Charles Kamuren, MP	