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REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT – (SECOND SESSION)
THE NATIONAL ASSEMBLY

COMMITTEE ON IMPLEMENTATION

FIRST REPORT ON
IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND
RESOLUTIONS PASSED BY THE HOUSE

October, 2023

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 26 OCT 2023	
DAY: Thursday	
TABLED BY:	Hon. Rose Murego (Vice Chairperson, Implementation Committee)
CLERK AT THE TABLE:	Anne Shibuko

Directorate of Audit, Appropriations and Other Select Committees
The National Assembly
Parliament Buildings
NAIROBI



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Annex 5	Submission by National Government Constituencies Development Fund Board on the implementation status of the Special Fund Accounts Committee Report on examination of Audited Financial Statements for Financial years 2013/14, 2014/15 and 2015/16 for the NG-CDF for Constituencies in Nairobi County.
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ABBREVIATIONS

AFS	-	Audited Financial Statement
BQ	-	Bill of Quantities
CEO	-	Chief Executive Officer
CORT	-	Code of Regulations for Teachers
EACC	-	Ethics and Anti-Corruption Commission
EMS	-	Express Mail Services
FAMs	-	Fund Accounts Managers
GIS	-	Geographical Information Systems
ILO	-	International Labour Organization
KARO	-	Kenya Association of Retired Officers
KFS	-	Kenya Ferry Service
KMA	-	Kenya Maritime Authority
KNUT	-	Kenya National Union of Teachers
KPA	-	Kenya Ports Authority
KUPPET	-	Kenya Union of Post Primary Teachers
NG-CDF	-	National Government Constituency Development Fund
NHIF	-	National Health Insurance Fund
NIMES	-	National Electronic Monitoring and Evaluation Systems
PAC	-	Public Accounts Committee
PIC	-	Public Investment Committee
PMC	-	Project Management Committee
PSASB	-	Public Sector Accounting Standard Board
PWP	-	Presidential Working Party
SAGAs	-	Semi-Autonomous Government Agencies
SOLAS	-	Safety Life at the Sea
SRC	-	Salaries and Remuneration Commission
TPD	-	Teacher Professional Development Program
TSC	-	Teachers Service Commission

CHAIRPERSON'S FOREWORD

The Committee on Implementation is established under Standing Order 209 of the National Assembly Standing Orders. The Committee scrutinizes resolutions of the House (*including adopted Committee Reports*), petitions and undertakings given by the National Executive. It examines whether such decisions and undertakings have been implemented, the extent to which they have been implemented and whether such implementation has taken place within the minimum time necessary.

The mandate of the Committee is further enhanced by Standing Order 201 of the National Assembly Standing Orders that provides that within 60 days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House. In addition, Article 153(4) (b) of the Constitution requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

As such, the Committee plays a pivotal role in ensuring that the National Assembly resolves issues of concern to the people by holding the executive to account through the implementation of House resolutions. This ultimately ensures that the National Assembly executes its constitutional mandate effectively and efficiently; and that it does not act in vain.

In the execution of its mandate, the Committee invited the concerned Ministries, Departments and Semi-Autonomous Government Agencies (SAGAs) to submit status reports on the implementation of various House resolutions under their purview. The Committee also received both oral and written submissions from Cabinet Secretaries and Accounting Officers of State Corporations about the extent to which they had implemented recommendations contained in the reports adopted by the House.

In addition, the Committee carried out inspection of some of the projects referenced in the reports to verify their degree of completeness as reported by the Accounting Officers. This report therefore contains responses received by the Committee from the implementing agencies about the status of implementation of House resolutions, findings arising from inspection visits to various projects, as well as observations about the level of implementation and Committee recommendations.

In execution of its mandate, the Committee made the following general observations which have a direct impact on the implementation of House resolutions:

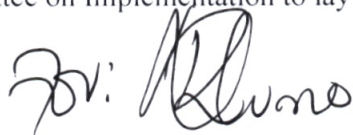
1. A majority of the House Resolutions have budgetary implications for their effective implementation. For this reason, there is need for appropriation of funds in subsequent financial year to ensure House Resolutions are implemented as directed. However, in most instances, inadequate budgetary allocation is the major hindrance to effective implementation of the same by ministries, departments and agencies.;
2. Some of the recommendations were generalized and not specific, measurable, achievable, realistic and time-bound (SMART) so as to facilitate smooth implementation of House resolutions.

To address these challenges, the Committee made the following general recommendations:

1. The Accounting Officers of MDAs should factor resolutions with budgetary implications in the subsequent financial year budgets for effective implementation;
2. The Accounting Officers of MDAs should incorporate House resolutions in their work plans for effective and efficient delivery of the implementations. This should include timelines for achievement of specific deliverables and assignment of responsibility; and
3. The EACC should provide a status report of all pending investigations stated in this report within 60 days of the adoption of this report by the House.

In conclusion, I wish to express my appreciation to fellow Honourable Members of the Committee, the Office of the Speaker, the Clerk of the National Assembly and the Secretariat for their contribution and support in the production of this report.

Pursuant to Standing Order 199(6), it is therefore, my pleasant duty and privilege, on behalf of the select Committee on Implementation to lay this report on the table of the House.



HON. RAPHAEL BITTA SAUTI WANJALA, M.P.

CHAIRPERSON, COMMITTEE ON IMPLEMENTATION

1 PREFACE

1.1 Mandate of the Committee

1. The Committee on Implementation is established under Standing Order 209 of the National Assembly Standing Orders.
2. The Committee is charged with scrutinizing the resolutions of the House (*including adopted committee reports*), petitions and undertakings given by the National Executive and examining whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and whether or not legislation passed by the House has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary. The Committee may propose to the House; sanctions against any Cabinet Secretary who, without justifiable reasons; fails to report to the relevant Committee on the implementation status.
3. Standing Order 201 further provides that within 60 days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House.
4. The mandate of the Committee is further enhanced by the provisions of Article 153(4) (b) of the Constitution which requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

1.2 Committee Membership

5. The Committee membership comprises:

Chairperson

Hon. Raphael Bitta Sauti Wanjala, M.P.

Budalangi Constituency

Orange Democratic Movement

Vice-Chairperson

Hon. Rose Museo, M.P.

Makueni County

Wiper Democratic Movement-Kenya

Members

Hon. Mohamed Ali, M.P.

Nyali Constituency

United Democratic Alliance

Hon. Elijah Memusi Kanchory, M.P.

Kajiado Central Constituency

Orange Democratic Movement

Hon. Johnson Many Naicca, M.P.

Mumias West Constituency

Orange Democratic Movement

Hon. Hillary Arap Kosgei, M.P.

Kipkelion West Constituency

United Democratic Alliance

Hon. George Koimhuri Ndung'u, M.P.

Juja Constituency

United Democratic Alliance

Hon. Nicholas N. Nixon Ngikilong', M.P.

Turkana East Constituency

Jubilee Party

Hon. Charles Gumini Gimose, M.P.

Hamisi Constituency

Amani National Congress

Hon. Prof. Guyo Waqo Jaldesa, M.P.

Moyale Constituency

United Party of Independent Alliance

Hon. Linet Chebet, Siyoi, M.P.

Trans Nzoia County

United Democratic Alliance

Hon. Abdul Ebrahim Haro, M.P.

Mandera South Constituency

United Democratic Movement

Hon. Cynthia Jepkosgei Muge, M.P.
Nandi County

United Democratic Alliance

Hon. John Okwisia Makali, M.P.
Kanduyi Constituency

FORD-K

Hon. Hamisi Kakuta Maimai, M.P.
Kajiado East Constituency

Orange Democratic Movement

Hon. Mark Samwel Muriithi Mwenje, M.P.
Embakasi West Constituency

Jubilee Party

Hon. Rael Chepkemai Kasiwai, M.P.
West Pokot

Kenya Union Party

Hon. Julius Taitumu M'Anaiba, M.P.
Igembe North Constituency

United Democratic Alliance

Hon. Timothy Kipchumba Toroitich, M.P.
Marakwet West Constituency

Independent

Hon. Stanley Muiruri Muthama, M.P.
Lamu West Constituency

Jubilee Party

Hon. Zamzam Mohamed Chimba, M.P.
Mombasa County

Orange Democratic Movement

1.3 Committee Secretariat

6. The Secretariat facilitating the Committee in executing its mandate comprises of:

Ms. Lucy G. Kimathi

Principal Clerk Assistant I/Team Leader

Mr. Abdiaziz Shobay

Clerk Assistant II

Ms. Kafuyai Wamae

Clerk Assistant III

Mr. Abdimalik Ahmed

Clerk Assistant III

Ms. Noel Amutabi

Legal Counsel II

Ms. Winnie Kiziah

Media Relations Officer II

Dr. Joseph K. Waitara

Research Officer III

Mr. Danton Kimutai

Audio Officer III

Mr. Joshua Lenambeti

Sergeant- at- Arms

Ms. Mary Kamande

Public Communications Officer III

2 INTRODUCTION

7. The Committee on Implementation commenced to apprise itself on implementation status of House resolutions according to Standing Order 209 (2) which requires the Committee to scrutinize resolutions of the House (including adopted Committee Reports), Petitions and undertakings given by the National Executive.
8. This report contains the status of the implementation of various House resolutions as submitted by various Ministries, Departments and Agencies between February and April, 2023 as follows:
 - i. Report of the Departmental Committee on Education and Research on Public Petition No. 047 of 2021 regarding the suspension of the Teacher Professional Development (TPD) program;
 - ii. Report by the Departmental Committee on Education and Research on Public Petition regarding the repeal of sections of the Universities Act 2012;
 - iii. The Special Fund Accounts Committee Report on the examination of Audited Financial Statements for Financial years 2013/14 to 2015/16 for the National Government Constituency Development Fund (NG-CDF) for Constituencies in Nairobi County;
 - iv. The Public Investments Committee Report on the Inquiry into the Safety of Ferries as observed in the Audited Accounts for Financial Year 2016/17; and
 - v. Report by the Departmental Committee on Labour and Social Welfare on its consideration of the Petition by the Kenya Association of Retired Officers (KARO) on improved terms for pensioners in Kenya.

IMPLEMENTATION STATUS OF VARIOUS COMMITTEE REPORTS, PETITIONS AND HOUSE RESOLUTIONS

3 THE REPORT OF DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH ON PUBLIC PETITION NO. 047 OF 2021 REGARDING THE SUSPENSION OF TEACHER PROFESSIONAL DEVELOPMENT PROGRAM

3.1 Background

9. The Petition regarding the suspension of Teachers Professional Development (TPD) by the Teachers Service Commission (TSC) was presented by Hon. Omboko Milemba, M.P. on behalf of Mr. Moses Mbora, Mr. Francis Yivo and Mr. Justus Nyakundi. The three were representatives of the Kenya Union of Post Primary Education Teachers (KUPPET) Nairobi Branch.

Recommendations by the Departmental Committee on Education and Research

10. In response to the Petitioners' prayer, the Departmental Committee on Education and Research Committee recommended that:
- i. The Teachers Service Commission suspends the roll-out and implementation of the Teacher Professional Development programme until the following concerns regarding the programme are addressed by the Commission:
 - a. That the Teacher Service Commission should conduct extensive public participation as required under Article 232(1) (d) of the Constitution and consider the views of teachers, teachers' trade unions and other stakeholders with a view of building consensus on the programme; and
 - b. That the sourcing of service providers/institutions/centres to offer the programme should be broadened to ensure even distribution of the centres across the counties for easy access.
 - ii. The Teacher Professional Development programme, being a training initiated by the employer, should be paid for by the Government; and
 - iii. Parliament should enact legislation and pass amendments to Article 237 of the Constitution and the Teachers Service Commission Act, 2012 to remedy the conflict of interest of the Commission being a regulator and an employer and further scrutinize and approve regulations governing Teacher Professional Development program.

3.2 Implementation Status of the Recommendations

11. The Committee on Implementation wrote to the Teachers Service Commission on 19th January, 2023 seeking the implementation status of the report by the Departmental Committee on Education and Research on Public Petition No. 047 of 2021 regarding the suspension of the Teacher Professional Development program.
12. Dr. Nancy Macharia, the Chief Executive Officer of the Teacher Service Commission, appeared before the Committee on 21st February, 2023 to apprise the Committee on the implementation of the recommendations.

She was accompanied by the following officers of the commission:

- | | | | |
|------|----------------------|---|----------------------------|
| i. | Mr. Cavin Anyuor | - | Director Legal Services |
| ii. | Dr. Reuben Ndamburi | - | Director Quality Assurance |
| iii. | Mr. Gabriel Mathenge | - | Director Operations |
| iv. | Ms. Edwin Musundi | - | Legal Officer |

Submission by the Chief Executive Officer

13. Dr. Macharia submitted that a Constitutional Petition No. 24 of 2021 challenging the implementation of TPD by Joseph Ng'ethe Karanja vs TSC and nine others was before the Nakuru Employment and Labour Relations Court. Specifically, she informed the Committee that the petitioner sought *inter alia* the following orders:
 - i. Declaration that, in formulating and seeking to implement TPD, the Commission failed to observe and uphold Articles 10, 41, 47 and 232 of the Constitution;
 - ii. A permanent injunction restraining the Commission from implementing TPD;
 - iii. Declaration that the appointment of the service providers was irregular, illegal, and thus void; and
 - iv. Declaration that Regulation 48 of the Code of Regulations for Teachers (CORT) is unconstitutional.
14. She further informed the Committee that the teachers' unions, the Kenya National Union of Teachers (KNUT) and Kenya Union of Post Primary Teachers (KUPPET) together with the service providers were enjoined as respondents in the suit and filed responses to it. She added that the Committee on Education had considered the Petition and it had made recommendations that TSC suspends the roll-out and implementation of the TPD program until the following concerns regarding the programme are addressed by the Commission:

- i. Conduct extensive public participation as required under Article 232(1) (d) of the Constitution and take into account views of teachers, teacher unions and other stakeholders with a view of building consensus concerning the programme; and
 - ii. Broaden the sourcing of service providers to offer the programme to ensure even distribution of the centres across counties for easy access.
- 15. With regard to the above, the CEO submitted that the TSC had informed the Committee on Education and Research that the matter was *sub judice*, since the issues raised in the Petition were similar in subject to a matter that was pending in court, and which was still active at the time of the submission.
- 16. She informed the Committee that the Commission had appealed against the recommendations by the Committee on Education and Research to the Speaker of the National Assembly.
- 17. Upon this appeal, the Speaker of the National Assembly vide a letter Ref: NA.2/4/2022 (187) dated 20th July 2022 directed that the recommendations of the Committee on Education with respect to the Public Petition No. 47 of 2021 be put in abeyance awaiting the outcome of the Court matter.
- 18. Pursuant to the directive by the Speaker of the National Assembly highlighted above, the Committee on Implementation was informed that the recommendations of the Committee on Education and Research were put in abeyance awaiting the determination of the court case.
- 19. The Court rendered its judgement on 22nd September, 2022 on the matter and made the following findings:
 - a) That the Commission had not breached Articles 10, 41, 47 & 232 of the Constitution in implementing TPD;
 - b) By providing for and implementing TPD, the Commission was simply implementing the provisions of the law under Article 237 of the Constitution, Sections 11 and 35 of the TSC Act and Regulations 41, 48 and 49 of the Code of Regulations for Teachers;
 - c) The appointment of the service providers was appropriately done in accordance with the Public Procurement and Asset Disposal Act; and
 - d) Regulation 48 of CORT does not offend Article 237 of the Constitution and it is therefore constitutional and valid.

To this end, the suit was dismissed in its entirety.

20. Dr. Macharia informed the Committee that as a result of the dismissal of the Petition, the Commission's obligations under the Committee's recommendations were therefore fully discharged. This is because the matters raised in the petition mirrored issues and recommendations in the report by the Departmental Committee on Education and Research.
21. She further submitted that the Commission had received feedback from teachers and other stakeholders and it is in consultation with the Ministry of Education on the use of the existing Teacher Training Colleges as centres for capacity building and professional development programmes for teachers. This is meant to address issues of costs and other logistical challenges the Commission has faced in rolling the programme out.
22. Lastly, the Committee was informed that TSC had gained important insights since the commencement of the programme and that it is committed to working with more institutions to expand accessibility and to lower costs in the next phase of the programme.

Committee Observations

23. Arising from the submissions by the TSC, the Committee observed that the court had pronounced itself on the matter and that the recommendations by the Committee on Education and Research had been fully addressed.

Committee Recommendation

24. **The Committee recommends that the Teachers Service Commission should fast track its engagement with the Ministry of Education and engage with teachers, who are the key stakeholders, in order to lower the cost of the programme and bring more service providers on board so as to improve accessibility.**

4 REPORT OF THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH ON A PETITION REGARDING REPEAL OF SECTIONS OF THE UNIVERSITIES ACT, 2012

4.1 Background

25. Mr. Amos Ndung'u Kamotho presented a Petition to the Clerk of the National Assembly on 5th August, 2021. The petitioner sought to repeal sections 41(1c), (1d) and (1e) of the Universities Act, 2012 in order to replace the Electoral College system with Direct Voting system based on universal suffrage.

26. In response to the petitioner's prayer, the Departmental Committee on Education and Research recommended that:

The Universities Act, 2012 be amended to provide for election to the students' council through election by the students' associations comprising of all students as opposed to electoral colleges by amending Section 41 of the Universities Act, 2012 by:

- i. deleting subsection (1c) which provides for the election of members of the student council through electoral colleges;
- ii. deleting subsection (1d) which provides for the election of three representatives from each electoral college; and
- iii. deleting subsection (1e) which provides for the election of members of the student council by representatives of each electoral college.

27. The Committee on Education also recommended that each university, in consultation with the students' associations of the university, formulates and enacts regulations on good academic standing to govern the conduct of elections; including regulation of campaigns, election financing, offences and penalties.

4.2 Implementation Status of the Recommendations

28. The Committee on Implementation wrote to the Ministry of Education seeking the implementation status of the report on 19th January, 2023.

29. Dr. Beatrice Inyangala, the Principal Secretary, State Department of Higher Education and Research, appeared before the Committee on 21st February, 2023 to apprise the committee of the status of the recommendation. She was accompanied by the following officers from the Ministry of Education:

- i. Mr. Obiero Charles - Deputy Director Higher Education
- ii. Ms. Wamittah Hellen - Principal Higher Education Officer

Submission by the Principal Secretary

30. The Principal Secretary submitted that:

- i. the recommendations by the Departmental Committee on Education and Research were made on 3rd March, 2022;
- ii. At the time of the recommendations, the Universities (Amendment) Bill, 2021 was pending before the National Assembly;
- iii. on 9th June, 2022 (the last sitting of the 12th Parliament) the Speaker of the National Assembly had ruled that the Bill was unconstitutional on several fronts and ordered that it be republished. Thus, the Ministry did not have the opportunity to re-introduce the bill before the lapse of the 12th Parliament;
- iv. She further submitted that, on 30th September, 2022, the President had appointed the Presidential Working Party on Education Reform. The Terms of Reference the taskforce were wide-ranging and included studying all laws governing the tertiary education sub-sector and making recommendations for the review of this legislation with a view to streamlining the effectiveness and efficiency in the sub-sector; and
- v. In this regard, the Ministry presented the report of the Committee on Education and Research to the Presidential Working party. She informed the committee that it was the objective of the ministry to prosecute the Committee on Education and Research's recommendations together with the overall recommendations for law reform that were to be made by the Presidential Working Party on Education Reform.

Committee Observation

31. Arising from the submissions by the Principal Secretary, the Committee observed that the recommendations by the Departmental Committee on Education and Research had not been implemented.

Committee Recommendation

32. **The Committee recommends that the Cabinet Secretary, Ministry of Education, prepares the Universities Act, 2012 (Amendment) Bill and presents it to the House for consideration within 60 days of the adoption of this report by the House.**

5 THE SPECIAL FUND ACCOUNTS COMMITTEE REPORT ON THE EXAMINATION OF AUDITED FINANCIAL STATEMENTS FOR FINANCIAL YEARS 2013/14, 2014/15 AND 2015/16 FOR THE NG-CDF FOR CONSTITUENCIES IN NAIROBI COUNTY

5.1 Background

33. The Special Fund Accounts Committee was one of the three Audit Committees alongside the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) in the 12th Parliament that examined reports of the Auditor-General laid before the National Assembly.
34. The Committee examined audited financial statements for financial years 2013/14, 2014/15 and 2015/16 for the NG-CDF for the following constituencies in Nairobi County: Dagoretti North, Dagoretti South, Embakasi Central, Embakasi East, Embakasi North, Embakasi South, Embakasi West, Kamukunji, Kasarani, Kibra, Lang'ata, Makadara, Mathare, Roysambu, Ruaraka, Starehe and Westlands.
35. The Public Investments Committee made recommendations in its report on the following audit queries:
- 1. Disbursement of funds for the implementation of NG-CDF Projects;**
 - 2. Failure to submit documents during the audit period;**
 - 3. Bursary allocations and disbursement;**
 - 4. Accuracy of financial statements;**
 - 5. The NG-CDF Board adopts and implements Electronic Monitoring and Evaluation Systems and Tools to monitor all projects in the Constituencies and have them linked to the Electronic National Government Monitoring and Evaluation Systems (NIMES);**
 - 6. Un-surrendered imprest;**
 - 7. Transfer of assets and liabilities following split of constituencies;**
 - 8. Support from the National Government Sub-County Treasury in Nairobi City County;**
 - 9. Engagement of Fund Account Managers by the National Government Constituencies Development Fund Board;**
 - 10. Operations of the National Government Constituencies Development Fund Board; and**
 - 11. Investigations by EACC and active matters in court.**

5.2 Implementation Status of the Recommendations

36. The Committee on Implementation wrote to the National Government Constituency Development Fund (NG-CDF) Board on 3rd March, 2023 seeking the implementation status of the recommendations contained in the report.
37. Mr. Yusuf Mbuno, the Chief Executive Officer of the NGCDF Board, appeared before the Committee on 16th March, 2023 to apprise the Committee of the implementation of the recommendations. He was accompanied by the following officers from the NGCDF Board-
- i. Mr. James Chebii - Head of Finance
 - ii. Ms. Christine Mwongolo , - National Program Co-ordinator
 - iii. Ms. Beatrice Otieno - In-charge of Accounts/Field Service

Submission by the Chief Executive Officer

1. Disbursement of funds for the implementation of NG-CDF Projects

Implementation Status

38. Mr. Mbuno, the Chief Executive Officer, submitted that the Board, in liaison with the National Assembly Select Committee on NG-CDF, continually engages the National Treasury for prompt release of funds.

Committee Recommendation

39. **The Committee recommends that the National Treasury should strictly ensure timely release of funds to the NGCDF Board.**

2. Failure to submit documents during audit period

Implementation Status

40. The Chief Executive Officer submitted that the Board issued a directive requiring the Fund Account Managers to maintain project files containing original Bills of Quantities (BQs) drawings, payments certificates and expenditure returns.

Committee Observation

41. Arising from the submission by the Chief Executive Officer, the Committee observed that the recommendation had been implemented.

3. Bursary allocations and disbursement

Implementation Status

42. The Chief Executive Officer submitted that the guidelines on bursary funds had been reviewed and issued to constituencies. This incorporated electronic funds transfers and any other efficient means. Additionally, he informed the Committee that Constituency committees had been guided through a circular to dispatch cheques to institutions through express mail service (EMS) or alternative safest and expeditious means that also remit acknowledgement receipts.

Committee Observation

43. Arising from the submission by the Chief Executive Officer, the Committee observed that the measures put in place by the Board have improved bursary allocations and disbursement. The implementation status is ongoing.

4. Accuracy of financial statements

Implementation Status

44. The Chief Executive Officer submitted that the Board in consultation with the Public Sector Accounting Standards Board (PSASB) undertakes annual training of the Fund Account Managers, Sub-County Accountants and Chairpersons on the financial reporting template. In addition, he said that the Board reviews annual reports and financial statements of constituencies to ensure compliance with the reporting template before submission to the Auditor General.

Committee Observation

45. Arising from the submission by the Chief Executive Officer, the Committee observed that the recommendation had been implemented.

5. The NG-CDF Board adopts and implements Electronic Monitoring and Evaluation Systems and Tools to monitor all projects in the Constituencies and have them linked to the Electronic National Government Monitoring and Evaluation Systems (NIMES).

Implementation Status

46. The Chief Executive Officer submitted that the Board had developed a Monitoring and Evaluation Framework guided by the National Monitoring and Evaluation Policy (2022) which includes provision for linking to NIMES. The Board was in the process of developing an Integrated Geographic Information System (GIS) based Monitoring and Evaluation system.

47. He further submitted that the Board had developed the National Government Constituencies Development Fund Management Information System (NGCDFMIS) capable of online submission and processing of project proposals, automated generation of project code list and tracking implementation at Project Management Committee (PMC) level.
48. This is complemented by a vote-book management system deployed by the National Treasury and customized to NGCDF operations to track financial management in the Fund.

Committee Observation

49. Arising from the submissions, the Committee observed that:
- i. The NG-CDF Board had had put in place appropriate systems to monitor NG-CDF projects in all the 290 Constituencies.
 - ii. The recommendation was adequately implemented.

6. Un-surrendered imprest

Implementation Status

50. The Chief Executive Officer submitted that the Board had put in place mechanisms to ensure imprests are duly surrendered. He informed the Committee that cases of imprest defaulters were continuously identified through the Board's internal audit. He added that recovery is instituted through the payroll and paid back to the respective constituencies.

Committee Observation

51. Arising from the submission, the Committee observed that the recommendation had been implemented.

7. Transfer of assets and liabilities following split of constituencies

Implementation Status

52. The Chief Executive Officer informed the Committee that the Board, in a circular dated 16th April, 2013, guided the constituency committees on how to transfer assets and liabilities between the parent and newly created Constituencies.

Committee Observation

53. Arising from the submission by the Chief Executive Officer, the Committee observed that the recommendation had been implemented.

8. Support from the National Government Sub-County Treasury in Nairobi City County

Implementation Status

54. The Chief Executive Officer informed the Committee that the Board engaged the National Treasury on the matter. This engagement resulted in the National Treasury establishing four National Sub-County treasuries to serve the 17 constituencies in Nairobi County.

Committee Observation

55. Arising from the submission, the Committee observed that the recommendation had been implemented.

9. Engagement of Fund Account Managers by the National Government Constituencies Development Fund Board

Implementation Status

56. In his submission, the Chief Executive Officer informed the Committee that the Board had developed a comprehensive appraisal instrument that ensures Fund Accounts Managers (FAMs) have cleared all the outstanding issues before their employment contracts are renewed. The Board has also recruited substantive Regional Co-ordinators who are responsible for overseeing the handing- over process.

Committee Observation

57. Arising from the submission, the Committee observed that some fund managers were not available in their offices during working hours thus affecting service delivery.

Committee Recommendation

58. **The Committee recommends that the NG-CDF Board should enhance monitoring of the Fund Accounts Managers to enhance service delivery.**

10. Operations of the National Government Constituencies Development Fund Board

Implementation Status

59. The Chief Executive Officer informed the Committee that administratively, the Board had divided the country into ten regions namely; Nairobi, Lower Eastern, Upper Eastern, Central, Coast, North Eastern, South Rift, North Rift , Nyanza and Western.
60. He informed the committee that the Regional Offices are run by Regional Co-ordinators who are the immediate supervisors of Fund Account Managers. The Regional Co-ordinators report to the Chief Manager, Programmes and Field Services Co-ordination in the NG-CDF Board.

Committee Observation

61. Arising from the submissions, the Committee observed that the recommendation had been implemented.

11. Investigations by EACC and active matters in Court

Implementation Status

62. The Chief Executive Officer informed the Committee that the audit queries raised by the Auditor General were either in court or under investigation by the EACC. This matter is within the mandate of the EACC. Additionally, he informed the committee that the Board had taken administrative action against all officers charged in court.

Committee Observation

63. Arising from the submission by the Chief Executive Officer, the Committee observed that the NG-CDF-Board had undertaken administrative action against the implicated officers. The recommendation had been implemented.

6 PUBLIC INVESTMENTS COMMITTEE REPORT ON THE INQUIRY INTO THE SAFETY OF FERRIES AS OBSERVED IN THE AUDITED ACCOUNTS OF KENYA FERRY SERVICES FOR FINANCIAL YEAR 2016/17

6.1 Background

64. The Public Investments Committee examined the report of the Auditor General on the audited accounts of the Kenya Ferry Services for the financial year 2016/17. In its report, the committee made the following recommendations-

- 1. The Kenya Ferry Services should ground MV Harambee until the vessel undergoes dry docking and significant repair followed by inspection before the it can resume operation;**
- 2. The National Treasury should urgently release funds to the Kenya Ferry Services to ensure that ferries operated by the agency undergo urgent repair and maintenance. Funds for ferry repair and maintenance should be ring-fenced in future budgets for the Kenya Ferry Services to ensure availability for scheduled maintenance of the vessels;**
- 3. The Kenya Ports Authority should consider establishing a dry dock facility for the repair and maintenance of maritime vessels including ferries. The facility would ensure competitiveness of the Mombasa port facility, generate income for the Authority and provide cost effective services for maritime operators;**
- 4. All ferries operated by the Kenya Ferry Services should be fitted with necessary safety equipment for use in emergency situations. The ferries should also be fitted with public address system for use to communicate safety matters when the vessels are in use;**
- 5. Board appointees to the Kenya Ferry Services should be competent and qualified individuals to provide effective leadership and strategic direction for the organisation. The Board should ensure that board members are appropriately inducted and that their skills and knowledge are regularly enhanced given the specialised nature of the maritime industry;**
- 6. The Kenya Ferry Services should ensure that key positions such as the Head of Engineering are filled substantively. Succession planning should also be done to ensure that recruitment of a replacement is done to coincide with the departure of the incumbent office holder;**

7. The Ministry of Transport, Infrastructure and Housing and Urban Development should fast track the implementation of infrastructure projects that provide access to the South Coast so as to reduce over-reliance on the ferries operating at the Likoni and Mtongwe channels;
8. The Kenya Maritime Authority (KMA) and Kenya Ferry Services should conduct a public education and safety campaign at the ferry crossings to sensitize the public on maintaining safety while using the ferries;
9. The Kenya Ferry Services should replace the security company that provides security services aboard the ferries because they are negligent in performing their duties; and
10. The Kenya Ferry Services should impose stiff penalties against ferry passengers who fail to adhere to safety regulations while using the ferries. The penalties should be enforced strictly to ensure compliance.

6.2 Implementation status of the recommendations

65. The Committee on Implementation wrote to the Kenya Ferry Services on 10th March, 2023 seeking to establish the implementation status of the report.
66. Capt. William K. Ruto, the Managing Director, Kenya Ports Authority and Kenya Ferry Services, appeared before the Committee on 24th March, 2023 to apprise the Committee on the implementation of the recommendations. He was accompanied by the following officers:
 - i. Mr. Bakari Gowa - Manager, Kenya Ferry Services
 - ii. Mr. Alex Mbui - Representative, Ministry of Roads and Transport
 - iii. Mr. Livingstone Bumbe - Representative, The National Treasury
 - iv. Mr. Turasha Kinyanjui - Kenya Ports Authority

Submission by the Managing Director

1. The Kenya Ferry Services should ground MV Harambee until the vessel undergoes dry docking and significant repair followed by inspection before it can resume operation.

Implementation Status

67. The Managing Director informed the Committee that the MV Harambee had been removed from operations on 1st December 2019 for comprehensive repairs. The construction of dry docking and superstructure had started in December 2020 and it was concluded in August 2021. In addition, the prow lifting system and new hydraulic works started in April 2021 and were concluded in December 2021.

Committee Observation

68. Arising from the submissions by the Managing Director, the Committee observed that the recommendation had been implemented.

- 2. The National Treasury should urgently release funds to the Kenya Ferry Services to ensure ferries operated by the Agency undergo urgent repair and maintenance. Funds for ferry repair and maintenance should be ring-fenced in future budgets for the Kenya Ferry Services to ensure availability for scheduled maintenance of vessels.**

Implementation Status

69. In his submission, the Managing Director presented a schedule of funds disbursed by the government in financial years 2018/19 to 2020/2021 as follows:

Period	New ferries	Ferry rehabilitation
2018/2019	150,000,000	200,000,000
2019/2020	127,000,000	370,000,000
2020/2021	128,000,000	200,000,000
Total	405,000,000	770,000,000

70. He further informed the Committee that the government had merged KPA and KFS in June 2021 partly to ensure ferry services are well resourced and to improve the safety of vessels.

Committee Observation

71. Arising from the submissions of the Managing Director, the Committee observed that the recommendation had been implemented.

- 3. The Kenya Ports Authority should consider establishing a dry dock facility for the repair and maintenance of maritime vessels including ferries. The facility would ensure competitiveness of the Mombasa port facility, generate income for the Authority and provide cost effective services to maritime operators.**

Implementation Status

72. The Managing Director submitted that the Government had established Kenya Shipyard Limited in August 2020 with a mandate to construct, refit, convert, repair and maintain marine vessels among other services.

Committee Observation

73. Arising from the submission of the Managing Director, the Committee noted that the recommendation had been implemented.

- 4. All ferries operated by the Kenya Ferry Services should be fitted with necessary safety equipment to be used in case of emergency. The ferries should also be fitted with public address system for to be used to communicate safety matters when the vessels are in use.**

Implementation Status

74. The Managing Director informed the Committee that the ferries are equipped with life-saving equipment on board (rigid life rafts, safety life jackets and life buoys) as established by Safety of Life at Sea Regulations (SOLAS).
75. Additionally, he added that all ferries are fitted with public address systems which are used to disseminate information and safety matters on board and they are routinely maintained to ensure functionality.

Committee Observation

76. Arising from the submission by the Managing Director, the Committee observed that the recommendation had been implemented.

- 5. Board appointees to the Kenya Ferry Services should be competent and qualified individuals to provide effective leadership and strategic direction for the organisation. The Board should ensure that Board members are appropriately inducted and that their skills and knowledge are regularly enhanced given the specialised nature of the maritime industry.**

Implementation Status

77. The Managing Director submitted that the last appointment of the board by the Government on 7th August, 2020 comprised of the following three members with background and experience in the marine industry:
- i. Mr. Salim Chingabwi, who had worked for KPA at the level of General Manager for over 30 years was appointed Chairperson;
 - ii. Julius Seger, who was a Director of Maritime as a Ministry of Transport representative; and

- iii. Mr. Mohamed Amin Sheikh, a marine expert who has also worked at KPA among other organisations in the marine industry.

Committee Observation

78. Arising from the submission, the Committee noted that the board had experts with diverse backgrounds and experience, specifically in maritime. The recommendation had been implemented.

- 6. Kenya Ferry Services should ensure that key positions such as the Head of Engineering are filled substantively. Succession planning should be done to ensure that recruitment of a replacement is done to coincide with the departure of the incumbent office holder.**

Implementation status

79. The Managing Director informed the committee that the position of Manager, Ferry Maintenance was substantively filled up on the completion of the merger of KPA and KFS and the restructuring process in April 2022. The delay had been occasioned by the merger process. Further, he informed the Committee that a succession plan had been put in place in line with the recommendation of the Committee.

Committee Observation

80. Arising from the submission, the Committee noted that the recommendation had been implemented.

- 7. The Ministry of Transport, Infrastructure and Housing and Urban Development should fast track the implementation of infrastructure projects that provide access to the South Coast so as to reduce over-reliance on the ferries operating at the Likoni and Mtongwe channels.**

Implementation Status

81. The Managing Director submitted that the construction of the Dongo Kundu bypass, a road linking Mombasa West mainland to the South Coast, was at an advanced stage towards completion.

Committee Observation

82. Arising from the submission, the Committee observed that the implementation of the recommendation was on-going.

- 8. Kenya Maritime Authority (KMA) and Kenya Ferry Services should conduct a public education and safety campaign at the ferry crossings to sensitize the public about maintaining safety when using the ferries.**

Implementation Status

83. The Managing Director submitted that safety sensitisation is regularly done by the KMA and ferry customer services team. At the time of the submission, the last exercise of the programme had been conducted in December 2022.

Committee Observation

84. Arising from the submission, the Committee noted that the recommendation had been implemented.

9. Kenya Ferry Services should replace the security company that provides security services aboard the ferries because they are negligent in performing their duties.

Implementation Status

85. The Managing Director informed the committee that the Guard Force Security Company Group had exited on the 31st December, 2019 and Ismax Security Company started offering services on 1st January, 2020.

Committee Observation

86. Arising from the submission by the Managing Director, the Committee observed that the recommendation had been implemented.

10. The Kenya Ferry Services should impose stiff penalties against ferry passengers who fail to adhere to safety regulations while using the ferries. The penalties should be enforced strictly to ensure compliance.

Implementation Status

87. The Managing Director submitted that a multi-agency team comprising of the Kenya Coast Guards Service, the National Police Service and the Mombasa County Inspectorate assists the ferry security team on enforcement. Additionally, those who violate ferry regulations are booked and taken to court for various offences as provided for by the Kenya Penal Code.
88. He further submitted the following information concerning various offences that had taken place between January and August, 2023 and actions taken against each offender-

INCIDENT	NATURE OF OCCURRENCE	REMARKS
Assault Onboard vessel MV Harambee 13-01-2023	Use of obscene gender language against staff by a motorist and a Tuk Tuk driver.	Suspects taken to FPS OB no. 02/13/01/2023

Assault Island and ramp area respectively 30-01-2023	Outsourced security personnel assaulted (torn uniform) by pedestrians who forced their way against designated access points.	Suspects taken to FPS OB no. 39/30/01/2023
Violation of procedures 01-02-2023	Cycling in prohibited area	Bicycle taken to FPS after abandonment by the suspect OB 40/01/02/2023
Incitement Island screening shade 05-02-2023	Suspect became unruly after being denied access against procedure	Suspect taken to FPS OB no. 23/05/05/2023
Drowning Island ramp 10-02-2023	An elderly man identified as Juma Mwakiranze accidentally slipped into the Indian ocean shortly after disembarking from MV Kwale.	Rescued by security personnel (Crowd Control) Escorted home by his relative after it was established, he was in good condition.
Breach of procedure Island ramp 15-02-2023	One Martin Ngumbao staff C/N 563092 violated segregation procedure	Suspect taken to FPS OB no. 46/15/02/2023
Breach of procedure Mainland ramp 03-03-2023	Motorist Raphael Munyao driving Mini-bus reg. no. KDE 769X defied boarding procedure order from the ramp controller	Taken to FPS and given a stern warning.
Breach of procedure Mainland ramp 05-03-2023	Motorist Caroline Wausi driving saloon vehicle reg. no. KDG 265D defied boarding procedure order from the ramp controller	Suspect taken to FPS OB no. 12/05/03/2023

Non-payment of toll charges Island ramp 08-03-2023	Joseph Ochieng, Tuk Tuk driver drove past toll booth area without payment of ferry toll charges	Suspect taken to FPS OB no. 48/08/03/2023 Fine of Kshs3000 was imposed
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Tabulated data on offences done by ferry passengers who fail to adhere to ferry safety regulations and actions taken by KFS against these individual offences.

Inspection Visit to Likoni Ferry

89. Arising from the submissions made by the Managing Director of Kenya Ports Authority, the Committee resolved to undertake an inspection visit to Likoni. The Committee undertook the inspection visit on 24th March, 2023.
90. The objectives of the visit were:
 - i. to physically ascertain the completion status of the recommendations by the Public Investments Committee such as the grounding and repair of MV Harambee and the establishment of a dry dock facility; and
 - ii. to apprise itself of the current status of the ferries.



Members of the Committee on Implementation during an inspection visit to the Likoni Ferry on 24th March, 2023.



Likoni Ferry passengers holding area.

Committee Observations

91. Arising from the inspection visit, the committee observed that:
- i. the ferries are equipped with life-saving equipment on board (rigid life rafts, safety life jackets and life buoys);
 - ii. all ferries are fitted with public address systems which are used to disseminate information and safety matters on board and are routinely maintained to ensure functionality;
 - iii. there is a holding area and adequate security measures have been put in place; and
 - iv. the recommendation had been implemented.

7. REPORT OF DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE CONSIDERATION OF THE PETITION BY THE KENYA ASSOCIATION OF RETIRED OFFICERS ON IMPROVED TERMS FOR PENSIONERS IN KENYA

7.1 Background

92. The Petition regarding the improvement of terms for pensioners was presented by the Kenya Association of Retired Officers (KARO) and considered by the Labour and Social Welfare Committee.
93. The Association is a duly registered association working towards better and improved terms and conditions for pensioners in Kenya, submitted a petition which was tendered on behalf of over 200,000 Government pensioners in the country.
94. The petitioners claimed that majority of the pensioners, especially those who retired before 2003, live in abject poverty and are unable to meet their monthly upkeep, food, clothing and medical expenses and that they have for long been neglected due to the perception that they are economically unproductive.
95. The petitioners prayed that the House intervenes through the implementation of the Salaries and Remuneration Commission (SRC) Pension Increase Policy of 2015, amendment of the Pensions Act Cap. 189 and the Pensions Increase Act Cap.190 of the Laws of Kenya.
96. Additionally, they also prayed for the provision of free and comprehensive healthcare for pensioners as well as the development and implementation of a comprehensive pension policy for the public service in Kenya.
97. The Departmental Committee on Labour and Social Welfare considered the Petition and made the following recommendations:
- 1. The Cabinet Secretary for National Treasury and Economic Planning should fast track the ongoing process on the development of National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country;**
 - 2. The Cabinet Secretary for National Treasury and Economic Planning should initiate the comprehensive review/repeal of the Pensions Act, Cap 189 and the Pensions Increase Act, Cap 190 to align them with the provisions of the constitution of Kenya 2010 and enable it to conform to the realities of the day. The review should in particular consider the issue of frequency of review of pension,**

minimum payable pension and the need for consideration of the cost-of-living adjustment;

3. The Cabinet Secretary for Health in consultation with the National Treasury should fast track the implementation of the post-retirement medical scheme to cater for the health needs of the pensioners, in the interim and in cognizance of the current risks enhanced by the COVID-19 situation, to cushion current pensioners from the burden of disease, it is recommended that pensioners drawing less than KShs.5,000 in monthly pension be granted free access to comprehensive healthcare services at all public health institutions country wide. All pensioners are granted subsidies to make premiums affordable to those who opt to purchase insurance cover under NHIF;
4. The Cabinet Secretary for the National Treasury and Economic Planning should implement the recommendations of the SRC on pensions increase policy as contained in the Public Sector Remuneration and Benefits Policy 2015, launched by His Excellency the President in June 2015 and submitted to the National Treasury for implementation. This should be executed in an equitable manner so as to ensure it does not perpetuate further disparity;
5. The Cabinet Secretary for Labour in consultation with the National Treasury should include Government pensioners currently earning less than KShs. 4,000 in monthly pension in the next listing of beneficiaries of the cash transfer for the elderly as a stop gap measure pending review to reflect the current cost of living; and
6. The Cabinet Secretary for the National Treasury and Economic Planning should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) to manage and administer pensions and with a wider mandate of developing and implementing the pension policy for the public service that would address issues of fairness, adequacy, affordability, and sustainability of pension benefits. In line with the International Labour Organization (ILO) recognition of pensions as a form of social security, the Government should in the long run consider domiciling the management of the retirement benefits sector under the state department for social protection together with other social protection initiatives.

7.2 Implementation Status of the Recommendations

98. The Committee on Implementation wrote to the Cabinet Secretary National Treasury and Economic Planning on 15th March, 2023 seeking to find out the implementation status.
99. Prof. Njuguna Ndung'u, the Cabinet Secretary for National Treasury and Economic Planning appeared before the Committee on 6th April, 2023 to apprise the Committee of the status of the recommendations. He was accompanied by the following officers from the National Treasury:
- i) Mr. Michael Ndichu - Director Pensions
 - ii) CPA Isabella Kogei - Parliamentary Liaison Unit
100. The Kenya Association of Retired Workers were represented by the following:
- i) Mr. Joseph Kinyua - Kenya Association of Retired Workers
 - ii) Ms. Monica Kilonzo - Kenya Association of Retired Workers
 - iii) Ms. Beatrice Mwaniki - Kenya Association of Retired Workers
 - iv) Mr. John Wachira - Kenya Association of Retired Workers
 - v) Mr. Boniface Makau - Kenya Association of Retired Workers
 - vi) Mr. Ahmed Hussein - Kenya Association of Retired Workers

Submission by the Cabinet Secretary

- 1. The Cabinet Secretary for National Treasury and Economic Planning should fast track the ongoing process of the development of National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country.**
101. The Cabinet Secretary submitted that the National Treasury and Economic Planning had accelerated the momentum to finalise the National Retirement Benefits Policy. Additionally, the National Treasury has retained a consultant who continues to work with the multi-agency team under the co-ordination of the National Treasury. He informed the Committee that a final stakeholder's forum was planned in the fourth quarter of the FY 2022/2023 whereupon a Cabinet memorandum would be drawn and submitted to the Cabinet before 30th June 2023.
102. He further submitted that the National Treasury was developing a policy that addresses key areas of concern that included:
- i. **The pension structure and legal framework:** The policy provides for a comprehensive pension system framework that follows a structure that recognizes

the different levels of needs, utilises various sources of funding and reflects the various roles of stakeholders. In addition, he informed the committee that the policy proposes a harmonized pension legal and regulatory framework;

- ii. **Pension coverage:** The policy aims to broaden pension coverage in both formal and informal sectors to enhance social protection for all citizens;
- iii. **Consumer protection:** The policy provides for mechanisms of consumer protection of members and beneficiaries of pension schemes and stakeholders;
- iv. **Transferability and Portability of Retirement Benefits:** The policy recognizes the portability of accrued benefits to another retirement savings arrangement in the country, East African Community (EAC) countries and in other countries with bilateral arrangements with Kenya;
- v. **Administration and Management of pension funds:** The policy advocates for innovative ways to optimize administrative costs in relation to returns in order to grow members' pension savings;
- vi. **Annuities and Income Drawdown:** The policy promotes the development of the market for annuities and income drawdown in Kenya;
- vii. **Indexation:** The policy promotes indexation of pension benefits in order to avoid erosion of retirement benefits; and
- viii. **Mutual recognition:** The policy encourages pension supervisors to practice mutual recognition of service providers and share information pertaining to registration to allow pension players registered in one EAC Partner State to operate in another Partner State and other countries with bilateral arrangement with Kenya.

Committee Observation

103. Arising from the submission made by the Cabinet Secretary, the Committee observed that the current National Retirement Benefits Policy, which is aimed to provide a framework on the management of retirement benefits in the country, is under development. For this reason, the Committee concluded that the implementation of the recommendation is on-going.

Committee Recommendation

104. **The Committee recommends that the National Treasury should fast track the development process of the National Retirement Benefits Policy and to submit a progress report on its development to the National Treasury within 60 days of the adoption of this report by the House.**

2. **The Cabinet Secretary for National Treasury and Economic Planning should initiate the Comprehensive review/repeal of the Pensions Act, Cap 189 and the Pensions Increase Act, Cap 190 to align them with the provisions of the constitution of Kenya, 2010 and enable it to conform to the realities of the day. The review should in particular consider the issue of the frequency of review of pension, minimum payable pension and the need for the consideration of the cost-of-living adjustment.**

Implementation Status

105. The Cabinet Secretary informed the Committee that a review of the public service pension laws had commenced under the banner of the Transformation of the Public Service Pension Ecosystem initiative of the National Treasury and Economic Planning. The initiative has four thematic areas, one of which is to review the public pension legal framework to be in accord with the Constitution of Kenya, 2010.
106. He submitted that in the preliminary analysis, the team had considered the gaps in the following key laws and regulations relating to the administration of public service pensions:
- i) Pension Act Cap.189;
 - ii) Pensions Increase Act Cap.190;
 - iii) Widows' and Children's Pensions Act Cap.195;
 - iv) Parliamentary Pensions Act Cap.196; and
 - v) Kenya Defence Forces (Pensions and Gratuities) Regulations 2017.
107. The Cabinet Secretary further submitted that under The Pensions Act (Cap 189) several gaps had been highlighted for consideration to amend including:
- i. The provisions of Sections 3, 5, 14 & 15 which bestow enormous powers on the Government and the President (delegated to the Secretary, Pensions) to among other things, determine whether or not an employee should get his/her pension, gratuity or other benefit at all or in the event of bankruptcy or insolvency, imprisonment among others;
 - ii. The provision under section 5 (3) stipulates that the benefits vest fully in the officer and become payable after completion of five years of pensionable service. This period is long and limits a member's rights to pension. The general provision in Kenya, covered under the Retirement Benefits Act, is for benefits to vest immediately when an employee becomes a member of a scheme; and

- iii. The current Constitution of Kenya provides that any modifications to the Public Service Pension Scheme benefits should not take away accrued benefits. This does limit the ability to reform the current system for existing staff.

Committee Observation

108. Arising from the submission, the Committee observed that the National Treasury was in the process of reviewing various pension laws aimed at filling identified gaps. The implementation of the recommendation is on-going.

Committee Recommendation

109. **The Committee recommends that the Cabinet Secretary, National Treasury and Economic Planning should prepare the amendments or Bills within a reasonable time and present them to the House for consideration.**

- 3. The Cabinet Secretary for Health in consultation with the National Treasury should fast track the implementation of the post-retirement medical scheme to cater for the health needs of the pensioners in the interim and in cognizance of the current risks enhanced by the COVID-19 situation, to cushion current pensioners from the burden of disease. It is recommended that pensioners drawing less than KShs.5,000 in monthly pension be granted free access to comprehensive healthcare services at all public health institutions country wide. All pensioners should also be granted subsidies to make premiums affordable to those who opt to purchase insurance cover under NHIF.**

110. The Cabinet Secretary informed the Committee that his Ministry was working closely with the State Department of Public Service in implementing this resolution. Additionally, a draft Post-Retirement Medical Policy had been prepared and public participation conducted with a number of stakeholders including the Kenya Association of Retired Officers.
111. He further submitted that the Ministry of Health had been looped in through the NHIF, with a consultative forum planned in the second week of April, 2023. He informed the Committee that a joint Cabinet Memo would be submitted to the Cabinet for consideration.

Committee Observation

112. Arising from the submission, the Committee observed that the implementation of the recommendation was going on.

Committee Recommendation

113. The Committee recommends that the National Treasury and Economic Planning and the Ministry of Health should conclude the development of the Post-Retirement Medical Policy and report the progress within 60 days of the adoption of the report by the House.

4. The Cabinet Secretary for the National Treasury and Economic Planning should implement the recommendations of the SRC on pensions increase policy as contained in the Public Sector Remuneration and Benefits Policy 2015, launched by His Excellency the President in June 2015 and submitted to the National Treasury for implementation. This should be executed in an equitable manner so as to ensure it does not perpetuate further disparity.

Implementation Status

114. The Cabinet Secretary informed the Committee that at the time of the submission, the monthly pension paid to pensioners and their dependants was subject to a biennial increase at the rate of three (3) percent as per the Financial Act No. 9 of 2007, which was implemented with effect from 1st July 2007. In order to implement the SRC recommendations, it was necessary to undertake an actuarial review to evaluate the fiscal burden of the recommendations. Thus, the actuarial study would be factored in the F/Y 2023/2024.

Committee Observation

115. Arising from the submission by the Cabinet Secretary, the Committee observed that the recommendation had not been implemented pending the actuarial review to be done in the F/Y 2023/2024.

Committee Recommendation

116. The committee recommends that the Cabinet Secretary, National Treasury and Economic Planning should implement the recommendations of the Salaries and Remuneration Commission within 60 days of the adoption of the report by the House.

5. The Cabinet Secretary for Labour in consultation with the National Treasury should include Government pensioners currently earning less than KShs. 4,000 in monthly pension in the next listing of beneficiaries of the cash transfer for the elderly as a stop gap measure pending review to reflect the current cost of living.

Implementation Status

117. The Cabinet Secretary informed the Committee that he had shared the list of 977 Government pensioners, earning less than KShs. 4,000 monthly pension at the time of the submission, with the Ministry of Labour for further action.

Committee Observation

118. Arising from the submission made by the Cabinet Secretary, the National Treasury, the Committee observed that the recommendation had been implemented.

Committee Recommendation

119. **The Committee recommends that the Cabinet Secretary, Ministry of Labour and Social Protection should provide a status report on the payment of the 977 pensioners within 60 days of the adoption of the report by the House.**
6. **The Cabinet Secretary for the National Treasury and Economic Planning should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) to manage and administer pensions and with a wider mandate of developing and implementing the pension policy for the public service that would address issues of fairness, adequacy, affordability and sustainability of pension benefits. In line with the International Labour Organization (ILO) recognition of pensions as a form of social security, the Government should in the long run consider domiciling the management of the retirement benefits sector under the state department for social protection together with other social protection initiatives.**

Implementation Status

120. The Cabinet Secretary submitted that as part of the reforms in the Public Service Pensions' Sector, on 1st January 2021, the Government implemented the Public Service Superannuation Scheme Act, 2012 establishing the Public Service Superannuation Scheme (PSSS). The scheme is contributory, where employees contribute up to 7.5 percent of their monthly basic salary to the pension. This is graduated at the following rates: Two percent in the first year; Five percent in the second year and 7.5 percent in the third year. The Government contributes 15 percent of the employee's basic salary to the pension scheme.
121. He further informed the Committee that this lessens the pension burden on the Government while guaranteeing sustainability. He added that the National Treasury Administration ensures efficiency through automation as opposed to the creation of new institutions. He submitted that the National Treasury and Economic Planning is

determined to ensure that employers must remit pension obligations in a timely manner for the benefit of pensioners.

Committee Observation

122. Arising from the submission, the Committee noted that the Pensions Department had not been transformed into a Semi-Autonomous Agency (SAGA). However, the National Treasury had automated its processes to enhance efficiency and effectiveness. As such; the implementation of the recommendation is going on.

8. COMMITTEE'S GENERAL OBSERVATIONS

In consideration of the implementation status of House resolutions pursuant to its mandate under Standing Order 209 of the National Assembly Standing Orders, the Committee made the following general observations:

1. Implementation of majority of the House Resolutions passed require financial obligations for adequate implementation to be carried out by the executive. There is a need for the timely appropriation of funds to various agencies so as to ensure House Resolutions are implemented within the required timeframe;
2. There was no adequate budget allocated to the ministries, departments and agencies to implement some of the recommendations; and
3. There is a need for committee recommendations to be specific, measurable, achievable, realistic and time-bound (SMART) so as to facilitate smoother implementation of House resolutions.

9. COMMITTEES' GENERAL RECOMMENDATIONS

Following the general observations, the Committee makes the following general recommendations:

1. The National Treasury should ensure appropriations of funds for the implementation of House resolutions are done within one financial year following the adoption of a House resolution for the public to derive the intended benefits. Further, The National Assembly should allocate sufficient funds to the implementing agencies for effective implementation of reports passed by the House; and
2. Government Agencies and Departments are directed to implement House Resolutions should endeavour to fit the resolutions in their work plans and deliver the same within the stipulated time frame. Failure to do so, sanctions should be imposed against the responsible officials.

Signed.....

For. Bitta

HON. RAPHAEL BITTA SAUTI WANJALA, M.P
(CHAIRPERSON)

Date.....

25th October 2023

ANNEXTURE 1

ADOPTION LIST

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

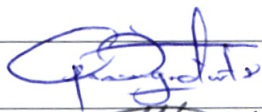
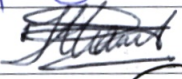
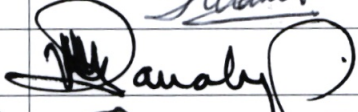
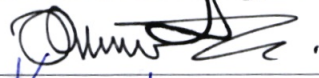
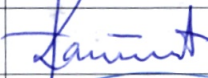
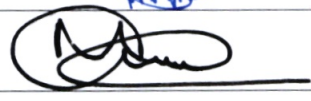
COMMITTEE ON IMPLEMENTATION

Adoption Schedule

FIRST REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

We, the undersigned Members of the Committee on Implementation, have pursuant to Standing Order 199 adopted today, Tuesday, 24th October, 2023, and do hereby affix our signatures to this FIRST REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE to affirm our approval and confirm its accuracy, validity, and authenticity: -

NO.	NAME	SIGNATURE
1.	The Hon. Raphael Bitta Sauti Wanjala, M.P - Chairperson	
2.	The Hon. Rose Museo Mumo,, M.P - Vice Chairperson	
3.	The Hon. Mohamed, Ali, M.P	
4.	The Hon. Elijah Memusi Kachory, M.P	
5.	The Hon. Johnson Many Naicca, M.P	
6.	The Hon. Hilary Arap Kosgei, M.P	
7.	The Hon. George Koimburi Ndung'u, M.P	
8.	The Hon. Nicholas Ng'ikor Nixon Ngikilong, M.P	
9.	The Hon. Charles Gumini Gimose, M.P	
10.	The Hon. Prof Guyo Waqo Jaldesa, M.P	
11.	The Hon. Siyoi Lillian, M.P	

12.	The Hon. Abdul Ebrahim Haro, M.P	
13.	The Hon. Cynthia Jepkosgei Muge, M.P	
14.	The Hon. Julius Taitumu M'Anaiba, M.P	
15.	The Hon. John Okwisia Makali , M.P	
16.	The Hon. Timothy Kipchumba Toroitich, M.P	
17.	The Hon. Hamisi Kakuta Maimai, M.P	
18.	The Hon. Stanley Muiruri Muthama, M.P	
19.	The Hon. Mark Samuel Muriithi Mwenje,, M.P	
20.	The Hon. Zamzam Mohamed Chimba, M.P	
21.	The Hon. Rael Chepkemoui Kasiwai, M.P	

ANNEXTURE 2

MINUTES

MINUTES OF THE FORTY SECOND (42ND) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON WEDNESDAY, 30TH AUGUST, 2023 IN MASHUA CONFERENCE ROOM, SERENA BEACH HOTEL, MOMBASA COUNTY AT 2:00PM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | - Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | - Vice Chairperson |
| 3. The Hon. Elijah Memusi Kanchory, M.P | |
| 4. The Hon. Hilary Arap Kosgei, M.P | |
| 5. The Hon. George Koimburu Ndung'u, M.P | |
| 6. The Hon. Charles Gumini Gimose, M.P | |
| 7. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 8. The Hon. Siyoi Lillian, M.P | |
| 9. The Hon. Abdul Ebrahim Haro, M.P | |
| 10. The Hon. Cynthia Jepkosgei Muge, M.P | |
| 11. The Hon. Julius Taitumu M'Anaiba, M.P | |
| 12. The Hon. John Okwisia Makali, M.P | |
| 13. The Hon. Timothy Kipchumba Toroitich, M.P | |
| 14. The Hon. Hamisi Kakuta Maimai, M.P | |
| 15. The Hon. Stanley Muiruri Muthama, M.P | |
| 16. The Hon. Mark Samuel Muriithi Mwenje, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
3. The Hon. Johnson Many Naicca, M.P
4. The Hon. Rael Chepkemai Kasiwai, M.P
5. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|---------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assistant I/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Dr. Kuria Waitara | - | Research Officer III |
| 6. Mr. Danton Kimutai | - | Audio Officer III |
| 7. Mr. Joshua Lenambeti | - | Sergeant at Arms |

MIN. NO.NA/DAAOSC/COI/2023/224:

PRELIMINARIES.

The Chairperson called the meeting to order at 2:10pm. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Abdul Ebrahim Haro, M.P and seconded by the Hon John Okwisia Makali, M.P.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Consideration and adoption of the Second Omnibus Report on Implementation Status of Inquiries, Petitions and Resolutions passed by the House.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/225:

CONFIRMATION OF MINUTES.

The Agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/226:

THE PUBLIC INVESTMENT COMMITTEE, 24TH REPORT ON CONSIDERATION OF THE AUDITOR GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS OF KENYA NATIONAL BUREAU OF STATISTICS. (FY 2011/12 TO 2017/18)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Kenya National Bureau of Statistics for (FY 2011/12 to 2017/18), having been proposed and seconded by The Hon. Stanley Muiruri Muthama, M.P and The Hon. Rose Museo Mumo, M.P, respectively.

The Committee made the following Observation, Recommendation & Resolution:

Committee Observation

- i) Arising from the submissions by the Chief Executive Officer, Kenyatta National Bureau of Statistics it was observed that the implementation status is still on-going;
- ii) The Committee observed that the Bureau has been recovering outstanding imprest from employee's monthly basis through payroll and some recoveries by cash payments. The total outstanding imprest over seven days as at 25th May 2023 is Kshs 7,142,817. Issuance of multiple imprests has been stopped. The implementation of the recommendation is on-going.
- iii) KNBS submitted a sample assets register. The total book value of assets owned by KNBS is Kshs. 168,000,000 as per December 2022;
- iv) The Committee also noted that the Bureau has requested for indenting letter and allotment from the Director of Land Administration to facilitate the acquisition of Registry Index Map (RIM) for the purpose of registration of lease. The submission was satisfactory.
- v) The Committee observed that the presented letter of reprimand was unsatisfactory. The said accounting officer is no longer an employee of KNBS since he is currently in a different state agency.

Committee Recommendation

- i) The Principal Secretary for Interior should assist in recovering pending imprests, prioritizing efforts to collect from serving officers or through terminal dues for those who exited the service. The National Treasury should only consider writing off unaccounted imprests as a last resort.
- ii) KNBS should diligently maintain and update its asset register to ensure accurate records of its assets.
- iii) The accounting officer for KNBS should persistently engage the Ministry of Lands to secure the title deed for the Embu land.
- iv) KNBS should rigorously implement cashless transactions, such as using Mpesa, for all payments to village elders and maintain comprehensive attendance registers for such activities;
- v) The Inspector General of Police must promptly and comprehensively account for funds advanced to the Police Service, and a detailed report should be prepared during the next audit cycle;
- vi) The Committee recommended that KNBS should write another reprimand letter with clear terms as envisaged in the law to the affected officer;
- vii) The Kenya National Bureau of Statistics (KNBS) should fully comply with the recommendation regarding the use of MPESA to send cash in the future. Additionally, it is crucial for them to establish a well-maintained attendance register and provide an MPESA statement to support these actions.

Committee Resolution

The Committee resolved to include this report in its Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/227:

THE PUBLIC INVESTMENT
COMMITTEE, 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL REPORTS ON THE
FINANCIAL STATEMENTS OF
STATE CORPORATIONS OF
NORTHERN WATER SERVICE
BOARD (FYS 2011/12 TO 2017/18)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Northern Water Services Board (FYS 2011/12 to 2017/18, having been proposed and seconded by The Hon. Hilary Arap Kosgei, M.P and The Hon. Abdul Ebrahim Haro, M.P, respectively

The Committee made the following Observation, Recommendation & Resolution:

Committee Observation

- i) Based on the submissions by the Ag. Chief Executive Officer, Northern Water Service Board, the Committee noted that the recommendations on the transfer of the two motor vehicles by the Ministry of Water to the Authority have not been implemented.
- ii) Further, the Agency needs to address its pending issues to fully comply with the Committee's recommendations and improve its overall operations.

Committee Recommendation

- i) The Committee recommends that the Parent Ministry should expedite the transfer of two motor vehicles, Reg. No. GK A 741L and GK A999J, to the North Water and Services Board in accordance with the previous recommendation.
- ii) The Committee advises that the Northern Water Services Board should continue its efforts to collect arrears from County Governments and water bodies as a matter of urgency, emphasizing that these arrears are a top priority at the start of each new financial year.

Committee Resolution

The Committee resolved to include this report in the Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/228:

THE PUBLIC INVESTMENT
COMMITTEE, 23RD REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL REPORTS ON THE
FINANCIAL STATEMENTS OF
STATE CORPORATIONS OF TANA
AND ATHI RIVERS DEVELOPMENT
AUTHORITY (TARDA) (FY 2014/15
TO 2017/18)

The Committee considered and adopted the Public Investment Committee's 23rd Report on Consideration of the Auditor General's Reports on Financial Statements of Tana and Athi Rivers Development Authority, having been proposed and seconded by The Hon. Hamisi Kakuta Maimai, M.P and The Hon. Elijah Memusi Kanchory, M.P, respectively

The Committee made the following Observation & Recommendation:

Committee Observation

- i) The Committee observed that the recommendations has not been implemented by TARDA including significant financial matters and property ownership issues.
- ii) The Committee also observed that the Authority has not yet completed the process the process of developing a policy on revaluation of depreciated assets.

Committee Recommendation

- i) KENGEN should pay TARDA Ksh 533 million p.a as per Price Water House Coopers report or Ksh 420 million p.a as per the ISG recommendation.
- ii) The Authority should complete the process of developing a policy on revaluation of fully depreciated assets and revalue the assets to avoid recurrence of the audit query.
- iii) The Inspectorate of State Corporations should be enjoined in the recovery of the assets from the former Managing Director's terminal dues.

Committee Resolution

The Committee resolved to include this report in the Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/229:

THE PUBLIC INVESTMENT
COMMITTEE, 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL REPORTS ON THE
FINANCIAL STATEMENTS OF
STATE CORPORATIONS OF RURAL
ELECTRIFICATION AND
RENEWABLE ENERGY
CORPORATION (REREC FY
2006/2007 TO FY 2019/2020)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Rural Electrification and Renewable Energy (REREC) for FY 2006/2007 to FY 2019/2020, having been proposed and seconded by The Hon. Timothy Kipchumba Toroitich, M.P and The Hon. Charles Gumini Gimose, M.P, respectively

Committee Observation and Resolution

- i) The Committee observed that the Agency has adhered to the current policy guidelines from the Attorney General on payment of sitting allowances, and that the recommendation has been implemented; and
- ii) The Committee also observed that the recommendation directed at EACC to investigate the entire procurement of the poles has not been implemented.

Committee Recommendations

Arising from the submissions by the Chief Executive Officer, the Committee was satisfied with the explanation by Rural Electrification and Renewable Energy Corporation (REREC), noting that the agency has made progress in implementing the recommendations further, which the Committee resolved to include in its Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/230:

THE PUBLIC INVESTMENT
COMMITTEE, 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL REPORTS ON THE
FINANCIAL STATEMENTS OF
STATE CORPORATIONS OF
NATIONAL HOUSING
CORPORATION (NHC FY 2012/13 TO
FY 2016/17)

The Committee considered the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of National Housing Corporation (NHC FY 2012/13 to FY 2016/17. Arising from the submissions by the Managing Director, National

Housing Corporation (NHC) the Committee observed that the recommendations by the Public Investments Committee has not been implemented.

Committee Resolution

The Committee resolved to exclude this report from the Second Omnibus Report as it was awaiting inspection visits related to the proposed Changamwe infill Phase II and the proposed Langata Housing Scheme in order to make informed recommendations based on the ground assessments.

MIN. NO.NA/DAAOSC/COI/2023/231:

ANY OTHER BUSSINESS

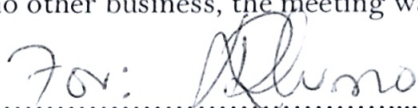
No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/232:

ADJOURNMENT

There being no other business, the meeting was adjourned at three o'clock.

Signed.....

For: 

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

25th October 2023

MINUTES OF THE FORTY-FIRST (41st) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON WEDNESDAY, 30TH AUGUST, 2023 IN MASHUA CONFERENCE ROOM, SERENA BEACH HOTEL, MOMBASA COUNTY AT 9:30AM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | - Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | - Vice Chairperson |
| 3. The Hon. Elijah Memusi Kanchory, M.P | |
| 4. The Hon. Hilary Arap Kosgei, M.P | |
| 5. The Hon. George Koimhuri Ndung'u, M.P | |
| 6. The Hon. Charles Gumini Gimose, M.P | |
| 7. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 8. The Hon. Siyoi Lillian, M.P | |
| 9. The Hon. Abdul Ebrahim Haro, M.P | |
| 10. The Hon. Cynthia Jepkosgei Muge, M.P | |
| 11. The Hon. Julius Taitumu M'Anaiba, M.P | |
| 12. The Hon. John Okwisia Makali, M.P | |
| 13. The Hon. Timothy Kipchumba Toroitich, M.P | |
| 14. The Hon. Hamisi Kakuta Maimai, M.P | |
| 15. The Hon. Stanley Muiruri Muthama, M.P | |
| 16. The Hon. Mark Samuel Muriithi Mwenje, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Rael Chepkemai Kasiwai, M.P
5. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|-------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assistant/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Dr. Kuria Waitara | - | Research Officer III |
| 6. Mr. Danton Kimutai | - | Audio Officer III |
| 7. Mr. Joshua Lenambeti | - | Sergeant at Arms |

MIN. NO.NA/DAAOSC/COI/2023/214:

PRELIMINARIES.

The Chairperson called the meeting to order at 9:35am and the Hon. Rose Museo Mumo; M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Cynthia Jepkoskei Muge M.P and seconded by the Hon Hamisi Kakuta Maimai, M.P.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Consideration and adoption of the Second Omnibus Report on Implementation Status of Inquiries, Petitions and Resolutions passed by the House.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/215:

CONFIRMATION OF MINUTES.

The Agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/216:

THE PUBLIC INVESTMENT
COMMITTEE'S 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORTS ON
FINANCIAL STATEMENTS OF
GEOTHERMAL DEVELOPMENT
COMPANY (FY2016 -2017)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Geothermal Development Company (FY 2016-2017, having been proposed and seconded by the The Hon. Stanley Muiruri Muthama, M.P and the The Hon Prof Guyo Waqo Jaldesa, M.P, respectively.

The Committee made the following observations and recommendations:

Committee Observations

The Committee observed that the Geothermal Development Company has taken steps to address the Committee's recommendations however challenges like budget constraints still exist in the Agency.

Committee Recommendations

- i) The Committee recommends that the GDC management should source for additional funding to address the balance sheet imbalances and remain afloat.
- ii) The Company's Board should review identification and digging wells mechanism to reduce losses on unproductive geothermal wells.
- iii) GDC should continue to evaluate other mechanisms to manage and reduce the risk of drilling unproductive wells.
- iv) The Company leadership should develop a formal policy on what should constitute acceptable levels of NPT based on international standards to reduce loss from NPT, and The National Treasury should ensure timely release of exchequer on projects under implementation.
- v) The National Treasury should allocate funds to the GDC to be used in meeting tax obligations.

Committee Resolution

The Committee unanimously resolved to include this report in its Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/217:

THE PUBLIC INVESTMENT
COMMITTEE'S 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORTS ON
FINANCIAL STATEMENTS OF
KENYA ELECTRICITY
GENERATING COMPANY (FY
2012/2015 to 2019/2020)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Kenya Electricity Generating Company (FY 2012/2015 To 2019/2020) having been proposed and seconded by The Hon. John Okwisia Makali, M.P and the Hon. Siyoi Lillian, M.P, respectively.

The Committee made the following Observation and Recommendations

Committee Observations

Arising from the submissions by the Kenya Electricity Generating Company the Committee observed that the recommendations by the Public Investment Committee are currently being implemented.

Committee Recommendation

- i. That the books of accounts for KENGEN be exclusively audited by the Office of the Auditor General the Auditor General should carry out the audit without outsourcing.
- ii. The Committee recommends that entity's assets valuation should be carried out within the set time lines.
- iii. The EACC should investigate the circumstances under which KENGEN was denied approvals to connect ready wells to the national grid.
- iv. The accounting officer for KENGEN should ensure the expeditious transfer of assets belonging to KETRACO and recovery of the attendant costs expended in running them.

Committee Resolution

The Committee resolved to include this report in its Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/218:

THE PUBLIC INVESTMENT
COMMITTEE'S 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORT ON FINANCIAL
STATEMENTS OF KENYA WILDLIFE
SERVICE (FY2017/2018 TO
2018/2019)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements Kenya Wildlife Service (FY 2017/2018/2019) having been proposed and seconded by the Hon. Elijah Memusi Kanchory, M.P and The Hon. Timothy Kipchumba Toroitich, M.P, respectively

The Committee made the following Observation and Recommendations

Committee Observations

Arising from the submissions by the Director General Kenya Wildlife Service, it was observed that the implementation status of the recommendations is still-ongoing

Committee Recommendation

- i) The Kenya Wildlife Service management should fast-track the process of getting ownership documents for remaining properties which are at risk of encroachment.
- ii) The Management of KWS should ensure that the assets register is updated.
- iii) The CEO Kenya Wildlife Service should be held responsible for all consequences for failure to make all effort to update the asset register of its land and all biological assets, and a timeline for this should be provided. An updated assets register will enable the Kenya Wildlife Service to track changes in asset values over time, monitor their conservation efforts effectively, and evaluate the impact of their initiatives.
- iv) Kenya National Highways Authority should remit Ksh 2,474,710,000 to Kenya Wildlife Service immediately.
- v) The Kenya Wildlife Service should expedite procurement of a system that is integrated and accountable to avoid pilferage within the 2022/2023 financial year.
- vi) The Kenya Wildlife Service should adopt the e-procurement and implement the IFMIS system in all its financial transactions, and the Director of IFMIS should offer the requisite support to Kenya Wildlife Services.

Committee Resolution

The Committee resolved to include this report in the Second Omnibus Report and has directed that it be considered within a period of 60days from the date of the adoption of this report by the House.

MIN.NO.NA/DAAOSC/COI/2023/219:

THE PUBLIC INVESTMENT
COMMITTEE'S 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORTS ON
FINANCIAL STATEMENTS OF
KENYA MARINE AND FISHERIES
RESEARCH INSTITUTE (KMFRI)
(FY2012/2013 TO 2018/2019)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Kenya Marine & Fisheries Research Institute (KMFRI) FY2012/2013 to 2018/2019) having been proposed and seconded by The Hon. Abdul Ebrahim Haro, M.P and The Hon. Hamisi Kakuta Maimai, M.P, respectively

The Committee made the following Observation and Resolution:

Committee Observation

Arising from the submissions by the Kenya Marine and Research Institute (KMFRI) the Committee observed that the recommendation by the Public Investments Committee has not been implemented.

Committee Resolution

The Committee resolved to exclude this report from the Second Omnibus Report and instead convene a meeting with the Ethics and Anti-Corruption Commission (EACC) and National Land Commission (NLC) for further consultation before its finalization.

MIN.NO.NA/DAAOSC/COI/2023/220:

THE PUBLIC INVESTMENT
COMMITTEE'S 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORTS ON
FINANCIAL STATEMENTS OF ATHI
WATER WORKS DEVELOPMENT
AGENCY FINANCIAL YEARS
(2014/2015 TO 2018/2019)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Athi Water Works Development Agency Financial Years (2014/2015 to 2018/2019) having been proposed and seconded by The Hon. Charles Gumini Gimose, M.P and The Hon. Mark Samuel Muriithi Mwenje, M.P, respectively

The Committee made the following Observation, Recommendation & Resolution

Committee Observation

Arising from the submissions by the Chief Executive Officer, Athi Water Works Development Agency the Committee observed that the Agency has made a progress in implementing the recommendations by the Public Investments Committee.

Committee Recommendations

- i) The Management of the Athi Water Services should conduct an audit of all its property and a search with the lands office to ascertain ownership of land under the Agency
- ii) The CEO of AWWDA should aggressively pursue the money owed to the entity
- iii) The mother Ministry and the CEO should expeditiously secure ownership documents of the assets queried by the Auditors.
- iv) The CEO of AWWDA should aggressively pursue the money owed to the entity
- v) The Agency should always follow the law regarding implementation of the budget and the management should always provide documents for audit as per the timelines provided by the PFM and Public Audit Act guidelines.

Committee Resolution

The Committee resolved to include this report in the Second Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/221:

THE PUBLIC INVESTMENT
COMMITTEE'S 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORTS ON
FINANCIAL STATEMENTS OF
KENYATTA NATIONAL HOSPITAL
(FY 2013/2014 TO 2017/2018)

The Committee considered and adopted the Public Investment Committee's 24th Report on Consideration of the Auditor General's Reports on Financial Statements of Kenyatta National Hospital (FY 2013/2014 TO 2017/2018 having been proposed and seconded by The Hon. Hilary Arap Kosgei, M.P and The Hon. Cynthia Jepkosgei Muge, M.P, respectively

The Committee made the following Observation, Recommendation and Resolution:

Committee Observation

Arising from the submissions by the Chief Executive Officer, Kenyatta National Hospital the Committee observed that the implementation of the recommendations by the Public Investment Committee is still on-going.

Committee Recommendation

- i) Kenyatta National Hospital should provide for adequate funds for bad and doubtful debts in its books to cushion debtors that are emergency in nature, and the KNH and NHIF should use the same accounting standard (reconciliation) to avoid discrepancies on the amount due to KNH from NHIF;
- ii) The EACC should investigate the circumstances under which documentation relating to issued letters of credit got lost from the KNH with a view to preferring charges against those that were involved in the disappearance of the said documents;
- iii) The accounting officer for the KNH should ensure consistency in treatment of depreciation of the Hospital's assets.

Committee Resolution

The Committee resolved to include this report in the Second Omnibus Report and has directed that it be considered within a period of 60 days from the date of the adoption of this report by the House.

MIN. NO.NA/DAAOSC/COI/2023/222:

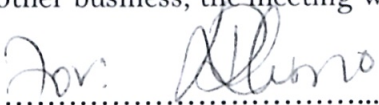
ANY OTHER BUSSINESS

No other business arose.

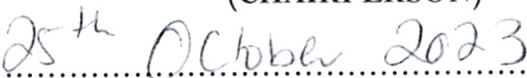
MIN. NO.NA/DAAOSC/COI/2023/223:

ADJOURNMENT

There being no other business, the meeting was adjourned at one o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date..... 25th October 2023

MINUTES OF THE FORTIETH (40TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 29TH AUGUST, 2023 IN MASHUA CONFERENCE ROOM, SERENA BEACH HOTEL, MOMBASA COUNTY AT 2:00PM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | – Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | – Vice Chairperson |
| 3. The Hon. Elijah Memusi Kanchory, M.P | |
| 4. The Hon. Hilary Arap Kosgei, M.P | |
| 5. The Hon. George Koimburu Ndung'u, M.P | |
| 6. The Hon. Charles Gumini Gimose, M.P | |
| 7. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 8. The Hon. Siyoi Lillian, M.P | |
| 9. The Hon. Abdul Ebrahim Haro, M.P | |
| 10. The Hon. Cynthia Jepkosgei Muge, M.P | |
| 11. The Hon. Julius Taitumu M'Anaiba, M.P | |
| 12. The Hon. John Okwisia Makali, M.P | |
| 13. The Hon. Timothy Kipchumba Toroitich, M.P | |
| 14. The Hon. Hamisi Kakuta Maimai, M.P | |
| 15. The Hon. Stanley Muiruri Muthama, M.P | |
| 16. The Hon. Mark Samuel Muriithi Mwenje, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Rael Chepkemai Kasiwai, M.P
5. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|-------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assistant/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Mr. Danton Kimutai | - | Audio Officer III |
| 6. Mr. Joshua Lenambeti | - | Sergeant at Arms |

MIN. NO.NA/DAAOSC/COI/2023/208:

PRELIMINARIES.

The Chairperson called the meeting to order at 2:00pm. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Rose Museo Mumo, M.P and seconded by The Hon. John Okwisia Makali, M.P.

AGENDA

1. Prayers
2. Introduction

3. Substantive agenda: **Consideration and adoption of the First Omnibus Report on Implementation Status of Inquiries, Petitions and Resolutions passed by the House.**
4. Any Other Business.

MIN.NO.NA/DAAOSC/COI/2023/209:

**THE PUBLIC INVESTMENT
COMMITTEE, 23RD REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL REPORTS ON THE
FINANCIAL STATEMENTS OF
STATE CORPORATIONS: KENYA
PORTS AUTHORITY (FYS 2014/15
TO 2016/17)**

The committee considered and adopted the Public Investment Committee report on consideration of the Auditor General's reports on the Financial Statements of Kenya Ports Authority (FY2014/15 TO 2016/17, having been proposed and seconded by the Hon Prof. Guyo Jaldesa, M.P and the Hon. Lilian Jepkosgei Muge, M.P, respectively.

The Committee made the following observations and recommendations

Committee Observation

- i) Arising from the submissions by the Kenya Ports Authority, the Committee observed that the implementations of some of the recommendations by the Public Investment Committee like the resolutions on debt issues are ongoing.
- ii) Further, the Committee observed that majority of the plots have pending cases in courts that have not been determined.

Committee Resolution

Emanating from the submissions and observations by the Committee during its site visit, the Committee resolved to expunge this report from its First Omnibus Report for further consultations with the various stakeholders since the cases have not been determined by the Courts.

MIN.NO.NA/DAAOSC/COI/2023/210:

**THE PUBLIC INVESTMENTS
COMMITTEE, REPORT ON THE
INQUIRY INTO THE SAFETY OF
FERRIES AS OBSERVED IN THE
AUDITED ACCOUNTS OF KENYA
FERRY SERVICES FOR FINANCIAL
YEAR 2016/17**

The committee considered and adopted the Public Investment Committee report on consideration of the Auditor General's reports on the Financial Statements of Kenya Ferry Service for FY 2016/2017 having been proposed and seconded by The Hon. Siyoi Lillian, M.P and The Hon. Stanley Muiruri Muthama, M.P, respectively.

The Committee made the following Observation and Resolution:

Committee Observation and Recommendations

Arising from the submissions by the Kenya Ports Authority and an inspection visit made by the Committee, the Committee observed that the recommendations by the Public Investments Committee have been implemented.

Committee Resolution

The Committee resolved to include this report in its First Omnibus Report.

MIN.NO.NA/DAAOSC/COI/2023/211:

THE REPORT OF THE
DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE ON
THE CONSIDERATION OF THE
PETITION BY THE KENYA
ASSOCIATION OF RETIRED
OFFICERS ON IMPROVED TERMS
FOR PENSIONERS IN KENYA

The Committee considered and adopted the report of the Departmental Committee on Labour and Social Welfare on the consideration of the petition by the Kenya Association of Retired Officers on improved terms for pensioners in Kenya, having been proposed and seconded by The Hon. Rose Museo Mumo, M.P and The Hon. George Koimburi Ndung'u, M.P, respectively

The Committee made the following Observation and Resolution:

Committee Observation

- i) Arising from the submissions by the National Treasury and Economic Planning, the Committee observed that the recommendations by the Departmental Committee on Labour and Social Welfare are currently being implemented.
- ii) The National Treasury should fast track the development process. A progress report on this activity should be made to Parliament within 3 months after adoption of the report.
- iii) The National Retirement Benefits Policy to provide for the management of retirement benefits in the country is under development. Implementation is on-going.
- iv) The National Treasury shared the list of nine hundred and seventy-seven (977) Government pensioners currently earning less than Kshs. 4,000 in monthly pension with the Ministry of Labour for further action
- v) The Committee noted that the National Retirement Benefits Policy to provide for the management of retirement benefits in the country is under development.
- vi) The National Treasury is in the process of reviewing various pensions laws aimed at filling in the gaps that they will be identified and conform to the best international standards and current realities.

Committee Observation

- i) The Cabinet Secretary Ministry of Labour and Social Protection should ensure that the nine hundred and seventy-seven pensioners are paid.

- ii) The Pensions Department has not been transformed to a Semi-Autonomous Agencies (SAGA) however; the National Treasury has automated its processes to enhance efficiency and effectiveness. The implementation is on-going.
- iii) The Committee recommends that the National Treasury and Economic Planning and the Ministry of Health should conclude the development of the Post-Retirement Medical Policy alleviate the pensioners suffering.
- iv) The National Treasury should prepare the amendments or Bills within a reasonable time and present them to the House for consideration.

Committee Resolution

The Committee resolved to include this report in its First Omnibus Report.

MIN. NO.NA/DAAOSC/COI/2023/212:

ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/213:

ADJOURNMENT

There being no other business, the meeting was adjourned at four o'clock.

Signed.....

for: [Signature]
Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

25th October 2023

MINUTES OF THE THIRTY-NINETH (39TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 29TH AUGUST, 2023 IN THE CONFERENCE ROOM AT MASHUA CONFERENCE ROOM, SERENA BEACH HOTEL, MOMBASA COUNTY AT 9:30AM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | – Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | – Vice Chairperson |
| 3. The Hon. Elijah Memusi Kanchory, M.P | |
| 4. The Hon. Hilary Arap Kosgei, M.P | |
| 5. The Hon. George Koimburi Ndung'u, M.P | |
| 6. The Hon. Charles Gumini Gimose, M.P | |
| 7. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 8. The Hon. Siyoi Lillian, M.P | |
| 9. The Hon. Abdul Ebrahim Haro, M.P | |
| 10. The Hon. Cynthia Jepkosgei Muge, M.P | |
| 11. The Hon. Julius Taitumu M'Anaiba, M.P | |
| 12. The Hon. John Okwisia Makali, M.P | |
| 13. The Hon. Timothy Kipchumba Toroitich, M.P | |
| 14. The Hon. Hamisi Kakuta Maimai, M.P | |
| 15. The Hon. Stanley Muiruri Muthama, M.P | |
| 16. The Hon. Mark Samuel Muriithi Mwenje, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
3. The Hon. Johnson Many Naicca, M.P
4. The Hon. Rael Chepkemai Kasiwai, M.P
5. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|-------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assistant/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Mr. Danton Kimutai | - | Audio Officer III |
| 6. Mr. Joshua Lenambeti | - | Sergeant at Arms |

MIN. NO.NA/DAAOSC/COI/2023/201:

PRELIMINARIES.

The Chairperson called the meeting to order at 9:35am and the Hon. Hillary Arap Kosgei said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Abdul Ebrahim Haro, M.P and seconded by the Hon Prof Guyo Waqo Jaldesa, M.P.

AGENDA

1. Prayers
2. Introduction
3. Substantive agenda: **Consideration and adoption of the First Omnibus Report on Implementation Status of Inquiries, Petitions and Resolutions passed by the House.**
4. Any Other Business.

MIN.NO.NA/DAAOSC/COI/2023/202:

CONSIDERATION AND ADOPTION
OF THE 24TH PUBLIC INVESTMENT
COMMITTEE REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORTS ON
FINANCIAL STATEMENTS OF
STATE CORPORATIONS: THE
RONALD NGALA UTALII COLLEGE
PROJECT IN KILIFI COUNTY
(FY2014 -2018/2019)

The committee considered the 24th Public Investment Committee report on consideration of the Auditor General's reports on the Financial Statements of Ronald Ngala Utalii College project in Kilifi County (FY 2014 to 2018/2019, having been proposed and seconded by The Hon. Elijah Memusi Kanchory, M.P and The Hon. Hilary Arap Kosgei, M.P, respectively.

The Committee made the following observations and recommendations

Committee Observations

- i) Based on the submissions by the Cabinet Secretary, Ministry of Tourism, Wildlife & Heritage, the committee observed that the Ethics and Anti-Corruption Commission (EACC) had not submitted any submissions on the implementation status of the report despite requests for appraisal by the Committee (vide letter Ref: NA/AA&OSC/COI/2023(023) written on 3rd March,2023);
- ii) Additionally, the Committee observed that the majority of the implementation status recommended was reliant on the findings of the investigations by EACC. EACC had failed to submit their investigations to both the Tourism Fund and the Committee on Implementation.

Committee Resolution

Based on the observations, the Committee resolved to expunge the report on Ronald Ngala Utalii College from its First Omnibus Report, subject to getting a status report from the EACC.

MIN.NO.NA/DAAOSC/COI/2023/203:

REPORT OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION AND
RESEARCH ON PUBLIC PETITION
NO. 047 OF 2021 REGARDING
SUSPENSION OF TEACHERS'
PROFESSIONAL DEVELOPMENT
(TPD) PROGRAM

The Committee considered and adopted the report of the Departmental Committee on Education and Research on public petition No. 047 of 2021 regarding suspension of Teachers Professional Development (TPD) Program; having been proposed and seconded by The Hon. Charles Gumini Gimose, M.P and The Hon. Julius Taitumu M'Anaiba, M.P, respectively

The Committee made the following observations and recommendations

Committee Observations and Resolution

- i) The Committee observed that the submissions provided by the Teacher's Service Commission were sufficient and that the matter had been settled in court
- ii) The Committee resolved to include this report in its first Omnibus Report

MIN.NO.NA/DAAOSC/COI/2023/204:

**REPORT OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION AND
RESEARCH ON PUBLIC PETITION
REGARDING REPEAL OF SECTIONS
OF THE UNIVERSITIES ACT 2012
PERTAINING TO THE ELECTIONS
OF STUDENTS**

The Committee considered and adopted the report of the Departmental Committee on Education and Research on public petition regarding repeal of sections of the Universities Act, 2012 pertaining to the elections of students; having been proposed and seconded by The Hon. George Koimburi Ndung'u, M.P and The Hon. Julius Taitumu M'Anaiba, M.P, respectively

The Committee made the following observations and recommendations

Committee Observations

- i) Arising from the submissions by the Ministry of Education, the Committee observed that the recommendations by the Departmental Committee on Education had not been implemented.
- ii) The Committee was concerned with the Ministry's response, considering that the Presidential Working Party on Education Reform had wide-ranging mandate it was not in a position to implement the recommendations by the Department Committee on Education and Research.

Committee Recommendations

The Committee directed the Cabinet Secretary in charge of Ministry of Education to prepare the Universities Act, 2012 (Amendment) Bill incorporating the recommendations and present it to the House for consideration.

Committee Resolution

The Committee resolved to include this report in its First Omnibus Report, subject to its recommendation that the Cabinet Secretary, Ministry of Education, prepare the Universities Act, 2012 (Amendment) Bill and present it to the House for consideration within 60 days of the House's adoption of the report.

MIN.NO.NA/DAAOSC/COI/2023/205:

THE SECOND REPORT OF THE
SPECIAL FUND ACCOUNTS
COMMITTEE ON AUDITED
FINANCIAL STATEMENTS FOR THE
NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT
FUND FOR CONSTITUENCIES IN
NAIROBI CITY COUNTY FOR THE
FINANCIAL YEAR 2013/14, 2014/15
AND 2015/16

The Committee considered and adopted the second report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi City County for the FY 2013/14, 2014/15 and 2015/16; having been proposed and seconded by The Hon Prof Guyo Waqo Jaldesa, M.P and The Hon. Abdul Ebrahim Haro, M.P, respectively

The Committee made the following observations and recommendations

Committee Observations

- i) Arising from the submissions by the NGCCDF Board, the Committee observed that the recommendations by the Special Fund Accounts Committee are currently being implemented.
- ii) The Board has issued directive requiring the Fund Account Managers to maintain project files containing original BQs, drawings, payments certificates and expenditure returns. The recommendation has been implemented.
- iii) The measures put in place by the Board have improved bursary allocations and disbursement. The recommendation is under implementation.
- iv) The Board in consultations with the Public Sector Accounting Standards Board (PSASB) undertakes annual trainings of the Fund Account Managers, Sub County Accountants and Chairperson on the financial reporting template.
- v) The Committee observed that all the 290 Constituencies are different and the use of alternative systems of tracking initiated by the NGCDF Board was commendable since each constituency wants to modify projects to suit their local needs. Implementation is on progress.
- vi) The Board has put in place mechanisms to ensure imprests are duly surrendered. Further, cases of imprest defaulters are continuously identified through the Board's internal audit and recovery instituted through the payroll and paid back to the respective constituencies. The recommendation has been implemented.
- vii) The Committee also observed that the Board engaged the National Treasury on the matter resulting in the National Treasury establishing four National Sub-County treasuries to serve the 17 constituencies in Nairobi County. The recommendation has been implemented.
- viii) The Committee noted that some of the Fund Managers do not adhere to Human Resources Policy thus they are not available in the offices during the working hours.
- ix) Audit queries raised by the auditor general were either in court or under investigation by the EACC. This matter is within the mandate of the EACC. The Board has taken administrative action on all officers charged in court.

Committee Recommendations

- i) The Committee recommended that the NGCDF Board should connect the National Government Constituencies Development Fund Management Information System (NGCDFMIS) to Electronic National Government Monitoring and Evaluation Systems (NIMES) to enable tracking of implementation of projects on a real time basis;
- ii) The Committee recommended that the NGCDF-Board should enhance monitoring of the Fund Account Managers to enhance service delivery.
- iii) The Committee recommended that the NGCDF-Board should undertake administrative action against the implicated officers.

Committee Resolution

The Committee resolved to include this report in its First Omnibus Report.

MIN. NO.NA/DAAOSC/COI/2023/206:

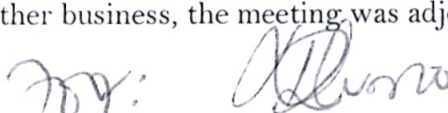
ANY OTHER BUSSINESS

No other business arose.

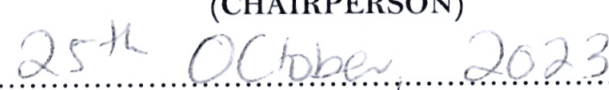
MIN. NO.NA/DAAOSC/COI/2023/207:

ADJOURNMENT

There being no other business, the meeting was adjourned at one o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE EIGHTH (8TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 21ST FEBRUARY, 2023 AT MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Prof Guyo Waqo Jaldesa, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Hamisi Kakuta Maimai, M.P
10. The Hon. Stanley Muiruri Muthama, M.P
11. The Hon. Mark Samuel Muriithi Mwenje, M.P
12. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. George Koimhuri Ndung'u, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon. Zamzam Mohamed Chimba, M.P
8. The Hon. Siyoi Lillian, M.P
9. The Hon. Cynthia Jepkosgei Muge, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Fridah Ngari | - | Media Relations Officer |
| 7. Mr. Cosmas Akhonya | - | Audio Officer |

IN-ATTENDANCE

MINISTRY OF EDUCATION

- | | | |
|---------------------------|---|---------------------------------------|
| 1. Dr. Beatrice Inyangala | - | PS, State Department Higher Education |
| 2. Mr. Obiero Charles | - | Ministry of Education |
| 3. Mr. Wamittah Hellen | - | Ministry of Education |

IN-ATTENDANCE

TEACHERS SERVICE COMMISSION

- | | | |
|-----------------------|---|----------------------------------|
| 1. Dr. Nancy Macharia | - | CEO, Teachers Service Commission |
|-----------------------|---|----------------------------------|

- | | | |
|-------------------------|---|-----------------------------|
| 2. Mr. Cavin Anyuor | - | Teachers Service Commission |
| 3. Dr. Reuben Ndambo | - | Teachers Service Commission |
| 4. Mr. Gabriel Mathenge | - | Teachers Service Commission |
| 5. Mr. Edwin Musundi | - | Teachers Service Commission |

MIN. NO.NA/DAAOSC/COI/2023/039:

PRELIMINARIES

The Chairperson called the meeting to order at thirty Minutes past ten o'clock and said a prayer.

AGENDA

1. Prayers
2. Introduction
3. Adoption of the agenda
4. **Confirmation of minutes of previous sittings**
5. Substantive agenda: **Meeting with the Cabinet Secretary, Ministry of Education regarding status of implementation of the following reports:-**
 - i) Report by the Departmental Committee on Education & Research on petition regarding suspension of Teachers Professional Development presented by The Hon Omboko Milemba, M.P
 - ii) Report by the Departmental Committee on Education & Research on a public petition regarding repeal of sections of the Universities Act 2012 pertaining to the Elections of University Student Leaders.
6. Any Other Business

MIN.NO.NA/DAAOSC/COI/2023/040:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

7th Sittings

Minutes of the 7th sitting held on 21st February, 2023 were read and confirmed as a true record of the proceedings as proposed by the Hon. Timothy Kipchumba Toroitich, M.P and seconded by the Hon. Abdul Ebrahim Haro, M.P.

MIN.NO.NA/DAAOSC/COI/2023/041:

SUBMISSIONS BY THE TEACHERS SERVICE COMMISSION ON PETITION REGARDING SUSPENSION OF TEACHERS PROFESSIONAL DEVELOPMENT.

The CEO Teachers Service Commission submitted the following in response to the suspension of Teachers Professional Development:-

1. The Teachers Professional Development (TPD) programs are formal trainings that are registered by law in order to continuously improve their pedagogical skills, management skills and learner outcomes;
2. Learners in the 21st century are confronted with increasingly complex social cultural, economic, technological and global challenges;
3. Teachers therefore must prepare learners who possess sophisticated, diversified and complementary competencies that will enable them to navigate through these challenges;
4. Like other professionals i.e advocates, doctors, engineers and accountants, teachers are required by TSC act to undertake Professional Development programs and to enhance their knowledge and skills so as to improve their competence and leadership capacity through structured programs developed by TSC;

5. The main objective of TPD is to professionalize the teaching service and bring it at a par with other professions in Kenya and globally;
6. On 27th sep 2021, Mr. Joseph Ngethe filed a constitutional petition No24 of 2021 vs TSC and nine others before Nakuru Employment and Labour Relations Court challenging the implementation of TPD;
7. The Teachers Unions (KNUT & KUPPET) together with the service providers were enjoined as respondents in the suits & filed responses to the suits;
8. On 28th September, 2021, Hon. Omboko Milemba, MP presented to the National assembly, a petition No. 047 of 2021 regarding the implementation of TPD;
9. The Committee however considered the petition and made recommendations amongst others that the Commission suspends the roll-out and implementation of TPD program until concerns are addressed by the Commission which included, conducting extensive public participation and broadening the source of service providers;
10. In response the Commission vide a letter dated 12th November, 2021 informing the Committee that the matter was subjudice in that the issue raised in the petition were similar and subject of the matter pending in court & which was active at the time;
11. To this end the suite was dismissed in its entirety
12. In view of the feedback from Teachers and other stakeholders, the Commission is in consultation with the Ministry of Education to use the existing Teachers Training Colleges as centers for capacity building and professional development programmes for teachers.

Committee Observations

- i) The Committee was not satisfied with the submissions of Teachers Service Commission and queried the method used to determine the cost incurred by the teachers and the legal framework used to implement the teacher's professional development program;
- ii) Further the Committee was also concerned whether all teachers have been using equal access to this program and whether public participation was incorporated in developing the program.

MIN.NO.NA/DAAOSC/COI/2023/042:

SUBMISSIONS BY THE MINISTRY
OF EDUCATION ON A PUBLIC
PETITION REGARDING REPEAL
OF SECTIONS OF UNIVERSITIES
ACT, 2012

The Principal Secretary, State Department for Higher Education submitted the following in response to the repeal of sections of Universities Act:-

1. By a petition dated 5th August 2021, Mr. Amos kamothe petitioned the National Assembly to Repeal sections 18(1C) 18(1D) and 18 (1E) of the Universities act to introduce a collegiate system of electing student leaders;
2. The petitioner argued that these amendments are contrary to the constitution because they curtail universal suffrage by denying students the right to directly participate in the election of their leaders;
3. The Ministry expressed the view that student leaders should be elected democratically through universal suffrage;
4. Further the Ministry noted that having considered the petition and submissions by stakeholders, the Departmental Committee on Education and Research held that the

Electoral College system of electing student leaders is not in tandem with the constitution;

The Committee was not satisfied with assurances and demanded concrete actions and timelines. Members raised concern over the delay in implementation of the recommendations by the Departmental Committee on Education & Research, particularly delay by the Ministry to commence repeal of various sections of the Universities Act, 2012 to address the petition.

The Committee resolved to invite the Cabinet Secretary or Education to a meeting on Tuesday, 7th March, 2023 to be apprised on the steps taken by the Ministry towards implementation of the recommendations in the report.

MIN. NO.NA/DAAOSC/COI/2023/043:

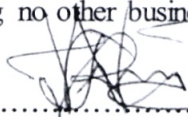
ANY OTHER BUSSINESS

The meeting was informed that the field visit to Ronald Ngala Utalii College in Kilifi County scheduled to be undertaken between Thursday, 23rd - Sunday, 26th February, 2023 was on course.

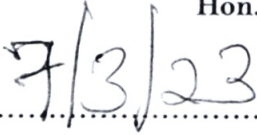
MIN. NO.NA/DAAOSC/COI/2023/044

ADJOURNMENT

There being no other business, the meeting adjourned at 12.10 pm.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE SEVENTH (7TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 16TH FEBRUARY, 2023 AT MAIN CHAMBER, PARLIAMENT BUILDING AT 11.00 AM.

PRESENT

1. The Hon. Rose Museo Mumo, M.P – Vice Chairperson
2. The Hon. Johnson Many Naicca, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Prof Guyo Waqo Jaldesa, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Timothy Kipchumba Toroitich, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. Mark Samuel Muriithi Mwenje, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – Chairperson
2. The Hon. Mohamed Ali, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. George Koimburu Ndung'u, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Siyoi Lillian, M.P
10. The Hon. Cynthia Jepkosgei Muge, M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Rael Chepkemai Kasiwai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 3. Dr. Kuria Waitara | - | Research officer III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Mr. Derrick Kimathi | - | Media Relations Officer |
| 6. Mr. Cosmas Akhonya | - | Audio Officer |

IN ATTENDANCE

MINISTRY OF EDUCATION

- | | | |
|----------------------|---|-----------------------|
| 1. Fredrick Ndambuki | - | Ministry of Education |
| 2. Joshua Wabwire | - | Ministry of Education |
| 3. Elizabeth Mulei | - | Ministry of Education |
| 4. Charles Obiero | - | Ministry of Education |

MIN. NO.NA/DAAOSC/COI/2023/034:

PRELIMINARIES

The Chairperson called the meeting to order at thirty Minutes past eleven o'clock and said a prayer. The agenda of the meeting was adopted as proposed by The Hon. Hilary Arap Kosgei, M.P and seconded by The Hon. Hamisi Kakuta Maimai, M.P respectively.

AGENDA

1. Prayers
2. Introduction
3. Adoption of the agenda
4. Confirmation of minutes of previous sittings
5. Substantive agenda: Meeting with the Cabinet Secretary of the Ministry of Education to consider implementation status of the report of the Departmental Committee on Education and Research on a public petition regarding repeal of sections of the Universities Act 2012 pertaining to the Elections of University Student Leaders which was presented by Mr. Amos Kamotho.
6. Any Other Business

MIN. NO.NA/DAAOSC/COI/2023/035:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

6th Sitting

Minutes of the 6th sitting held on 9th February, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Johnson Manya Naicca and seconded by The Hon. Mark Samuel Muriithi Mwenje, M.P. There were no matters arising.

MIN. NO.NA/DAAOSC/COI/2023/036:

SUBMISSIONS BY THE MINISTRY OF EDUCATION ON THE IMPLEMENTATION STATUS OF A PUBLIC PETITION REGARDING THE REPEAL OF SECTIONS OF THE UNIVERSITIES ACT 2012 PERTAINING TO THE ELECTIONS OF UNIVERSITY STUDENT LEADERS

The meeting was informed that the Ministry requested their appearance before the Committee to respond to the status of implementation of the above report to a later date due to unavailability of the CS and PS who were attending a meeting at State House. The Committee resolved to reschedule the meeting to Tuesday 21st February, 2023 for the Ministry to provide the information requested by the Committee.

MIN. NO.NA/DAAOSC/COI/2023/037:

ANY OTHER BUSSINESS

Site visit to Ronald Ngala Utalii College – The Committee nominated the following members to undertake site visits to Ronald Ngala Utalii College in Kilifi County, on **Friday, 24th February, 2023;-**

1. The Hon. Raphael Bitta Sauti Wanjala, M.P - Chairperson
2. The Hon Rose Museo Mumo, M.P -Vice Chairperson
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Prof Guyo Waqo Jaldesa, M.P
7. The Hon. Siyoi Lillian, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Mark Samuel Muriithi Mwenje, M.P

10. The Hon. Rael Chepkemai Kasiwai, M.P

Further, the Committee noted that remaining Members of the Committee be considered in subsequent visits as scheduled in the Committee work plan.

MIN. NO.NA/DAAOSC/COI/2023/038

ADJOURNMENT

The meeting adjourned at 11:45 am

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

7/3/23

MINUTES OF THE ELEVENTH (11TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 7TH MARCH, 2023 AT COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – Chairperson
2. The Hon. Johnson Many Naicca, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Hilary Arap Kosgei, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. George Koimburi Ndung'u, M.P
10. The Hon. Siyoi Lillian, M.P
11. The Hon. Julius Taitumu M'Anaiba, M.P
12. The Hon. Timothy Kipchumba Toroitich, M.P
13. The Hon. Abdul Ebrahim Haro, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – Vice Chairperson
2. The Hon. Mohamed Ali, M.P
3. The Hon. Stanley Muiruri Muthama, M.P
4. The Hon. Zamzam Mohamed Chimba, M.P
5. The Hon. Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Cynthia Jepkosgei Muge, M.P
7. The Hon. Mark Samuel Muriithi Mwenje, M.P
8. The Hon. Rael Chepkemai Kasiwai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|---------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Mr. Joshua Lenambeti | - | Sergeant at-arms |
| 6. Ms. Mercy Kerubo | - | Audio Officer |
| 7. Ms. Fridah Ngari | - | Media Relations |

MIN. NO.NA/DAAOSC/COI/2023/055): PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past ten O'clock and the Hon. Elijah Memusi Kanchory, M.P said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. John Okwisia Makali, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P.

AGENDA

1. Prayers
2. Adoption of the agenda
3. Substantive agenda: Meeting with the Cabinet Secretary of the Ministry of Education to consider implementation status of the report of the Departmental Committee on Education and Research on a public petition regarding repeal of sections of the Universities Act 2012 pertaining to the Elections of University Student Leaders which was presented by Mr. Amos Kamotho.
4. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/056:

CONFIRMATION OF MINUTES OF
PREVIOUS SITTINGS

8th Sitting

Minutes of the 8th sitting held on 21st February, 2023 were read and confirmed as a true record of proceedings as proposed by the Hon. John Okwisia Makali, M.P and seconded by the Hon. Timothy Kipchumba Toroitich, M.P.

MIN. No.NA/DAAOSC/COI/2023/057: MATTERS ARISING

Under MIN. No.NA/DAAOSC/COI/2023/041:

- i) The Committee noted that the Teachers Professional Development (TPD) program had been suspended by the 12th Parliament hence it is a pertinent matter since the TSC had previously mentioned to the Committee that it is in the process of rolling out the program.
- ii) The Employment and Labor Relations Court upheld the rollout of the TPD whilst the 12th August House suspended the said program. The Committee acknowledged this impasse.
- iii) The Committee acknowledged that it looks into resolutions and recommendations of the departmental Committee on Education when making a follow up on this issue and it is mandated to make reports directly to the House. It was resolved that the onus is upon the Committee on Education and Research to follow up directly on the TPD in a bid of easing the existing predicament between the two arms of government.

9th Sitting

Minutes of the 9th sitting held on 24th February, 2023 were read and confirmed as a true record of proceedings as proposed by the Hon. Siyoi Lillian, M.P and seconded by the Hon. Elijah Memusi Kanchory, M.P.

Under MIN. No.NA/DAAOSC/COI/2023/047:

- i) The Honorable Members who visited the Ronald Ngala Utalii College briefed the Committee on the site visit. It was unanimously agreed that the EACC ought to give the Committee a way forward concerning the said project since it is unethical for a project under investigation by the EACC to proceed despite the said investigations being ongoing.
- ii) The Committee agreed that this matter needs to be expedited so that more funds are not lost. The next site visit ought to be before the lapse of 6 months and that the Honourable Members who did not carry out the first site visit will be given preference.

10th Sitting

Minutes of the 10th sitting held on 28th February, 2023 were read and confirmed as a true record of proceedings as proposed by the Hon. Siyoi Lillian, M.P and seconded by the Hon. Timothy Kipchumba Toroitich, M.P.

Under MIN. No.NA/DAAOSC/COI/2023/051:

The Committee noted that the issue on Miraa farming and marketing should be expedited because local farmers are currently going through losses due to the lack of export markets for their crops.

MIN.NO.NA/DAAOSC/COI/2023/058:

**MEETING WITH THE MINISTRY
OF EDUCATION AND RESEARCH
ON A PUBLIC PETITION
REGARDING THE REPEAL OF
SECTIONS OF THE UNIVERSITIES
ACT PERTAINING TO THE
ELECTION OF STUDENT LEADERS**

The secretariat reported that they were in receipt of a letter from the Principal Secretary for Education and Research requesting the Committee to reschedule the meeting to a later date since the Cabinet Secretary was engaged in a relief food distribution activity in North Eastern. The Committee acceded to the request however, it was concerned that this is the third meeting that the CS has been invited by the Committee and he did not show up despite this being a pertinent matter. The Committee resolved to meet the Ministry on 13th April, 2023.

MIN. NO.NA/DAAOSC/COI/2023/059: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/060:

ADJOURNMENT

The meeting adjourned at 11:33 am

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

14/3/2023

MINUTES OF THE THIRTEENTH (13TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 16TH MARCH, 2023 AT WALNUT 1 CONFERENCE ROOM, PANARI HOTEL NAIROBI COUNTY AT 10.00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P -Chairperson
2. The Hon. Rose Museo Mumo, M.P – Vice Chairperson
3. The Hon. Johnson Many Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Prof Guyo Waqo Jaldesa, M.P
7. The Hon. Siyoi Lillian, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Julius Taitumu M'Anaiba, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Rael Chepkemai Kasiwai, M.P

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. George Koimburi Ndung'u, M.P
4. The Hon. Nicholas Ng'ikar Nixon Ngikilong M.P
5. The Hon. Cynthia Jepkosgei Muge, M.P
6. The Hon. Hamisi Kakuta Maimai, M.P
7. The Hon. Zamzam Mohamed Chimba, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Stanley Muiruri Muthama, M.P
10. The Hon. Mark Samuel Muriithi Mwenje, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Boniface Mugambi | - | Sergeant at-arms I |
| 8. Mr. Danton Kimutai | - | Audio Officer |

IN-ATTENDANCE

NG-CDF BOARD

- | | | |
|---------------------------|---|-------------------|
| 1. Mr. Yusuf Mbuno | - | CEO, NG-CDF Board |
| 2. Ms. Beatrice Otieno | - | NG-CDF Board |
| 3. Ms. Christine Mwongolo | - | NG-CDF Board |
| 4. Mr. James Chebii | - | NG-CDF Board |

- | | | |
|-----------------------|---|-------------|
| 5. Mr. Raphael Nduati | - | NGCDF Board |
| 6. Ms. Alice Wachira | - | NGCDF Board |

MIN. NO.NA/DAAOSC/COI/2023/066: PRELIMINARIES.

The Chairperson called the meeting to order at eighteen minutes past eleven o'clock and the Hon. Prof Guyo Waqo Jaldesa, M.P, said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Chief Executive Officer NFG-CDF Board regarding the implementation status of the Second Report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15 and 2015/16.**
5. Any Other Business.

MIN.NO.NA/DAAOSC/COI/2023/067:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

12th Sitzings

Minutes of the 12th Sitting held on the 14th of March were confirmed as the true proceedings of the meeting as proposed by Hon. Prof Guyo Waqo Jaldesa, M.P and seconded by Hon. Rael Chepkemoi Kasiwai, M.P. **There were no matters arising.**

MIN.NO.NA/DAAOSC/COI/2023/068:

MEETING WITH THE CEO, NGCDF BOARD REGARDING THE IMPLEMENTATION STATUS OF THE 2ND REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE ON AUDITED FINANCIAL STATEMENTS FOR THE NG-CDF FOR CONSTITUENCIES IN NAIROBI CITY COUNTY FOR THE FY 2013/14, 2014/15 AND 2015/16.

The CEO NG-CDF Board Mr. Yusuf Mbuno submitted the following in response to the implementation status of the recommendations by Special Funds Account Committee:-

- i) The Board in liaison with National Assembly Select Committee on NG-CDF continually engages the National Treasury for prompt release of funds;
- ii) The Principal Secretary for the State Department for Economic Planning communicated the National Treasury's undertaking to be releasing Ksh. 2 billion weekly so that by 31st March 2023 up to 50% of the NG-CDF allocations for the 2022/2023 financial year will have been released;
- iii) This position was reinforced by the communication by the Speaker of the National Assembly during the training;
- iv) The Board is enforcing the recruitment of key constituency staff through ensuring that budgetary provisions are made in the project proposals including for capacity building;

- v) Guidelines on bursary fund have been reviewed and issued to constituencies. This incorporated electronic Funds transfers and any other efficient means;
- vi) Constituency committees have been guided through a circular to dispatch cheques to institutions through express mail service (EMS) or alternative safest and expeditious means that also remits back acknowledgement receipts;
- vii) The Board in consultations with the PSASB undertakes annual trainings of the Fund Account Managers, Sub County Accountants and Chairperson on the financial reporting template;
- viii) In addition, The Board reviews constituencies' annual reports and financial statements to ensure compliance to the reporting template before submission to the Auditor General;
- ix) The Board has developed an M&E Framework guided by the National M&E Policy (2022) which includes provision for linking to NIMES;
- x) The Board is in the process of developing an Integrated Geographic Information System (GIS) based M&E system;
- xi) For a start the Board has developed National Government Constituencies Development Fund Management Information System (NGCDFMIS) capable of online submission and processing of project proposals, automated generation of project code list, and tracking implementation at PMC level;
- xii) This is complemented by a vote book management system deployed by the National Treasury and customized to NGCDF operations to track financial management in the Fund;
- xiii) The Board also has in place Enterprise Risk Management Systems (ERMS) for effective risk management to guarantee achievement of the objectives of the Fund;
- xiv) The Board continuously does quality checks and builds capacity of staff and stakeholders to effectively utilize the developed systems for effective management of the funds.

The CEO NG-CDF Mr. Mbuno further informed the Committee as follows:-

- i) The issue of double funding whereby a student receives funding from the NGCDF, NGAF and MCA bursaries is a challenge to the board. The Board is currently working on an information sharing system whereby once a child receives any of these funding, the other bodies will be notified.
- ii) The Board is working in conjunction with banks so that as it disburses funds electronically, M. Ps can be given dummy cheques to issue out to constituencies for the purpose of awareness creation. The board acknowledges that physical disbursement of bursaries benefits MPs locally, the dummy cheques will help create a good rapport between the constituents and their M.P;
- iii) Absentee fund managers or those who do not report to work and are inaccessible via phone will be identified and the necessary action will be taken on them.

Committee Observations

1. The Committee observed that all the 290 Constituencies are different from one other and the use of alternative systems of tracking initiated by the NG-CDF Board was commendable since each county wants to modify projects to suit their local needs;
2. The Board has put in place mechanisms to ensure imprest is duly surrendered. Further, cases of imprest defaulters are continuously identified through the Board's internal audit and recovery instituted through the payroll and paid back to the respective constituencies;

3. The Board in a circular dated 16th April, 2013 guided the constituency committees on how to transfer of assets and liabilities between the parent and newly created Constituencies;
4. The Board engaged the National Treasury on the matter resulting in the National Treasury establishing four National Sub-County treasuries to serve the 17 constituencies in Nairobi County;
5. The Board has developed a comprehensive appraisal instrument that ensures FAMS have cleared all the outstanding issues before their employment contract are renewed. Further, the Board has recruited substantive Regional Coordinators who are responsible for overseeing handing over process;
6. Seven Board directors for a period of three years with effect from 26th March 2019. Administratively, the Board has divided the country into ten regions namely; Nairobi, Lower Eastern, Upper Eastern, Central, Coast, North Eastern, South Rift and North Rift Regions, Nyanza and Western. The Regional Offices are manned by Regional Coordinators who are the immediate supervisors of Fund Account Managers. The Regional Coordinators report to the Chief Manager, Programmes and Field Services Coordination in the NG-CDF Board;
7. Audit queries raised by the auditor general were either in court or under investigation by the EACC. This matter is within the mandate of the EACC.
8. The Board has taken administrative action on all officers charged in court

Committee Recommendations

1. The Ethics and Anti-Corruption Commission should expedite investigations into active matters in courts and furnish a status report on the investigations to the National Assembly.
2. The National Government Constituencies Development Fund Board suspends Fund account managers and any other officers of the Board who are under investigation by the EACC until these investigations are completed.
3. The National Treasury expedites the process of quarterly disbursements of funds to the NG-CDF Board for timely release to constituencies.
4. The NG-CDF should factor in the outstanding arrears of Kshs. 2.9 billion in the supplementary estimate for the 2022–2023 financial year.
5. The Board should issue a directive requiring the Fund Account Managers to maintain project files containing original BQs, drawings, payment certificates, and expenditure returns, and the Board should include this directive as one of the targets in the performance contract signed with the constituency committee every year.
6. Guidelines on bursary funds should be reviewed and issued to constituencies, and electronic funds transfers should be incorporated.
7. Capacity building of NG-CDF staff targeting fund account managers, national sub-county accountants, and constituency committee chairpersons on financial reporting standards should be done annually upon needs assessment.
8. In regards to the implementation of projects and reallocation of funds without approval from the NG-CDF Board, the Board should take administrative action against the affected Fund Account Managers.
9. On un-surrendered imprest, the NG-CDF Board should put in place mechanisms to ensure imprest is duly surrendered on time.

MIN. NO.NA/DAAOSC/COI/2023/069:

ANY OTHER BUSSINESS

The meeting was informed that the inspection visit to Kenya Ports Authority and Kenya Ferry Services in Mombasa County scheduled to be undertaken between Thursday, 23rd - Sunday, 26th March, 2023 was on course.

MIN. NO.NA/DAAOSC/COI/2023/070:

ADJOURNMENT

There being no other business, the meeting was adjourned at one thirty o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE FIFTEENTH (15TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 25TH MARCH, 2023 AT THE KENYA PORTS AUTHORITY BOARD ROOM, MOMBASA COUNTY AT 10.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – Chairperson
2. The Hon. Charles Gumini Gimose, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimhuri Ndung'u, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – Vice Chairperson
2. The Hon. Mohamed Ali, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Cynthia Jepkosgei Muge, M.P
7. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
8. The Hon. Siyoi Lillian, M.P
9. The Hon. Rael Chepkemoi Kasiwai, M.P
10. The Hon. Stanley Muiruri Muthama, M.P
11. The Hon. Mark Samuel Muriithi Mwenje, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 3. Ms. Noel Amutabi | - | Legal Counsel |
| 4. Dr. Kuria Waitara | - | Research officer III |
| 5. Ms. Winnie Kiziah | - | Media Relations Officer |

KENYA PORTS AUTHORITY (KPA) AND KENYA FERRY SERVICE (KFS)

- | | | |
|--------------------------|---|---|
| 1. Capt. William K Ruto | - | Managing Director, Kenya Ports Authority |
| 2. Mr. Alex Mbui | - | Representative, Ministry of Roads & Transport |
| 3. Mr. Livingstone Bumbe | - | Representative, The National Treasury |
| 4. Mr. Turasha Kinyanjui | - | Kenya Ports Authority |
| 5. Mr. Capt G Namadoa | - | Kenya Ports Authority |
| 6. Mr. Ali Mwambiro | - | Kenya Ports Authority |
| 7. Mr. Evelyn Mwamure | - | Kenya Ports Authority |
| 8. Eng Vincent Sidei | - | Kenya Ports Authority |
| 9. Mr. Bakari H Gowa | - | Kenya Ports Authority |

- | | | |
|--------------------------|---|-----------------------|
| 10. Mr. Said Mata | - | Kenya Ports Authority |
| 11. Mr. Millicent Omollo | - | Kenya Ports Authority |
| 12. Mr. Tony L Kibwana | - | Kenya Ports Authority |

MIN. NO.NA/DAAOSC/COI/2023/076: PRELIMINARIES.

The Chairperson called the meeting to order at fifty minutes past ten o'clock and The Hon. Julius Taitumu M'Anaiba, M.P said a word of prayer.

AGENDA

- 1) Prayers
- 2) Introduction
- 3) Confirmation of Minutes
- 4) Substantive agenda: **Meeting with the Ministry of Roads & Transport, Kenya Ports Authority, Kenya Ferry Services the National Treasury and Economic Planning to consider the implementation status of the Public Investment Committee's 23rd report on consideration of Auditor-General's report**
- 5) Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/077:

CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/078:

SUBMISSION BY KPA ON KENYA FERRY SERVICES REGARDING REPORT OF THE PUBLIC INVESTMENT COMMITTEE ON THE INQUIRY INTO THE SAFETY OF FERRIES AS OBSERVED IN THE AUDITED ACCOUNTS OF KENYA FERRY SERVICES FOR THE FY 2016/17

The Managing Director, Kenya Ports Authority, Capt. William K. Ruto, submitted the following in response to the implementation status of the Report of the Public Investment Committee on the Inquiry into the Safety of Ferries as observed in the audited accounts of Kenya Ferry Services for the FY 2016/17. Specifically, The Committee assessed the safety of the ferries to confirm the implementation status of the House recommendations.

The following was raised regarding safety of ferries:

1. Dry-docking for MV Kwale and MV Likoni not done as scheduled;
2. MV Kwale engine had operated for more than 30,000 hours without undergoing engine overhaul.
3. Pulleys on most ferries were defective causing prows are to be submerged in water
4. The ferry users are not insured therefore it may be difficult to settle liabilities in case of accident.

Management Response

- i) KFSL had a fleet of 5 vessels and for it to operate optimally it required 4 vessels for Likoni and one for Mtongwe channel (Mtungwe channel was re-opened in March 2017 after closure for 5 years).
- ii) While these vessels were scheduled for dry dock in March 2017, it was impractical to take them to dry dock because this would have meant complete withdrawal of service for a period of not less than 3 months. The Likoni channel would have operated with 3 ferries (deficit of one) and Mtongwe channel be closed down;
- iii) After taking into account demand for the ferry service and assessing the safety condition of the vessels, the KFS undertook minimal maintenance works on the said ferries and reviewed the major maintenance schedule to have the dry docking of the two vessels after delivery of M.V Jambo in July 2017;
- iv) Consequently, the two ferries were dry docked for major repair works in November 2017 for M.V Kwale and MV Likoni was dry docked during the same period;
- v) The ferries are fitted with CAT C12 Engines, which according to its manufacturer's (CATERPILLAR PLC), the engines had already undergone the major overhaul way back and were due for replacement. They have since been replaced with new engines.
- vi) The KFS had a program to repair the lifting systems of the ferry prows, which entails the pulleys and associated parts;
- vii) Repairs on this were done to M.V Kilindini in January 2019 and M.V Likoni in June 2019. Plans were underway to repair M.V Nyayo (Scheduled for Dry Docking in September 2019);
- viii) The Company managed to undertake reasonable repair works on the engine to mitigate on hour overrun safety exposure. However, the engine was overhauled in the year under review and services were offered without any disruption;
- ix) All vessels have sea worthiness certificates issued by KMA (certificate no. 35) and since the vessels were non-deep sea going (international waters), the issuance of an international certificate was of no use;
- x) All the ferry vessels were insured against Protection and third part indemnity liability as well as hull and all machinery.

Committee Observations

The Committee observed that -

- i) The major reason of none maintenance of the ferries, was budgetary constraints.
- ii) M.V Kwale and MV Likoni were dry docked for major repair works in November 2017.
- iii) The lifting systems of the ferry prows, which entail the pulleys and associated parts, have been repaired for M.V Kilindini in January 2019, M.V Likoni in June 2019 with plans to repair M.V Nyayo in September 2019.
- iv) Scheduled dry docking for repair works is delayed due to budgetary constraints at Kenya Ferry Service;
- v) Kenya Ferry Service has an annual expenditure of Kshs. 102,000,000 on fuel of which 25% is accounted for by machine inefficiency that increases consumption;
- vi) The ferries at Likoni and Mtongwe carry an average of 340,000 people and 5800 cars per day.

Recommendation

The Kenya Ferry Services should ground MV Harambee until the vessel undergoes dry docking and significant repair followed by inspection before the ferry can resume operation.

Management response

- i) On Grounding of MV Harambee. The vessel was removed from operations on 1st December 2019 for comprehensive repairs. Dry docking and superstructure started in December 2020 and concluded in August 2021. For the prow lifting system, new hydraulic works started in April 2021 and was concluded in December;
- ii) On inspection of MV Harambee. The ferry was first inspected on 17th Dec 2021 and defects observed and there after collected corrected. A further Re inspection was conducted on 2nd Feb 2023 and a certificate issued on 15th March 2023.

Recommendation

- i) The industry regulator, Kenya Maritime Authority should enforce the grounding of ferries that do not meet safety standards by cancelling the safety certificates issued to these vessels;
- ii) The Authority should undertake fresh inspection of all ferries to determine which of the vessels meet safety standards and have undergone scheduled maintenance to ensure safety of the vessels.

Recommendation

- i) The National Treasury should urgently release funds to the Kenya Ferry Services to ensure ferries operated by the Agency undergo urgent repair and maintenance;
- ii) Funds for ferry repair and maintenance should be ring-fenced in future budgets for Kenya Ferry Services to ensure availability of funds for scheduled maintenance of the vessels.

Management response

Funds disbursed by government are as follows.

Period	New ferries	Ferry rehabilitation
2018/2019	150,000,000	200,000,000
2019/2020	127,000,000	370,000,000
2020/2021	128,000,000	200,000,000
Total	405,000,000	770,000,000

The government merged KPA and KFS in June 2021 partly to ensure ferry services is well resourced so as to improve on the safety of vessels.

Recommendation

The Office of the Auditor General should conduct a value-for-money audit on the contract between African Marine and General Engineering and Kenya Ferry Services for repair and maintenance of ferries to establish whether there was probity, efficiency, and effectiveness in the use of public funds. The company has been the sole provider of dry-docking services for Kenya Ferry Services.

Recommendation

The Kenya Ports Authority should consider establishing a dry dock facility for the repair and maintenance of maritime vessels including ferries. The facility would ensure competitiveness of the Mombasa port facility, generate income for the Authority and provide cost effective service for maritime operators.

Management response

Management is aware that, the Government established Kenya Shipyard Ltd in August 2020 with a mandate to construct, refit, convert, repair and maintain marine vessels among other services. This will serve the purpose as guided by committee recommendation.

Recommendation

The Kenya Maritime Authority should reevaluate the ferry inspection procedures in place to check for lapses and weaknesses in the process. Measures should be put in place to ensure the inspection procedure has no loopholes and that vessels are comprehensively inspected before being issued with safety certificates.

Recommendation

The Kenya Maritime Authority should ensure there is succession planning in hiring and staffing of maritime vessel inspectors. The Authority should put in place measures to ensure younger inspectors are recruited and trained to provide for continuity in inspection of ferries and issuance of safety certificates.

Recommendation

The Kenya Maritime Authority should recruit divers and provide the requisite training on search and rescue operations in the event of an accident as well as acquire valuable sea time for their competency.

Recommendation

All ferries operated by Kenya Ferry Services should be fitted with necessary safety equipment to be used in case of emergency. The ferries should also be fitted with a public address system for communication on safety matters while aboard the vessels.

Management response

Ferries are equipped with live saving equipment on board (rigid life rafts, safety life jackets and life buoys) as established by safety of life at sea regulations (SOLAS). All ferries are fitted with public address systems which is used to disseminate information and safety matters on board and are routinely maintained to ensure functionality.

Recommendation

Board appointees to the Kenya Ferry Services should be competent and qualified individuals to provide effective leadership and strategic direction for the organization. The Board should ensure that Board members are inducted and that their skills and knowledge are regularly enhanced given the specialized nature of the maritime industry.

Management response

Board last appointment by the Government 7th August 2020 comprised of three members with marine background and experience

- a) Chairman Salim Chingabwi worked for KPA at General Manager level for over 30 years
- b) Julius Segera, Ministry of Transport representative was a Director of Maritime
- c) Mohamed Amin sheikh was a marine Expert having work at KPA among and marine industry.

Recommendation

Kenya Ferry Services should ensure that key positions such as the Head of Engineering are filled substantively. Succession planning should be done to ensure that recruitment of a replacement is done to coincide with the departure of the incumbent office holder.

Management response

The position of Manager Ferry Maintenance was substantively filled up on completion of the merger (KPA and KFS) and restructuring process in April 2022. The delay was occasioned by the merger process. A succession plan had been put in place in line with the recommendation of the committee.

Recommendation

The Ministry of Transport, Infrastructure, Housing and Urban Development should fast track the implementation of infrastructure projects that provide access to South Coast so as to reduce the over-reliance on the ferries operating at the Likoni and Mtongwe channels.

Management response

Management is aware that Dongo Kundu bypasses a road linking Mombasa West mainland to south Coast is its advance stages of completion.

Recommendation

Kenya Maritime Authority and Kenya Ferry Services should conduct a public education and safety campaign at the ferry crossings to sensitize the public on maintaining safety while using the ferries.

Management response

The safety sensitization is regularly done by KMA and ferry customer services team. The last exercise of such programmes was conducted in December 2022.

Recommendation

Kenya Ferry Services should replace the security company that provides security services aboard the ferries due to negligence in performing their duties.

Management response

The services of Guard force Security company group existed on the 31st of December 2019 and Ismax Security Company joined on 1st January 2020

Recommendation

The Kenya Ferry Services should provide stiff penalties for ferry passengers who fail to adhere to safety regulations while using the ferries. The penalties should be enforced strictly to ensure compliance by ferry users.

Management response

Multi Agency team including Kenya Coast Guards Service, National Police Service and Mombasa County Inspectorate assist the ferry security team on enforcement and those who violate the ferry regulations are booked and taken to court for various offenses as provided for by the Kenya Penal Code.

MIN. NO.NA/DAAOSC/COI/2023/079:

ANY OTHER BUSSINESS

No other business arose

MIN. NO.NA/DAAOSC/COI/2023/080:

ADJOURNMENT

There being no other business, the meeting was adjourned at one o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE SIXTEENTH (16TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 6th APRIL, 2023 AT KIFARU CONFERENCE ROOM, BOMA HOTEL NAIROBI COUNTY AT 2.30 PM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P - Chairperson
2. The Hon. Prof Guyo Waqo Jaldesa, M.P
3. The Hon. Abdul Ebrahim Haro, M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. John Okwisia Makali, M.P
6. The Hon. Rael Chepkemai Kasiwai, M.P
7. The Hon. Mark Samuel Muriithi Mwenje, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P - Vice Chairperson
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Many Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Elijah Memusi Kanchory, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. Hilary Arap Kosgei, M.P
8. The Hon. George Koimburi Ndung'u, M.P
9. The Hon. Hamisi Kakuta Maimai, M.P
10. The Hon. Julius Taitumu M'Anaiba, M.P
11. The Hon. Zamzam Mohamed Chimba, M.P
12. The Hon. Timothy Kipchumba Toroitich, M.P
13. The Hon. Siyoi Lillian, M.P
14. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assistant/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Noel Amutabi | - | Legal Counsel |
| 4. Dr. Kuria Waitara | - | Research officer III |
| 5. Ms. Winnie Kiziah | - | Media Relations Officer |

IN-ATTENDANCE

NG-CDF BOARD

- | | | |
|-------------------------|---|---|
| 1. Prof. Njuguna Ndungu | - | Cabinet Secretary, National Treasury |
| 2. Mr. Michael Ndichu | - | Director Pensions, National Treasury |
| 3. CPA. Isabella Kogei | - | Parliamentary Liaison Unite National Treasury |
| 4. Mr. Joseph Kinyua | - | Kenya Association of Retired Workers |
| 5. MS. Monica Kilonzo | - | Kenya Association of Retired Workers |
| 6. Ms. Beatrice Mwaniki | - | Kenya Association of Retired Workers |
| 7. Mr. John Wachira | - | Kenya Association of Retired Workers |

- | | | |
|-----------------------------|---|--------------------------------------|
| 8. Mr. Peter Karuga Gichohi | - | Kenya Association of Retired Workers |
| 9. Mr. Boniface Makau | - | Kenya Association of Retired Workers |
| 10. Mr. Ahmed Hussein | - | Kenya Association of Retired Workers |

MIN. NO.NA/DAAOSC/COI/2023/081: PRELIMINARIES.

The Chairperson called the meeting to order at forty minutes past two o'clock and the Hon. Abdul Ebrahim Haro, M.P, said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretaries for National Treasury & Economic Planning, Labour & Social Protection and Health regarding implementation status of the report on Consideration of a petition by Kenya Association of Retired Officers (KARO) on improved terms for pensioners in Kenya.**
5. Any Other Business.

MIN.NO.NA/DAAOSC/COI/2023/082:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/083:

SUBMISSION BY THE KENYA ASSOCIATION OF RETIRED OFFICERS (KARO)

- i) The majority of the pensioners especially those who retired in the year 2003 live in abject poverty and are unable to meet their monthly upkeep;
- ii) That the retired officers play a very significant role in National Development in their own way and deserve better livelihood through a comprehensive pension and benefit scheme;
- iii) That the Committee should intervene through the implementation of the Salaries and remuneration scheme (SRC) pension increase policy of 2015; amendment of pensions Act, Cap 189 and the pensions increase Act, CAP 190 of the laws of Kenya;
- iv) The Kenya Association of Retired Officers (KARO) on behalf of over 200,000 government pensioners in Kenya who receive their monthly pension from the pensions department of the National Treasury;
- v) Pensioners in the bracket of Kshs. 5,000-10,000 in monthly pension live in abject poverty and are unable to meet their basic needs;
- vi) That out of 220,000 public service retirees in Kenya drawing pensions, 25% earn Kshs. 4,000 and below per month;
- vii) The real pension value has been eroded by inflation which between 2013 and 2017 averaged 6.7% per annum against 3% bi-annual pension adjustment;
- viii) Medical covers for the retirees, showing how the low levels of pensions and discrimination of health care insurance providers on age, makes it impossible for the retirees to access quality healthcare service;
- ix) Reports by commissions, Parliamentary resolutions and relevant organizations from 1970 to 2015 recommend that "whenever there are salary adjustments in public sector, pensions should also be adjusted" Best practices cost of living adjustment of adjusting

payment of pensions to a measure of cost of living, as stated in ILO, world social protection report 2017-2019.

Committee Observations

1. Laws on pensions should be reviewed after every three years depending on the cost of living and in line with ILO regulations. Further, the current Act should be reviewed in totality so that irrelevant clauses can be expunged
2. The Committee noted that there are different pension laws for different arms of Government;
3. The current pensions law has punitive clauses where a male cant earn pension of a female pensioner;
4. There was need for comprehensive pensions policy to guard against the suffering of pensioners;
5. Healthcare is key within pension payment and therefore the NHIF contributions need to be retained once an individual retires.

MIN.NO.NA/DAAOSC/COI/2023/084:

**SUBMISSION BY THE CABINET
SECRETARY FOR HEALTH ON
IMPROVED TERMS FOR
PENSIONERS IN KENYA**

The Cabinet Secretary for Health requested for more time to provide a comprehensive response on the matter; the Committee acceded to the request and directed that a written response be availed in a week's time.

MIN.NO.NA/DAAOSC/COI/2023/085:

**SUBMISSION BY THE CABINET
SECRETARY FOR LABOUR &
SOCIAL SERVICE ON IMPROVED
TERMS FOR PENSIONERS IN
KENYA**

The Cabinet Secretary for Labour and Social Service submitted a written response in response to the implementation status of the recommendations by Labour & Social Welfare Committee:-

- i) The Ministry has not been able to enroll additional older persons 70 years and above to the cash transfer programme since the year 2017. This is due to inadequate fiscal space as there has been no additional funding from the National Treasury for this programme despite the efforts made to request for the same through the normal budget-making process;
- ii) Currently, the Inua Jamii programme receives Ksh. 28 billion annually which covers the 833,000 older persons, 353,000 orphans and vulnerable children and 47,000 persons with severe disabilities beneficiaries;
- iii) As a programme the next urgent activity is to undertake cleansing of the payroll to remove any ineligible and deceased beneficiaries. This will create some space to include more beneficiaries into the programme;
- iv) The Ministry is also fast tracking the establishment of the Social Assistance Fund. The fund will attract more resources from the government, private sector, development partners, philanthropists and other donors. This will enable a wider coverage of the vulnerable beneficiaries into the programme;
- v) The recommendation to include Government Pensioners who are currently earning less than KShs. 4,000 monthly pension as a stop gap measure before the review of

pensions will be considered when the Ministry is filling the gaps after cleansing of the payroll or if it gets more funding from the National Treasury. Key communications will be given when the enrolment commences.

MIN.NO.NA/DAAOSC/COI/2023/086:

SUBMISSION BY THE CABINET
SECRETARY FOR NATIONAL
TREASURY ON IMPROVED TERMS
FOR PENSIONERS IN KENYA

The Cabinet Secretary, Prof. Njuguna Ndung'u, CBS submitted the following in response to the implementation status of the recommendations by Labour & Social Welfare Committee:-

- i) **The Cabinet Secretary National Treasury should fast track the ongoing process on the development of National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country** - The National Treasury and Economic Planning has accelerated the momentum to finalize the National Retirement Benefits Policy. The National Treasury retained a consultant who continues to work with the Multi agency team under the coordination of the National Treasury.
- ii) A final stakeholder's forum is planned in the fourth quarter of the FY 2022/2023 whereupon a Cabinet memorandum will be drawn and submitted to the Cabinet before 30th June 2023;
- iii) The policy being developed addresses key areas of concern that include; The pension structure and legal framework, Pension coverage, Consumer protection, Transferability and Portability of Retirement Benefits, Administration and Management of pension funds, Annuities and Income Drawdown, Indexation, Mutual recognition;
- iv) **On Comprehensive review/repeal of the Pensions Act, Cap 189 and the Pensions Increase Act, Cap 190 to align them with the provisions of the constitution of Kenya 2010 and enable it conform to the realities of the day** - a review of the public service pension laws has commenced under the banner of the Transformation of the Public Service Pension Ecosystem initiative of the National Treasury and Economic Planning.
- v) The initiative has four thematic areas, one of which is to review the public pension legal framework to be in accord with the Constitution of Kenya, 2010;
- vi) In the preliminary analysis, the team has considered the gaps in the following key laws and regulations relating to administration of public service pensions: Pension Act Cap.189, Pensions Increase Act Cap.190, Widows' and Children's Pensions Act Cap.195, Parliamentary Pensions Act Cap.196 and Kenya Defence Forces (Pensions and Gratuities) Regulations 2017;
- vii) **The Cabinet Secretary for Health in consultation with the National Treasury should fast track the implementation of the post-retirement medical scheme to cater for the health needs of the pensioners** - the National Treasury and Economic Planning is working closely with the State Department of Public Service in implementing this resolution;
- viii) A draft Post-Retirement Medical Policy has been prepared and public participation conducted with a number of stakeholders including the Kenya Association of Retired Officers.
- ix) The Ministry of Health has been looped in through the NHIF, with a consultative forum planned in the second week of April, 2023. Thereafter a joint Cabinet Memo will be submitted to Cabinet for consideration;

- x) **The Cabinet Secretary for the National Treasury should implement the recommendations of the SRC on pensions increase policy as contained in the public sector remuneration and benefits policy 2015, - currently monthly pension paid to pensioners and their dependants is subject to a biennial increase at the rate of 3% as per the Financial Act No. 9 of 2007, which was implemented with effect 1st July 2007.**
- xi) In order to implement the SRC recommendations, it is necessary to undertake an actuarial review to evaluate the fiscal burden of the recommendations. The actuarial study will be factored in the F/Y 2023/2024;
- xii) **The Cabinet Secretary for Labour in consultation with the National Treasury should include Government pensioners currently earning less than Kshs.4,000 in monthly pension in the next listing of beneficiaries of the cash transfer for the elderly as a stop gap measure pending review to reflect the current cost of living - the National Treasury shared the list of nine hundred and seventy seven (977) Government pensioners currently earning less than Kshs.4,000 in monthly pension with the Ministry of Labour for further action;**
- xiii) **The Cabinet Secretary for the National Treasury and Economic Planning should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) to manage and administer pensions - as part of the reforms in the Public Service Pensions' Sector, on 1st January 2021, the Government implemented the Public Service Superannuation Scheme Act, 2012 establishing the Public Service Superannuation Scheme (PSSS).**
- xiv) The scheme is contributory where the employees contribute at the rate of 7.5 % of their monthly basic salary graduated at the following rates: 2% in first year; 5% in the second year; and 7.5% in the third year. The Government contributes 15% of the basic salary.
- xv) Automation and leveraging on technology will enhance efficiency and effectiveness. Indeed, new institutions increases cost eroding the benefits that could be available to pensioners.

Committee Recommendations

1. The National Treasury should fast track the ongoing process on the development of National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country. A progress report on this activity should be made to Parliament within 3 months;
2. The Cabinet Secretary for National Treasury should initiate the comprehensive review/repeal of Pensions Act, cap 189 of the Laws of Kenya and the pensions (increase) Act CAP, 190 of the Laws of Kenya to align it conform to the realities of the day.
3. The Cabinet Secretary for Health in consultation with the National Treasury should fast track the implementation of the Post-Retirement medical scheme to cater for the health needs of government pensioners.
4. The Cabinet Secretary for National Treasury and Planning should implement in three months' time the recommendations of the SRC on Pension Increase Policy as contained in the Public Sector Remuneration and Benefits Policy Framework.
5. The Cabinet Secretary for Labour in consultation with the National Treasury should include Government Pensioners currently earning less than Kshs.4000 in monthly pension in the next listing of beneficiaries of the Cash transfer for the elderly as a top gap measure pending review of pension to reflect the current cost of living.

6. The Cabinet Secretary for the National Treasury should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) to manage and administer pensions.

MIN. NO.NA/DAAOSC/COI/2023/087:

ANY OTHER BUSSINESS

Proposed Capacity Building for Members: The Secretariat reported to the Committee that the Center for Parliamentary Studies and Training (CPST) had responded to a request by the Committee for a capacity building program both locally and internationally. CPST listed the following areas as preference venues for training: Mombasa, India, Ghana, Scotland, Guyana and UAE. CPST proposed trainings from 24–28, April, 2023, in Dubai, UAE. However, the Clerk advised that the Committee may proceed with trainings at avenue within the Country.

The meeting proposed the following members to undertake the training in Dubai:-

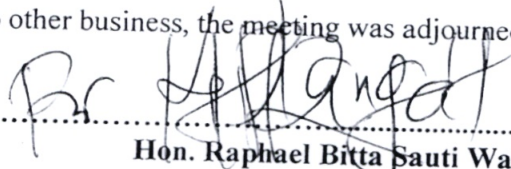
1. The Hon. Raphael Bitta Sauti Wanjala, M.P - **Chairperson**
2. The Hon. Prof Guyo Waqo Jaldesa, M.P
3. The Hon. Abdul Ebrahim Haro, M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. John Okwisja Makali, M.P
6. The Hon. Rael Chepkemai Kasiwai, M.P

MIN. NO.NA/DAAOSC/COI/2023/088:

ADJOURNMENT

There being no other business, the meeting was adjourned at four thirty o'clock.

Signed.....


Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

02/05/2023

MINUTES OF THE EIGHTEENTH (18TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 14TH APRIL, 2023 AT GDC OFFICES, MENENGAI, NAKURU COUNTY AT 10.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – Chairperson
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Julius Taitumu M'Anaiba, M.P
5. The Hon. Timothy Kipchumba Toroitich, M.P
6. The Hon. Rael Chepkemai Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – Vice Chairperson
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Many Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ng'ikar Nixon Ngikilong M.P
6. The Hon. George Koimburi Ndung'u, M.P
7. The Hon Prof. Guyo Waqo Jaldesa, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. John Okwisia Makali, M.P
10. The Hon. Zamzam Mohamed Chimba, M.P
11. The Hon. Cynthia Jepkosgei Muge, M.P
12. The Hon. Siyoi Lillian, M.P
13. The Hon. Stanley Muiruri Muthama, M.P
14. The Hon. Mark Samuel Muriithi Mwenje, M.P
15. The Hon. Hamisi Kakuta Maimai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|--------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assignment/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Joshua Lenambeti | - | Sergeant-At-Arms |

GEOHERMAL DEVELOPMENT COMPANY(GDC)

- | | | |
|---------------------------|---|--|
| 1. Mr. Paul Ngugi | - | Ag. Managing Director & CEO |
| 2. Mr. Cornel Ofwona | - | General Manager, Geothermal Resource Development |
| 3. Ms. Jackeline Wakhungu | - | Ag. Manager, Finance |

MIN. NO.NA/DAAOSC/COI/2023/094: PRELIMINARIES.

The Chairperson called the meeting to order at forty minutes past twelve o'clock and he said a word of prayer.

AGENDA

- 1) Prayers
- 2) Introduction
- 3) Confirmation of Minutes
- 4) Substantive agenda: **Meeting with GDC Officials concerning the implementation status of the PIC 24th report of the Auditor General on the financial statements of state corporations.**
- 5) Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/095:

CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/096:

**SUBMISSION BY GDC CONCERNING
THE PIC's 24TH REPORT ON
CONSIDERATION OF THE AUDITOR
GENERAL'S REPORT ON THE
FINANCIAL STATEMENTS OF STATE
CORPORATION**

The Ag. Managing Director and CEO of Geothermal Development Company Mr. Paul Ngugi submitted the following in response to the implementation status of the recommendations by the Public Investment Committee's 24th report on consideration of the Auditor General's Report on the financial statements of State Corporations.

Procurement of rig move services

a) Status of Investigation by EACC

- i) EACC made a prosecution recommendation to DPP who went ahead to file a High Court Case No.20 of 2015- *Republic Vs. Nicholas Karume Weke & Others*. In a ruling of February 2023 on application by the defendants, the Supreme Court ordered the case to proceed to full hearing.

b) Arbitration and Court process

- ii) The company entered into a contract with Bonafide Clearing and Forwarding Company Limited for provision of rig moves services. The company terminated the contract on 13th September, 2016. Bonafide referred the matter for arbitration claiming an amount of Kshs. 3,334,124,194 for work done, loss of business, interest and damages;
- iii) The arbitrator issued an interim award in September 2017 and Bonafide filed an application in the High Court against the award in October 2017.

- iv) Bonafide Clearing Company Limited have appealed against the interim award No.1 which dismissed the bulk of their claim leaving a balance of Kshs. 38.5 million which the Hon. Arbitrator deemed provable which was to proceed for formal proof through a hearing;
- v) On 24th June, 2022, the High Court dismissed as being unmerited the appeal by M/s Bonafide Clearing & Forwarding made vide Misc. application No.431 of 2017. Bonafide thereafter filed for a notice of appeal signaling their intention to move to the Court of Appeal. The substantive Memorandum of Appeal and Record of appeal are yet to be filed and served;
- vi) The issue before the arbitrator has been in abeyance since Bonafide Clearing & Forwarding elected to abandon the hearing of the residue of the claim as per Arbitral Award;

c) Unproductive and abandoned wells

- vii) The Company has collaborated with geothermal experts including ELC consultants (Italy), West JEC (Japan), JICA and further constituted a Geothermal Advisory Board (GAB) of experts for peer review on geo-scientific and drilling activities. The close collaboration and recommendations have aided in improving well targeting;
- viii) The company has also put in place a well siting and abandonment policy to guide on the conduct of identification and drilling of wells;
- ix) The Policy is aimed at ensuring that wells are optimally sited to maximize productivity and drilled efficiently to increase success rates and minimize cost;
- x) It provides detailed guidelines for planning, well siting, decision making, responsibility assignment, well measurement, well abandonment and costing. It also provides for tracking of key performance indicators during drilling, and a governance structure to guide decision making during drilling.

d) Cost of Non-productive time

- xi) The Company Well Siting and Abandonment Policy also guide efficient drilling and minimization of costs from Non-productive time (NPT).
- xii) The company continues to seek adequate budgetary allocation and timely disbursement.

e) Corporation tax and related penalties

- xiii) The National Treasury has provided direction on the tax matter stating that the funds allocated toward development of geothermal resources be exempted from taxes.

Committee Observation

The committee observed that GDC had implemented the PIC recommendations contained in its 23rd Report.

MIN. NO.NA/DAAOSC/COI/2023/097:

ANY OTHER BUSSINESS

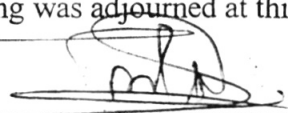
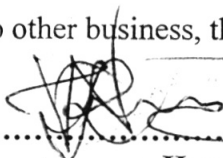
No other business arose

MIN. NO.NA/DAAOSC/COI/2023/098:

ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past eleven o'clock.

Signed.....


Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

27/4/2023

MINUTES OF THE NINETEENTH (19TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 14TH APRIL, 2023 AT KENGEN OFFICES, NAIVASHA, NAKURU COUNTY AT 2.00 PM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – Chairperson
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Julius Taitumu M'Anaiba, M.P
5. The Hon. Timothy Kipchumba Toroitich, M.P
6. The Hon. Rael Chepkemai Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – Vice Chairperson
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Many Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon. George Koimhuri Ndung'u, M.P
7. The Hon Prof. Guyo Waqo Jaldesa, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. John Okwisia Makali, M.P
10. The Hon. Zamzam Mohamed Chimba, M.P
11. The Hon. Cynthia Jepkosgei Muge, M.P
12. The Hon. Siyoi Lillian, M.P
13. The Hon. Stanley Muiruri Muthama, M.P
14. The Hon. Mark Samuel Muriithi Mwenje, M.P
15. The Hon. Hamisi Kakuta Maimai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|--------------------------------|
| 1. Ms. Lucy Kimathi | - | Principal Clerk Assignment/HOD |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Joshua Lenambeti | - | Sergeant-At-Arms |

KENYA ELECTRICITY GENERATING COMPANY(KENGEN)

- | | | |
|-------------------------|---|---|
| 1. Mr. Abraham Serem | - | Ag. Managing Director & Chief Executive Officer |
| 2. Mr. Peketsa Mangi | - | General Manager, Geothermal Development |
| 3. Ms. Mary Maalu | - | General Manager, Finance & ICT |
| 4. Ms. Elizabeth Njenga | - | General Manager, Business Development |
| 5. Mr. Henry Ithiami | - | Ag. General Manager, Corporate & Regulatory |
| 6. Eng. Francis Makabwa | - | Operations Manager, Geothermal |
| 7. Eng. John Muoka | - | Technical Assistant to Managing Director & CEO |
| 8. Mr. Frank D. Ochieng | - | Communications Manager |

MIN. NO.NA/DAAOSC/COI/2023/099: PRELIMINARIES.

The Chairperson called the meeting to order at forty four minutes past six o'clock and requested Hon. Elijah Memusi Kanchory, MP to say a word of prayer.

AGENDA

- 1) Prayers
- 2) Introduction
- 3) Confirmation of Minutes
- 4) Substantive agenda: Meeting with the Kenya Electricity Generating Company (KENGEN) Officials concerning the implementation status of the PIC 24th report of the Auditor General on the financial statements of state corporations.
- 5) Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/100:**CONFIRMATION OF MINUTES**

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/101:**SUBMISSION BY KENGEN
CONCERNING THE PIC 24TH
REPORT ON CONSIDERATION OF
THE AUDITOR GENERAL'S
REPORT ON THE FINANCIAL
STATEMENTS OF STATE
CORPORATION**

The Ag. Managing Director and CEO of KENGEN Mr. Abraham Serem submitted the following in response to the implementation status of the recommendations by the Public Investment Committee's 24th report on consideration of the Auditor General's Report on the financial statements of State Corporations.

- a) **Examination of the reports of the auditor general on the audited accounts of the Kenya Electricity Generating Company for the financial years 2014/2015 to 2019/2020**
 - i) KenGen has been paying TARDA KShs 5.1Millions monthly for dam maintenance and water catchment areas;
- b) **Amount due from Kenya Power and Lighting Company PLC (FY 2019/2020)**
 - ii) Under the leadership of KenGen and KPLC CEOs, reconciliations have been undertaken and amounts agreed. KENGEN received a commitment from KPLC to enhance the monthly payments once they receive funds from the new tariff review;
- c) **Non-Valuation of Property, Plant and Equipment (FY /2020/2021)**
 - iii) The valuation was completed and incorporated in the Financial Statements for the year ended 30 June 2022;
- d) **Capital Work in Progress (FY 2020/2021)**
 - iv) The project pipeline which was intended to connect the wells is behind schedule. However, the costs incurred will be recovered when the wells are connected upon commissioning of the pipeline geothermal power plants in line with the Least Costs Power Development Plans (LCPDP) and other relevant approvals;
 - v) The 58 wells which were not connected have been connected, assigned, and allocated to

- the projects as shown below;
- vi) The Company has connected and assigned an additional 23 wells as follows.
- a) Olkaria I Unit 6-10 wells
 - b) Olkaria II- 2 wells
 - c) Olkaria I AU- 3 wells
 - d) Wellheads- 8 wells
- vii) The balance of the 35 wells are scheduled to be connected to the following projects as follows;
- a) Wellhead leasing- 7 wells
 - b) Olkaria VII-15 wells
 - c) Olkaria VI- 2 wells
 - d) Olkaria II- 5 wells
 - e) Olkaria IAU-2 wells
 - f) Olkaria I- 2 wells
 - g) Monitoring & Research- 2 wells

e) Amounts due from Kenya Power and Lighting Company PLC (FY 2019/2020)

- viii) Through the leadership of the KenGen and KPLC CEOs, the two parties have reconciled and agreed to most of the interest charged;
- ix) KenGen continues to charge interest on delayed payments as provided in the various Power Purchase Agreements (PPAs). From various discussions, KPLC have disagreed in principle with some of KenGen's positions such as charging interest on Force Majeure balances, delayed payments based on initialed PPAs among others. Further, KPLC has indicated some of the reconciling items which have not been resolved require guidance from EPRA;
- f) Non-Compliance with Capital Markets Authority Regulations (FY 2019/2020)**
- x) The Profit before Tax (PBT) in the year ended June 2021 was KShs. 14.761B compared to KShs 13.789B for prior period which was higher by 7%. The Profit After Tax (PAT) for the year ended 2021 was KShs 1.188B compared KShs 18.377B in prior year;
- xi) The CMA regulations stated that if earnings drop by 25%, the entity should issue a profit warning. The word earnings were not clear whether to consider PBT or PAT in order to issue the profit warning;
- xii) CMA issued a clarification in the subsequent year to clarify that the earnings mean Profit after Tax (PAT). Had this clarification been issued earlier, KENGEN would have complied and issued a profit warning.

MIN. NO.NA/DAAOSC/COI/2023/102:

ANY OTHER BUSSINESS

No other business arose

MIN. NO.NA/DAAOSC/COI/2023/103:

ADJOURNMENT

There being no other business, the meeting was adjourned at eight o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE TWENTY-FOURTH (24TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 6TH MAY, 2023 AT SERENA BEACH HOTEL, MOMBASA COUNTY AT 10.00 AM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | – Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | – Vice Chairperson |
| 3. The Hon. Johnson Many Naicca, M.P | |
| 4. The Hon. Charles Gumini Gimose, M.P | |
| 5. The Hon. Hilary Arap Kosgei, M.P | |
| 6. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 7. The Hon. George Koimburi Ndung'u, M.P | |
| 8. The Hon. John Okwisia Makali, M.P | |
| 9. The Hon. Abdul Ebrahim Haro, M.P | |
| 10. The Hon. Siyoi Lillian, M.P | |
| 11. The Hon. Mark Samuel Muriithi Mwenje, M.P | |
| 12. The Hon. Stanley Muiruri Muthama, M.P | |
| 13. The Hon. Zamzam Mohamed Chimba, M.P | |
| 14. The Hon. Rael Chepkemai Kasiwai, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. Timothy Kipchumba Toroitich, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Hamisi Kakuta Maimai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|------------------------------|
| 1. Ms. Lucy Kimathi | - | HOD/Principal Clerk I |
| 2. Ms. Beatrice Auma | - | Senior Personal Secretary |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Boniface Mugambi | - | Sergeant-at-arms |

KENYA WILDLIFE SERVICE (KFS)

- | | | |
|------------------------|---|--|
| 1. Dr. Erustus Kanga | - | Director General Kenya Wildlife Service |
| 2. Mr. John K Chelimo | - | State Department for Wildlife |
| 3. Mr. Japheth Kilonzo | - | Kenya Wildlife Service |
| 4. Mr. Samuel Toroke | - | Kenya Wildlife Service |
| 5. Mr. Collins Nthuni | - | Lands Management, Kenya Wildlife Service |
| 6. Mr. John Mugendi | - | Administrator Kenya Wildlife Service |
| 7. Ms. Leah Naisoi | - | Kenya Wildlife Service |
| 8. Mr. Hassan Bashir | - | P.A, DG Kenya Wildlife Service |

MIN. NO.NA/DAAOSC/COI/2023/124: PRELIMINARIES.

The Chairperson called the meeting to order at fifty minutes past ten o'clock and said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with Kenya Wildlife Service to Consider Implementation Status of the Report of the Public Investment Committee's (PIC) 24TH Report on consideration of the Auditor General's Report on the financial statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/125:

CONFIRMATION OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/126:

SUBMISSIONS BY THE KENYA WILDLIFE SERVICE REGARDING THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENT COMMITTEE'S 24th REPORT.

The Director General Kenya Wildlife Service (KWS) Dr. Erustus Kanga submitted the following in response to the implementation status of the recommendations by the Public Investment Committee's 24th report on consideration of the Auditor General's Report on the financial statements of State Corporations.

- i) Status of Acquisition of titles to 131 parcels of land which were at risk of being grabbed

Summary of Categorized Land Parcels

S/No	CATEGORY	TOTAL NUMBER
1	Terrestrial National Parks	24
2	Terrestrial National Reserves	29*
3	Marine National Parks	4
4	Marine National Reserves	6
5	National Sanctuaries	8
6	Station Plots, Outposts and Other Land Parcels	187
	Total Number	258

- ii) The Service is consistently pursuing acquisition of titles and a total of **51** titles have been acquired, **131** surveyed awaiting titles and **76** other land parcels are at various stages towards acquisition of title documents.

Table 2: Status of Land Acquisition Documents

Category	No. of Properties	Status Land Acquisition Documents				
		Boundary Plan Prepared but not surveyed	PDP Prepared (Planned)	Surveyed	Title registered	Cannot be registered*
National Parks	24	2	N/A	22	12	0
National Reserves	29	1	N/A	4	1	28
Marine National Parks/Reserves	10	2	N/A	10	1	0
Sanctuaries	8	0	N/A	5	1	0
Station Plots Outposts and Other Land Parcels	187	N/A	57	90	36	13
TOTAL	258	5	57	131	51	41

The status of valuation of assets owned by KWS to ascertain the fair value of KWS assets,

Management Response

- iii) The Service commenced valuation of assets in 2021 and managed to undertake valuation of motor vehicles, motor cycles, boats, plant and machinery. This exercise was carried out by the State Department of infrastructure for these categories of assets across all the conservation regions and a report submitted on 4th October 2021

The Status of payment of Ksh.6 million towards the Endowment Fund accruing from the land hived off for Standard Gauge Railway and a further Ksh.2.4 billion accruing from hiving off a parcel for the Southern bypass by the Kenya National Highways Authority;

Management Response

- iv) The Kenya Wildlife Service, Kenya Railways and Kenya National Highways Authority reached an agreement without taking any land from the Kenya Wildlife Service. Kenya Railways fulfilled its financial obligations by paying a total of Ksh1,469 million in accordance with the specified clauses. There is an outstanding amount of Ksh.6 million due to a typographical error in the contract. The Kenya National Highways Authority owes Kenya Wildlife Service Kshs.2,474,710,000 since 2016, despite multiple reminder letters being sent without any response.

Status of adoption of e-procurement and implementation of IFMIS system in all your financial transactions among other recommendations contained in the report.

Management Response

- v) The Service is yet to adopt the e-procurement system however it had engaged IFMIS Directorate at the National Treasury requesting for installation of e- procurement system module via a letter dated 17th June 2015.

vi) The National Treasury in their letter dated 2nd July 2015 responded to request by KWS and informed them that they were in the process of implementing E-procurement in phases and that they will be informed of the connectivity and issuance of user rights.

vii) A follow up letter on 18th February 2020 was sent to the Director of IFMIS seeking support to implement the system. However no response to date.

Committee Recommendations

1. The Kenya Wildlife Service management should fast-track the process of getting ownership of documents for its properties.
2. Kenya Wildlife Service should ensure that the assets register is updated.
3. The management of Kenya Wildlife Service should follow up with the Kenya National Highways Authority on the settlements of the Kshs 6 million
4. Kenya Wildlife Service should follow up on payment of the balances of KSh 2,474,710,000 from the Kenya National Highways Authority and the National Treasury.
5. The Committee recommends that the Kenya Wildlife Service board should adopt the e-procurement and implement the IFMIS system in all her financial transactions.

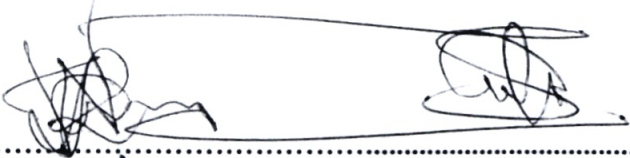
MIN. NO.NA/DAAOSC/COI/2023/127: ANY OTHER BUSSINESS

Inspection/site visit - The Committee resolved to conduct an inspection visit at a later date to various parcels of land owned by the Kenya Wildlife Service that are at risk of unlawful encroachment.

MIN. NO.NA/DAAOSC/COI/2023/128: ADJOURNMENT

There being no other business, the meeting was adjourned at twelve o'clock.

Signed.....


Hon./Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

27/7/23

MINUTES OF THE TWENTY THIRD (23RD) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 5TH MAY, 2023 AT SERENA HOTEL, MOMBASA COUNTY AT 4.00 PM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | – Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | – Vice Chairperson |
| 3. The Hon. Johnson Manya Naicca, M.P | |
| 4. The Hon. Hilary Arap Kosgei, M.P | |
| 5. The Hon. Charles Gumini Gimose, M.P | |
| 6. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 7. The Hon. John Okwisia Makali, M.P | |
| 8. The Hon. Abdul Ebrahim Haro, M.P | |
| 9. The Hon. George Koimburi Ndung'u, M.P | |
| 10. The Hon. Siyoi Lillian, M.P | |
| 11. The Hon. Mark Samuel Muriithi Mwenje, M.P | |
| 12. The Hon. Stanley Muiruri Muthama, M.P | |
| 13. The Hon. Zamzam Mohamed Chimba, M.P | |
| 14. The Hon. Rael Chepkemai Kasiwai, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. Timothy Kipchumba Toroitich, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Hamisi Kakuta Maimai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Lucy Kimathi | - | HOD/Principal Clerk I |
| 2. Ms. Beatrice Auma | - | Executive Secretary |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Boniface Mugambi | - | Sergeant-at-arms |

ATHI WATER WORKS DEVELOPMENT AGENCY

- | | | |
|-----------------------------|---|-----------------------------------|
| 1. Eng. Michael Thuita, MBS | - | Chief Executive Officer |
| 2. Mr. Michael Kimotho | - | Chief Manager, Finance & Strategy |

MIN. NO.NA/DAAOSC/COI/2023/119:

PRELIMINARIES.

The Chairperson called the meeting to order at fifty minutes past four o'clock and he said word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with Athi Water Works Development Agency Officials on implementation Status of the Report of the Public Investment Committee's (PIC) 24TH Report on consideration of the Auditor General's Report on the financial statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/120:

CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/121:

SUBMISSIONS BY ATHI WATER
WORKS DEVELOPMENT AGENCY
REGARDING THE IMPLEMENTATION
STATUS OF THE PUBLIC
INVESTMENT COMMITTEE'S 24th
REPORT.

The Chief Executive Officer, Athi Water Works Development Agency Eng. Michael Thuita submitted the following in response to the implementation status of the recommendations by the Public Investment Committee's 24th report on consideration of the Auditor General's Report on the financial statements of State Corporations.

a) Concerning debtors FY2014/15 & FY 2015/16

- i) The management has made several efforts in a bid to collect the debt including:
 - a) Holding a meeting with NCWSC, WASREB and AWWDA Holding a workshop in Naivasha with the Kiambu county WSPs together with the county leadership
 - b) Signing re-payment plans with NCWSC
 - c) Initiating the process to engage a professional debt collector through a board approval after guidance by WASREB
 - d) Board resolution to appoint a debt collector
 - e) The Attorney General however advised that AWWDA should explore for alternative debt collection efforts in the spirit of intergovernmental relations Act; including mediation process incorporating the National Treasury and Planning, the Ministry of Water & Sanitation and Irrigation, AWWDA and any other relevant agency. AWWDA was advised that engagement of a debt collector should be option as a last resort
 - f) AWWDA wrote to the Ministry requesting for guidance on the collection of the outstanding debts

- ii) Further AWWDA has ensured the outstanding amounts have been incorporated in the Tariff as approved by WASREB

b) Non-Compliance with Legal Notice No. 101 of August 2005- Transfer Plan

- iii) The Agency undertook valuation of the assets in readiness for the transfer of assets, subsequent vesting and securing of ownership documents;
- iv) With the enactment of the Water Act 2016, The Ministry of Water Sanitation and Irrigation prepared a Water Sector Transitional Plan for the period 2019-2021 which was expected to fully resolve the matter;
- v) The issue of asset and liability transfers is being handled by the intergovernmental relations technical committee who together with representatives from various Agencies (AWWDA is represented) are working towards ensuring full resolution of this matter;
- vi) After valuation the organization embarked on registration and titling which is ongoing

c) Cash and bank balances FY 2015/16

- v) The Agency has ensured that all bank deposits are held in Government linked banks;
- vii) After chase bank was placed under receivership, AWWDA immediately accessed Kshs.1 million. The balance of Kshs.31,451,912 was placed in different accounts as follows in the same bank as guided by CBK.

Account Details		Amount (Kshs)
Savings accounts(Two)	unrestricted usage	5,897,233.50
	6.30% Interest earning restricted usage	5,897,233.50
Fixed deposit accounts (One)	1-year	3,931,489.00
	2-year	3,931,489.00
	3-year	3,931,489.00

- viii) AWWDA accessed the savings unrestricted account balance by transferring the same to the National Treasury for loan repayment on 26th June 2019

d) Relocation of water and sewerage facilities at Thika Road FY 2016/17

- ix) EACC initiated investigations on the same. They requested for the documents which AWWDA submitted as evidenced by the letter dated 14th October 2022.

Committee Observations

The committee was satisfied with the submissions presented before it.

It noted that all the recommendations were either completed or are currently being implemented.

MIN. NO.NA/DAAOSC/COI/2023/122:

ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/123:

ADJOURNMENT

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

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

27/6/23

MINUTES OF THE TWENTY SECOND (22ND) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 5TH MAY, 2023 AT SERENA HOTEL, MOMBASA COUNTY AT 3.00 PM.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | – Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | – Vice Chairperson |
| 3. The Hon. Johnson Manya Naicca, M.P | |
| 4. The Hon. Hilary Arap Kosgei, M.P | |
| 5. The Hon. Charles Gumini Gimose, M.P | |
| 6. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 7. The Hon. John Okwisia Makali, M.P | |
| 8. The Hon. Abdul Ebrahim Haro, M.P | |
| 9. The Hon. George Koimburi Ndung'u, M.P | |
| 10. The Hon. Siyoi Lillian, M.P | |
| 11. The Hon. Mark Samuel Muriithi Mwenje, M.P | |
| 12. The Hon. Stanley Muiruri Muthama, M.P | |
| 13. The Hon. Zamzam Mohamed Chimba, M.P | |
| 14. The Hon. Rael Chepkemai Kasiwai, M.P | |

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Cynthia Jepkosgei Muge, M.P
4. The Hon. Timothy Kipchumba Toroitich, M.P
5. The Hon. Julius Taitumu M'Anaiba, M.P
6. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
7. The Hon. Hamisi Kakuta Maimai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Lucy Kimathi | - | HOD/Principal Clerk I |
| 2. Ms. Beatrice Auma | - | Executive Secretary |
| 3. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 4. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Boniface Mugambi | - | Sergeant-at-arms |

KENYATTA NATIONAL HOSPITAL

- | | | |
|------------------------|---|-------------------------|
| 1. Dr. Evanson Kamuri | – | Chief Executive Officer |
| 2. Mr. Michael Kihunga | – | Director Finance |

- | | | |
|------------------------|---|-----------------|
| 3. Mr. Calvin Nyachoti | – | Director, Legal |
| 4. Ms. Eunice Gathoni | – | Manager M& C |

MIN. NO.NA/DAAOSC/COI/2023/114:

PRELIMINARIES.

The Chairperson called the meeting to order at twenty minutes past three o'clock and Hon. Mark Mwenje, MP said word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with Kenyatta National Hospital to Consider Implementation Status of the Report of the Public Investment Committee's (PIC) 24TH Report on consideration of the Auditor General's Report on the financial statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/115:

CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/116:

SUBMISSIONS BY THE KENYATTA NATIONAL HOSPITAL REGARDING THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENT COMMITTEE'S 24th REPORT.

The Chief Executive Officer of Kenyatta National Hospital Dr. Evanson Kamuri submitted the following in response to the implementation status of the recommendations by the Public Investment Committee's 24th report on consideration of the Auditor General's Report on the financial statements of State Corporations.

- a) **On Trade and other receivables FY 2012/12-2017/18**
- i) The long outstanding debts whose recoverability is doubtful have been provided for on monthly basis as impaired in the hospital's financial statements in accordance to International Public Sector Accounting Standards (IPSAS) and the Hospital Finance Manual and Policy;
- ii) The provision for bad and doubtful debt is as follows;

Financial Year	18/19	19/20	21/22
Amount in Ksh.	755,669	1,059,515	610,743

- iii) However, the Hospital Management has put measures in place to recover debts owed to the Hospital by ;
 - a) Engaging an external Debt collector.
 - b) Sending reminders to the debtors on monthly basis through letters and making calls.
 - c) Sensitizing patients on the importance of registering with NHIF for medical cover.

iv) On KNH/NHIF accounting standards, the Hospital does annual reconciliations with NHIF and discrepancies found are resolved on time;

b) Letters of Credit

- v) The Hospital appointed an Audit Issues Resolution Committee that retrieved documents from all service points related to the LCs;
- vi) Poor flow of documents and goods movement in the period 2001 to 2008 was realized as the main reason why it was difficult to reconstruct files and pass the necessary book entries;
- vii) Supporting documentation for the outstanding balance of Ksh 96 million relating to clinical consumables were further availed to the Office of the Auditor General for scrutiny before the relevant book entries were passed in FY 2018/19;
- viii) The Hospital no longer issues Letter of Credit for consumable items.

c) Inconsistencies in depreciating policy(FY 2017/2018)

- ix) The hospital management carried out re-computation amounts using straight line method as stipulated in the finance manual and passed the necessary adjustments required in the books of account in FY2019/2020. After concurrence with the AG, the financial statements for the FY2018/2019 were restated;
- x) From the FY2019/20, the Hospital has been using the straight line method of depreciation as per the approved Hospital Finance Manual. The Auditor has been satisfied with the resolution and has dropped the matter from the subsequent reports.

Committee observation

- 1. The EACC and DCI carry away documents containing the outcomes of their investigations. This takes away history of matters since the physical evidence is not traceable despite attempts to obtain them back.
- 2. It is unclear how a bank account can be opened without due diligence from the registrar of Companies.

MIN. NO.NA/DAAOSC/COI/2023/117: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/118: ADJOURNMENT

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

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE TWENTY SIXTH (26TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 30TH MAY, 2023 AT COMMITTEE ROOM 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12.00PM.

PRESENT

- | | |
|--|-----------------|
| 1. The Hon. Hilary Arap Kosgei, M.P | Chairing |
| 2. The Hon Prof Guyo Waqo Jaldesa, M.P | |
| 3. The Hon. Julius Taitumu M'Anaiba, M.P | |
| 4. The Hon. Timothy Kipchumba Toroitich, M.P | |
| 5. The Hon. John Okwisia Makali, M.P | |

APOLOGIES

- | | |
|---|---------------------------|
| 1. The Hon. Raphael Bitta Sauti Wanjala, M.P | – Chairperson |
| 2. The Hon. Rose Museo Mumo, M.P | – Vice Chairperson |
| 3. The Hon. Mohamed Ali, M.P | |
| 4. The Hon. Johnson Many Naicca, M.P | |
| 5. The Hon. Elijah Memusi Kanchory, M.P | |
| 6. The Hon. Charles Gumini Gimose, M.P | |
| 7. The Hon. Nicholas Ngikor Nixon Ngikilong M.P | |
| 8. The Hon. George Koimburi Ndung'u, M.P | |
| 9. The Hon. Abdul Ebrahim Haro, M.P | |
| 10. The Hon. Cynthia Jepkosgei Muge, M.P | |
| 11. The Hon. Hamisi Kakuta Maimai, M.P | |
| 12. The Hon. Siyoi Lillian, M.P | |
| 13. The Hon. Mark Samuel Muriithi Mwenje, M.P | |
| 14. The Hon. Stanley Muiruri Muthama, M.P | |
| 15. The Hon. Zamzam Mohamed Chimba, M.P | |
| 16. The Hon. Rael Chepkemai Kasiwai, M.P | |

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|----------------------|
| 1. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 2. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Dr. Kuria Waitara | - | Research officer III |
| 5. Mr. Joshua Lenambeti | - | Sergeant-at-arms |

KENYA NATIONAL BUREAU OF STATISTICS (KNBS)

- | | | |
|-----------------------------|---|------------------------------------|
| 1. Mr. McDonald Obudho, MBS | - | Director General, KNBS |
| 2. Ms. Ann Mburu, HSC | - | Director, Corporate Services, KNBS |
| 3. Ms. Linda Olweny | - | Manager, Legal Services, KNBS |
| 4. Mr. Elias Njoroge | - | Head of Finance, KNBS |
| 5. Mr. Josiah Chiosa | - | Head Legal Services, KNBS |

MIN. NO.NA/DAAOSC/COI/2023/134:

PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past twelve noon and he said word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretaries for Interior and National Administration, the National Treasury and Kenya National Bureau of Statistics(KNBS) regarding implementation Status of the Report of the Public Investment Committee's (PIC) 24TH Report on consideration of the Auditor General's Report on the financial statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/135:

CONFIRMATON OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/136:

**SUBMISSION BY THE MINISTRY OF
INTERIOR & NATIONAL
ADMINISTRATION REGARDING THE
IMPLEMENTATION STATUS OF THE
PUBLIC INVESTMENT COMMITTEE'S
24th REPORT**

The secretariat reported that they were in receipt of a letter Ref. No. MOINA/SEC.1/27/1 dated May 29, 2023, from the Ministry of Interior and National Administration requesting that the Cabinet Secretary for Interior and National Administration is currently finalizing the preparation of the Madaraka Day's celebrations, which will be held in Embu County on 1st June, 2023, and therefore is not in a position to honor the invitation. The committee acceded to the request and resolved to reschedule the meeting to a later date to be communicated in due course.

MIN.NO.NA/DAAOSC/COI/2023/137:

**SUBMISSION BY KENYA NATIONAL
BUREAU OF STATISTICS ON THE
IMPLEMENTATION STATUS OF THE
PUBLIC INVESTMENT COMMITTEE'S
24th REPORT**

The Director General, KNBS, Mr. Macdonald Obudho, MBS submitted the following in response to the implementation status of the recommendations by the Public Investment Committee's 24th report on consideration of the Auditor General's Report on the financial statements of State Corporations.

1. **Status of recovery of long outstanding impreset FY 2015/16 to 2019/20**
 - a) **Outstanding 2009 KPHC imprest**

- i) The Bureau has been engaging the National Treasury on the recovery of the long-standing outstanding imprest, and various correspondences have been done.
- ii) On 21st December 2021, the Bureau wrote to the PS State Department for Interior and Coordination of National Government through PS, State Department for Planning to assist in recoveries of the outstanding imprests;
- iii) A reminder letter on the same was done by PS State Department for Economic Planning to PS Internal Security and National Administration on 31st January 2023.

Committee Observations

- iv) KNBS wrote to the PS State Department for Economic Planning in January and there has been no response four months down the line;
- v) KNBS has been struggling to get any response from the National Treasury and Economic Planning since 2010.

b) Long Outstanding Imprest FY 2015/16

- i) The Bureau has been recovering outstanding imprest from the affected employees on a monthly basis through the payroll and some recoveries are made through cash payments.
- ii) The total current outstanding imprest as at 25th May 2023 is Kshs 7,142,817. Issuance of multiple imprests has been stopped.

Analysis of balances

Customer	180 Days	150 Days	120 Days	90 Days	60 Days	Balance
Totals:	3,812,372.50	9,460.00	103,583.00	2,196,517.68	1,020,884.00	7,142,817.00
%of Balance:	29.23	0.07	0.79	16.84	7.83	

2. Current status of fixed asset register

The fixed asset register is now in place. The updating of the assets register is a continuous process.

Committee observation

- i) The sample assets register submitted was unsatisfactory.
- ii) The total book value of assets owned by KNBS is Ksh. 168,000,000 as per December 2022.
- iii) Presenting a sample asset register totaling Ksh. 4,105,519.04 is a meagre percentage of the total assets owned and is unreliable.
- iv) There is still noncompliance by KNBS to implement the recommendations contained in the 24th PIC Report.

3. Status of Tittle deed of land belonging to KNBS in Embu County

- i) The Bureau wrote to the Director of Surveys on 12th April, 2023 requesting for the Registry Index Map(RIM) to facilitate the issuance of the Allotment Letter by the National Land Commission(NLC).
- ii) The land has already been surveyed and the necessary documents forwarded to NLC Embu Office.

Committee observation

The submissions presented were satisfactory and well documented.

4. Doubtful payments to village elders FY 2018/2019

- i) The matter was viewed by OAG during their subsequent cycle of audit.
- ii) The matter was sorted.
- iii) Signing of attendance registers has been implemented for all similar activities.

Committee observation

- i) The sample of village elders' payment schedule and attendance had anomalies.
- ii) There are no signatures of the various village elders to authenticate the payment made.
- iii) The population census preparation figures include an amount of Ksh. 18,509,600 paid to village elders involved in the cartographic mapping exercise in ALL the 47 counties.
- iv) The submission presented showed the distribution of the Ksh. 18,509,600 among 6 counties. The rest of the 41 counties have not been included.
- v) This submission was unsatisfactory before the Committee.

5. Mobile devices and related accessories expenses (FY 2018/2019)

The then accounting officer was reprimanded for irregular use of direct procurement and for getting expensive letters of credit from banks instead of using the National Treasury.

Committee observation

- i) The presented letter of reprimand was unsatisfactory.
- ii) The said accounting officer is no longer an employee of KNBS thus KNBS has no solid ground of reprimanding him because he is now in a different state agency.

Committee Recommendations

- i) KNBS ought to follow up on the letters written to the National Treasury and Economic Planning for a response concerning the status of recovery of long outstanding imprests.
- ii) KNBS to give a status report on the recovery of outstanding imprests.
- iii) KNBS should submit clear terms of reprimand as envisaged by the PIC and the law to provide effective actions to be taken against the affected officers.

MIN. NO.NA/DAAOSC/COI/2023/138:

ANY OTHER BUSSINESS

Members were reminded of a retreat meeting scheduled with various stakeholders and a site visit by the Committee to the Coast Development Authority (CDA) from 8th to 11th June, 2023. Further, A

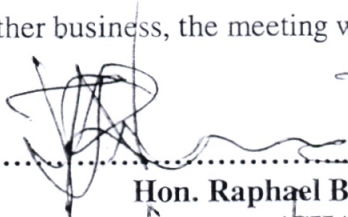
report writing retreat will also be carried out from 19th to 23rd June, 2023. Both meetings would be held in Mombasa County.

MIN. NO.NA/DAAOSC/COI/2023/139:

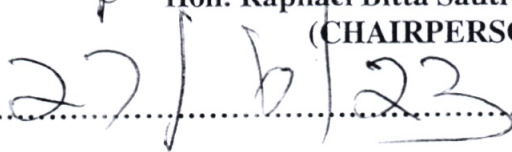
ADJOURNMENT

There being no other business, the meeting was adjourned at two o'clock.

Signed.....


Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....



MINUTES OF THE TWENTY SEVENTH (27TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 9th JUNE, 2023 AT THE PIER CONFERENCE ROOM, ENGLISH POINT MARINA HOTEL, MOMBASA COUNTY AT 10.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon Prof Guyo Waqo Jaldesa, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Mark Samuel Murithi Mwenje, M.P
7. The Hon. Siyoi Lillian, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Rael Chepkemai Kasiwai, M.P

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Johnson Many Naicca, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
6. The Hon. Hilary Arap Kosgei, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Julius Taitumu M'Anaiba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. John Okwisia Makali, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|----------------------------------|
| 1. Ms. Lucy Kimathi | - | HOD/ Principal Clerk Assistant I |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Joshua Lenambeti | - | Sergeant at-arms |

NORTHERN WATER SERVICE BOARD (NWSB)

- | | | |
|----------------------|---|---|
| 1. Mr. Andrew Rage | - | Ag. CEO Northern Water Service Board |
| 2. Ms. Amina Issa | - | Ag. Finance Manager, Northern Water Service |
| 3. Mr. Samuel Ndungu | - | Ag. Technical Service Manager, Northern Water |

MIN. NO.NA/DAAOSC/COI/2023/140: PRELIMINARIES.

The Chairperson called the meeting to order at fifty minutes past ten o'clock and said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Ministry of Water and Sanitation, Northern Water Service Board (NWSB) & the National Treasury and Economic Planning to consider the implementation status of the Public Investment Committee's 24th report on consideration of the Auditor-General's report**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/141:

CONFIRMATION OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/142:

SUBMISSIONS BY THE NORTHERN WATER SERVICE BOARD (NWSB) ON THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENT COMMITTEE'S 24TH REPORT.

The Ag. Managing Director, Mr. Andrew Rage submitted the following in response to the implementation status of the 12th Parliament's Public Investments Committee's 23rd report on consideration of the Auditor General's reports on financial statements of state corporations:

1. Status of Non-Current Assets

- i) The Northern Water Service Board was recommended by the Public Investment Committee Report that the organization should follow the parent ministry and transfer these assets to the North Water and Services Board.
- ii) As reported in the previous year, the property, plant and equipment balance of Kshs. 173,105,944 as at 30th June 2012 includes an amount of Kshs 6,509,000 in respect of motor vehicles procured by the Ministry of Water and Irrigation on behalf of the Board. However, the transfer of ownership of these vehicles to the Board had not been affected as at the date of this report.
- iii) In the circumstances, the accuracy and ownership of the property, plant and equipment balance of Kshs. 173,105,944 as at 30 June 2012 could not be confirmed

Management Response

- i) The amount of Kshs. 6,509,000 relates to two motor vehicles Reg. No. GK A 741L and GK A999J purchased by the Ministry of water and irrigation for use by the board as part of the capacity building process during the formation of water sector institutions.
- ii) The Board has written to the ministry to approve the change of ownership to the Board as per recommendation of the Controller and Auditor General's Audit reports. However, the transfer of the motor vehicles is yet to be fully affected.
- iii) The Agency still awaits the Ministry to do the transfer of ownership as per the recommendation.

Committee Observations

1. The Committee noted that the vehicles are serviceable, but the Ministry of Water and Sanitation has not transferred the vehicles to the agency.
2. The assets are with the agency, however; it is only the ownership document that has not been transferred yet.

Implementation Status

The Agency still awaits the Ministry to do the transfer of ownership as per the recommendation.

2. Financial Performance

- i) During the year under review, the board recorded a loss of Kshs.56,396,426 (2011-loss of kshs.161,136,135), thereby reducing the revenue reserves to Kshs.88,802,580 as at 30 June 2012 from Kshs145,199,006 in the previous year.
- ii) Although the Board reflects a net asset position of Kshs.600,076,742 as at 30 June 2012, its financial position is precarious and future operations may have to rely upon continued support of the Government and creditors.

Management Response.

- i) The deficit in the financial statements was because of the non-monetary expenditure incurred on depreciation of Property, plant and equipment some of which were purchased through donor funding.
- ii) Since the Board relied mostly on government donor funding to finance most of her operations, the expenditure on these funds were linked to the Performance Contract (PC) whose deliverables were expected at the end of the financial year.
- iii) This required the Board to utilize 100% of its grants to achieve the targets of each contract year, thus leaving a shortage for financing the non-monetary expenditure on depreciation of PPE.

Committee Observation

This was an accounting issue that has since been rectified.

Committee Recommendation

The Committee recommends that the North Water Services Board should develop an elaborate policy on how assets received through donation will be charged in books of account.

Implementation Status

The Agency has put a policy in place on how to receive and account for assets from donations in the books of accounts.

3. Trade and other Receivables

- i) The receivables from non-exchange transactions balance of Ksh. 23,880,969 as at 30th June, 2018 related to revenue receivables from the Water Service Providers which remained outstanding for more than two years.
- ii) Consequently, it was not possible to confirm that the receivables from non-exchange transactions balance of KSh23,880,969 as at 30th June, 2018 was fairly stated

Management Response

- i) The Management informed the Committee that the Board attributed the arrears to major government institutions not honoring their monthly bills and the challenges of

transition period and the confusion that was with the county government and interference with their operations, but that notwithstanding, the Board was talking to them and obtained a promise to pay our arrears

- ii) The Agency is still following up on the arrears.

Committee Observations

- i. The recommendation has not been implemented
- ii. The Committee noted that this is a recurrent audit query which has been occasioned by water companies
- iii. The Committee also observed that Northern Water Service Board is following up Ksh 23, 880,969 from the water companies.

Committee Recommendations

- 1. The Northern Water Service Board should consistently follow the parent ministry by writing letters to expedite the transfer of ownership of motor vehicles.
- 2. The Committee recommends that the North Water Services Board write demand letters to county governments and water companies and pay for all its arrears.
- 3. The board should provide or sell water to water companies to raise its profits.

MIN. NO.NA/DAAOSC/COI/2023/143: ANY OTHER BUSSINESS

No other business arose

MIN. NO.NA/DAAOSC/COI/2023/144: ADJOURNMENT

There being no other business, the meeting was adjourned at twelve o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE TWENTY EIGHTH (28TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 9TH JUNE, 2023 AT THE PIER CONFERENCE ROOM, ENGLISH POINT MARINA HOTEL, MOMBASA COUNTY AT 11.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon Prof Guyo Waqo Jaldesa, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Mark Samuel Murithi Mwenje, M.P
7. The Hon. Siyoi Lillian, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Rael Chepkemai Kasiwai, M.P

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Johnson Many Naicca, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
6. The Hon. Hilary Arap Kosgei, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Julius Taitumu M'Anaiba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. John Okwisia Makali, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|----------------------------------|
| 1. Ms. Lucy Kimathi | - | HOD/ Principal Clerk Assistant I |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Joshua Lenambeti | - | Sergeant at-arms |

TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY (TARDA)

- | | | |
|----------------------|---|--|
| 1. Mr. Liban R Duba | - | Managing Director, TARDA |
| 2. Ms. Maureen Oloo | - | Tana and Athi Rivers Development Authority |
| 3. Mr. David Kimaiyo | - | Tana and Athi Rivers Development Authority |
| 4. Mr. Joseph Okoth | - | Tana and Athi Rivers Development Authority |

MIN. NO.NA/DAAOSC/COI/2023/145: PRELIMINARIES.

The Chairperson called the meeting to order at ten minutes past ten o'clock and said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Ministry of EAC, ASALs & Regional Development, Tana and Athi Rivers Development Authority (TARDA) & the National Treasury and Economic Planning to consider the implementation status of the Public Investment Committee's 24th report on consideration of the Auditor-General's report**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/146:

CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/147:

**SUBMISSIONS BY THE TANA AND
ATHI RIVERS DEVELOPMENT
AUTHORITY REGARDING THE
IMPLEMENTATION STATUS OF
THE PUBLIC INVESTMENT
COMMITTEE'S 24th REPORT.**

The Managing Director, Mr. Liban R Duba submitted the following in response to the implementation status of the 12th Parliament's Public Investments Committee's 24th report on consideration of the Auditor General's reports on financial statements of state corporations:

Going Concern (FY 2014/2015 & FY 2015/16)

- i) The Tana and Athi Rivers Development agency was recommended in the 12th Parliament by the Public Investment Committee to follow up on the 19th and 21st recommendations
- ii) The Committee noted a significant loss of Kshs. 753,407,355 in the previous year this loss added to the cumulative deficit, reaching Kshs. 12,232,654,792 by June 30, 2015 depreciation charges on Masinga and Kiambere Hydro power facilities accounted for a substantial portion of the deficit.
- iii) the non-remittance of accrued revenue from Kenya Power and Lighting Company also contributed to the deficit the Government's directive to remit all revenue from hydroelectric power facilities to the National Treasury impacted the Authority's financial situation
- iv) Further the Committee Recommended that the Head of Public Service should convene a meeting between the two entities and resolve the matter.

Management Response

- i) KenGen continues to pay TARDA Kshs. 62,000,000 p.a despite recommendations by PWHC report of Kshs.533 million p.a, ISG of Kshs. 420 million p.a, PIC in 19th & 21st reports.

- ii) Recommendations by PIC in its 23rd report are similarly yet to be implemented. the recommended meeting between KenGen and the Authority to be convened by the Head of Public Service to resolve this matter is equally yet to be materialized

Committee Observations

- i) The Committee observed that TARDA is making loses regarding depreciation charges on Masinga and Kiambere Hydro power facilities.
- ii) The Committee also observed that it was a challenge to get arrangement with the Head of the Public Service in resolving the matter.

Work in-Progress (FY 2016/17)

- i) The Committee discovered that the capital work in progress balance of Kshs. 252,001,275, as reported in the previous year, consisted of stalled and dilapidated projects whose documented procurement and construction details were missing, raising concerns about the accuracy and validity of the disclosed amount.

Management Response

- i) Works related to Tana Delta Irrigation Project remains incomplete and as earlier reported relevant documents were destroyed during bomb blast. However, Masinga Dam Resort Construction was completed and commissioned.
- ii) Relevant procurement documents and payment vouchers were availed for audit verification, the cost capitalized as addition to non-current assets there by adjusting Work in Progress balance.

Committee Observations

- i) Tana and Athi Rivers Development Authority owns Masinga dam and Kiambere however the power generating companies owns the infrastructure and the income.
- ii) The Committee noted that it's difficult for the Committee on Implementation to follow up since the document got destroyed during the bomb last in 1998.
- iii) This involves other authority i.e. the Office of the Auditor General in closing the matter.

Other Incomes

- i) The Committee heard that revenue from exchange transactions of Kshs. 168,049,484 included an amount of Kshs. 61,036,682 in respect of sale of produce, sale of tree seedlings, sale of sand and honey and rendering services which was not fully supported by documentary evidence.
- ii) Consequently, the validity and accuracy of the recorded amounts totaling Kshs. 61,036,682 for other incomes could not be confirmed.
- iii) The Public Investment Committee however recommended that TARDA should provide documents for audit and also put in place system that ensure proper accountability of the revenue from this transaction.

Management Response.

- i) TARDA provides documents for audit verification within the required timelines as recommended by the Committee.
- ii) Appropriate systems are in place to ensure proper accountability of revenue as was recommended in the PIC report.

Committee Observation

The Committee noted that the Recommendations have been implemented.

Committee Recommendation

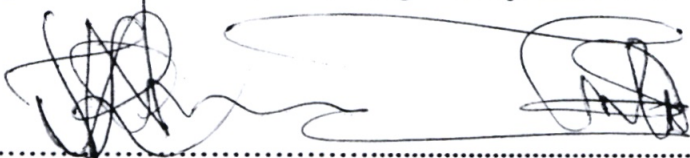
- i) The Management of TARDA should provide documents for audit within the required timelines failure to which sanctions provided under sections 62 of the Public Audit Act 2015 and Section 68 of the PFM Act should be instituted against the accounting officer.
- ii) Management should put in place a system that ensures proper accountability of the revenue streams from this transaction.
- iii) The office of the Auditor General should audit the entire transaction and report compliance of the same in the next audit report for TARDA's financial statements.

MIN. NO.NA/DAAOSC/COI/2023/148: ANY OTHER BUSSINESS

Inspection/site visit - The Committee resolved to conduct an inspection visit to Masinga and Kiambere dams at a later date to be communicated in due course.

MIN. NO.NA/DAAOSC/COI/2023/149: ADJOURNMENT

There being no other business, the meeting was adjourned at one o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date: 27/6/23.....

MINUTES OF THE TWENTY NINTH (29TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 10th JUNE, 2023 AT THE PIER CONFERENCE ROOM, ENGLISH POINT MARINA HOTEL, MOMBASA COUNTY AT 10.30 PM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon Prof Guyo Waqo Jaldesa, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Mark Samuel Murithi Mwenje, M.P
7. The Hon. Siyoi Lillian, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Rael Chepkemai Kasiwai, M.P

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Johnson Many Naicca, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
6. The Hon. Hilary Arap Kosgei, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Julius Taitumu M'Anaiba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. John Okwisia Makali, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|----------------------------------|
| 1. Ms. Lucy Kimathi | - | HOD/ Principal Clerk Assistant I |
| 2. Mr. Abdiaziz Shobay | - | Clerk Assistant II |
| 3. Mr. Abdimalik Ahmed | - | Clerk Assistant III |
| 4. Ms. Noel Amutabi | - | Legal Counsel |
| 5. Dr. Kuria Waitara | - | Research officer III |
| 6. Ms. Winnie Kiziah | - | Media Relations Officer |
| 7. Mr. Joshua Lenambeti | - | Sergeant at-arms |

RURAL ELECTRICIFICATION & RENEWABLE ENERGY CORPORATION

- | | | |
|------------------------|---|------------|
| 1. Mr. Peter Mbugua | - | CEO, REREC |
| 2. Mr. Davis Cheruiyot | - | REREC |
| 3. Mr. Wilfred Oduor | - | REREC |

- | | | |
|-------------------------|---|---------------------------------------|
| 4. Mr. Fredrick Gicharu | - | REREC |
| 5. Mr. Peter Namui | - | Representative, Ministry of Energy |
| 6. Mr. Rodrick Koome | - | Representative, The National Treasury |
| 7. Ms. Catherine Nzioki | - | Representative, The National Treasury |

MIN. NO.NA/DAAOSC/COI/2023/150: PRELIMINARIES.

The Chairperson called the meeting to order at Eleven o'clock and said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Ministry of Energy & Petroleum, Rural Electrification and Renewable Energy Corporation, & the National Treasury and Economic Planning to consider the implementation status of the Public Investment Committee's 24th report on consideration of the Auditor-General's report**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/151:

CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/152:

**SUBMISSIONS BY THE RURAL
ELECTRIFICATION AND
RENEWABLE ENERGY
CORPORATION REGARDING THE
IMPLEMENTATION STATUS OF
THE PUBLIC INVESTMENT
COMMITTEE'S 24th REPORT.**

The Chief Executive Officer, Rural Electrification & Renewable Energy Corporation (REREC), Mr. Peter Mbugua submitted the following in response to the implementation status of the 12th Parliament's Public Investments Committee's 24th report on consideration of the Auditor General's reports on financial statements of state corporations:

1. Damaged Wood Poles (FY 2012/2013)

- i) The Rural Electrification & Renewable Energy Corporation was recommended in the 12th Parliament by the Public Investment Committee that the EACC should investigate the entire procurement of the poles with a view to preferring charges on those that may have abdicated and or violated the law since wood poles totaling 2,310 and valued at KSh. 30,177,505 were stored in open spaces on the ground at both Makuyu and Mariakani Substations thus being exposed to adverse weather conditions and were therefore damaged beyond reasonable use.
- ii) Consequently, it was not possible to confirm that public resources were managed efficiently, economically and in an effective manner.

Management Response

- i) REREC informed the Committee that Wooden poles accumulated damage over several fiscal years. As storing them in enclosed warehouses was impractical, the Corporation followed best practices by stacking them to minimize damage.
- ii) Additional warehouses were constructed to improve storage capacity for other construction materials.
- iii) Damaged poles were offered to KWS for fencing national parks, as allowed by the Public Procurement and Asset Disposals Act.
- iv) While the Corporation had general insurance coverage, it did not cover losses from natural causes.
- v) The Corporation believes its procurement process was lawful but acknowledges the occasional need to dispose of damaged or unserviceable stores as per the Act.

Committee Observation

- i) The Committee noted that the explanation offered by REREC was satisfactory considering the damaged poles accumulated over multiple fiscal years were handed over to the Kenya Wildlife Service (KWS) as a method of asset disposal authorized by the Public Procurement and Asset Disposals Act.
- ii) It is not specified whether the damaged poles can be recovered and used for another purpose. However, since they were deemed unserviceable and unfit for the Corporation's projects, it is likely that their reuse or recovery was not feasible.

Committee Recommendation

- i) The Committee still recommends that the EACC should investigate the entire procurement of the poles.
- ii) The Committee further directed to invite Kenya Wildlife Service (KWS) on the matter.

2. Property, Plant and Equipment FY 2013/2014

- i) The financial statement on October 30th, 2014, revealed that the balance for Property, Plant and Equipment was KSh. 30,366,778,000.00, including Work in Progress (WIP) valued at KSh9, 736, 172,000.
- ii) Within the WIP category, KSh. 54,218,400.00 (VAT inclusive) was associated with a terminated five-month contract for the supply, installation, and commissioning of diesel generators and associated boards in Kiunga and Hulugho towns, located in Lamu East and Ijara Constituencies.
- iii) however, the Public Investment Committee recommended that the EACC should investigate the procurement of the project.

Management Response

- i) The Committee was informed that the company's financial statements recorded the costs of gen sets delivered to the site as Work in Progress (WIP), despite the project contract being terminated due to poor performance.
- ii) Another contractor was subsequently hired to procure, install, and commission the already delivered gen sets.
- iii) In the procurement process, the evaluation committee assessed the terminated contractor's past experience and performance in similar projects within the last five years, requesting certified copies of completion certificates as evidence.

- iv) This due diligence was conducted by the Corporation. Furthermore, the Corporation had issued an open tender for the supply, installation, testing, and commissioning of enclosed diesel generators (80kVA & 150kVA) and associated distribution boards in multiple locations, including Laisamis, Eldas, Takaba, North Horr, Hulugho, Kiunga, and Rhamu.

Committee Observations and Recommendations

- i) The Committee noted that the query was satisfactorily answered
- ii) The recommendation has been implemented.

3. Unrecovered Duty Paid to KRA on Behalf of Vendors (FY 2014/2015 to 2017/18)

- i) The Authority paid Ksh 47,605,799 for custom duty owned by two vendors, with one vendor's duty already recovered but the recovery of Ksh 31,894,048 from the other vendor remained uncertain.

Management Response

- i) The Corporation filed a civil suit against Apar Industries for recovery of the amounts, but Apar Industries requested arbitration, and on June 4th, 2021, the court referred the matter to arbitration (Rural Electrification and Renewable Energy Corporation vs. Apar Industries, Nairobi (Milimani) HCCC No. 153 of 2019).

Committee Observations and Recommendation

- i) REREC should follow up on the matter referred to arbitration.
- ii) The accounting officer for REREC should not make any payment to any vendor that had not been cleared with KRA
- iii) The Implementation of the resolution is on-going

4. Procurement of distribution of transformers.

- i) REREC procured 200 transformers from a Tanzanian Company based on Section 103(2b) of the Public Procurement and Asset Disposal Act, 2015.
- ii) They deemed the procurement urgent and unforeseen due to the government's plan to introduce a laptop project in public schools, which required electricity connection for its success.

Management Response.

- i) The assessment of the company's capacity and quality for manufacturing transformers was carried out by Tanelec Limited representatives in response to the Committee's claim that no due diligence was conducted, we would like to clarify that a thorough assessment was carried out by a team of REA and KPLC engineers who visited Tanelec Limited, evaluating their manufacturing processes, capacity, and material availability.
- ii) REREC provides documents for audit verification within the required timelines as recommended by the Committee. Appropriate systems are in place to ensure proper accountability of revenue as was recommended in the PIC report.

Committee Observation and Recommendation

The Committee noted that the query was satisfactory answered

5. Enterprise Resource Planning Overhaul FY 2018/2019

The audit found that Management planned to overhaul the ERP system for KSh.200,000,000, but it wasn't fully utilized and some modules were inactive, like the HR module used manually for payroll. Vendor support for the system will end in December 2025. Considering these factors, the planned overhaul may not be justified.

Management Response

The Corporation has put measures to fast track implementation of S4/Hanna system and all modules currently at user Acceptance testing with expected Go-live being 30/60/3023 and there shall be no contra variation.

Implementation Status

Status is on-going

Committee Recommendation

The accounting officer for REREC should always ensure timely implementation of projects to avoid costly variations.

6. Long Outstanding receivables FY 2019/2020

The Financial statements reflected other receivables-sale of power amounting to Ksh 760,606,000 the amount was due from the Kenya Power and Lighting Company Plc under a power purchase agreement with the Corporation. However, the amount had been outstanding for long periods exceeding 360days. Further there was no debt management policy in place at the Corporation to guide recovery of overdue debts

Management Response

- i) The Committee was informed that the KPLC, Kenya's power utility company, has been diligent in making timely payments for the revenues generated from the sale of power, ensuring that its debt remains current.
- ii) That the Government of Kenya, represented by The National Treasury of Kenya, entered into a concessional loan agreement with the Export Import Bank of China for the construction of the Garissa Solar Power Plant, which has a capacity of 54 MW.
- iii) KPLC signed an on-lending agreement with the Republic of Kenya to finance the commercial contract between the Ministry of Energy and Petroleum, REA, China Corporation for International Economic and Technical Cooperation, and Jianko Solar Company Limited.
- iv) This agreement highlights the collaborative effort between various entities to develop the solar power plant in Garissa. as part of the concessional loan agreement, it is stipulated that if the amount collected from the project is not sufficient to cover the loan repayment, the National Treasury of Kenya will undertake the responsibility of making the payment. This provision ensures that the loan obligations will be met, even in the case of potential revenue shortfalls.

Committee Observation

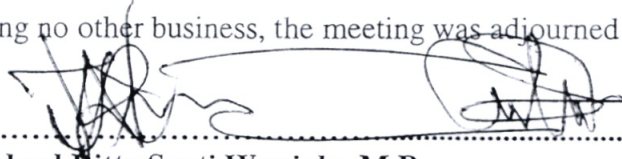
The submission presented was satisfactory.

MIN. NO.NA/DAAOSC/COI/2023/153: ANY OTHER BUSSINESS

No other business arose

MIN. NO.NA/DAAOSC/COI/2023/154: ADJOURNMENT

There being no other business, the meeting was adjourned at one o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....27/6/23

ANNEXTURE 3

Submission by the Teachers Service Commission on the implementation status of the Report of the Departmental Committee on Education and Research on Public Petition No. 047 of 2021 regarding suspension of Teachers' Professional Development (TPD) program.

TEACHERS SERVICE COMMISSION



BRIEF ON STATUS OF IMPLEMENTATION OF THE REPORT OF DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH ON PUBLIC PETITION NO. 047 OF 2021 REGARDING SUSPENSION OF TEACHERS PROFESSIONAL DEVELOPMENT PROGRAM (TPD).

Presented By

**DR. NANCY NJERI MACHARIA, CBS
SECRETARY/CHIEF EXECUTIVE OFFICER**

ON

21ST FEBRUARY, 2023

1. INTRODUCTION

- 1.1 The Teacher Professional Development (TPD) programmes are formal trainings that registered teachers are required by law to undertake in order to continuously improve their pedagogical skills, management skills, and learner outcomes.
- 1.2 Learners in the 21st century are confronted with increasingly complex social cultural, economic, technological, and global challenges; teachers therefore must prepare learners who possess sophisticated, diversified, and complementary competencies that will enable them to navigate through these challenges.
- 1.3 Like other professionals e.g. advocates, doctors, engineers, accountants, Teachers are required by the TSC Act to undertake Professional Development programmes to enhance their knowledge and skills so as to improve their competence and leadership capacity through structured programmes developed by TSC. The main objective of TPD is to professionalize the teaching service and bring it at par with other professions in Kenya and globally.
- 1.4 TPD is simply a coordinated and structured professional development programmes organized by the Commission based on the Kenya Professional Teaching Standards (KePTS), a set of competency standards that describe the current global trends in the teaching profession for improved learning outcomes. TPD is delivered through prescribed modules developed by the commission.
- 1.5 Section 11(e) of the TSC Act mandates the Commission to *“Facilitate Career Progression and Professional development for teachers in the teaching service ...”* while **Section 35** requires the Commission to ensure that every registered teacher to undertake career progression and professional development programmes as may be prescribed by regulations made under this Act;

2. Nakuru ELRC Petition No. 24 Of 2021: Joseph Ngethe Karanja Vs. Tsc & 9 Others

2.1 On 27th September 2021, Mr. Joseph Ngethe filed a Constitutional Petition No. 24 of 2021: Joseph Ngethe Karanja vs TSC & 9 others before Nakuru Employment and Labour Relations Court challenging the implementation of TPD. Specifically, he sought inter alia the following orders:

- a) *Declaration that in formulating and seeking to implement TPD the Commission failed to observe and uphold Articles 10, 41, 47 and 232 of the Constitution.*
- b) *A permanent order of injunction restraining the Commission from implementing TPD.*
- c) *Declaration that the appointment of the service providers was irregular, illegal, and thus void.*
- d) *Declaration that Regulation 48 of the CORT is unconstitutional.*

2.2 Notably, the teacher unions (KNUT & KUPPET) together with the service providers were enjoined as Respondents in the suit and filed responses to the suit.

3. Public Petition No. 047 of 2021 before the National Assembly by Hon. Omboko Milemba

3.1 On 28th September 2021, Hon. Omboko Milemba presented to the National Assembly Departmental Committee on Education and Research (hereinafter, the Committee) a Public Petition No. 047 of 2021 regarding the implementation of TPD.

3.2 In response the Commission vide a letter dated 12/11/2021, informed the Committee that the matter was *sub judice* in that the issues raised in the Petition were similar and subject of the matter pending in Court and which was still active at the material time. *Attached as Appendix 1 is a copy of the letter dated 12/11/2021.*

3.3 The Committee nonetheless considered the Public Petition No. 047 of 2021 and made recommendations amongst others that the Commission suspends the roll-out and implementation of the TPD program until the following concerns regarding the programme are addressed by the Commission: -

- a) Conducts extensive public participation as required under Article 232(1)(d) of the Constitution and take into account views of teachers, teacher unions and other stakeholders with a view of building consensus on the programme.
- b) Broadens the sourcing of service providers to offer the programme to ensure even distribution of the centers across the counties for easy access.

4. Appeal to the Speaker of the National Assembly against The Decision of the Committee Regarding Petition No. 047 Of 2021

4.1 Following the recommendations of the Committee, the Commission on 22nd March 2022 wrote to the Speaker of the National Assembly appealing against the recommendations of the Committee regarding the Public Petition 047 of 2021. *Attached as Appendix 2 is a copy of our Appeal dated 22/03/2022.*

4.2 Upon consideration of our Appeal, the Speaker of the National Assembly vide a letter Ref: NA.2/4/2022(187) dated 20th July 2022 directed that the recommendations of the Committee in respect of the Public Petition No. 47 of 2021 be put in abeyance awaiting the outcome of the Court matter. *Attached as Appendix 3 is a copy of the letter dated 20/07/2022.*

4.3 Pursuant to the directive by the Speaker of the National Assembly highlighted above, the recommendations of the Committee were put in abeyance awaiting the determination of court case.

4.4 On 22nd September 2022, the Court rendered its judgment on the matter and made the following findings:

- a) *That the Commission has not breached Articles 10, 41, 47 & 232 of the Constitution in implementing TPD.*
- b) *By providing for and implementing TPD, the Commission is simply implementing the provisions of law under Article 237 of the Constitution, Sections 11 and 35 of the TSC Act and Regulations 41, 48, and 49 of the CORT.*
- c) *The appointment of the service providers was appropriately done in accordance with the Public Procurement and Asset Disposal Act.*
- d) *Regulation 48 of CORT does not offend Article 237 of the Constitution and hence it is constitutional and valid.*

4.5 To this end, the suit was dismissed in its entirety. *Attached as Appendix 4 is a copy of the judgment dated 22nd September 2022.*

4.6 Following the above therefore, the Commission's obligations under the Committee's recommendations were fully discharged.

5. **CONCLUSION**

5.1 In view of the feedback from teachers and other stakeholders, the Commission is in consultations with the Ministry of Education to use the existing Teacher Training Colleges as centers for capacity building and professional development programmes for teachers. This will address the issue of costs and other logistical challenges the Commission has faced in rolling out the programme.

ENDS

TEACHERS SERVICE COMMISSION

APPX 1

Telephone: Nairobi 2892000
Email: info@tsc.go.ke
Web: www.tsc.go.ke



TSC HOUSE
KILIMANJARO ROAD
UPPER HILL
PRIVATE BAG- 00100
NAIROBI, KENYA

When replying please quote
Ref. N°:CS/TSC/76/VOL.III

Date: 12th NOVEMBER, 2021

The Clerk of the National Assembly,
Parliament Buildings,
P.O. Box 41842-00100
NAIROBI

Attention: Jeremiah W. Ndombi

INVITATION FOR A MEETING TO RESPOND TO PUBLIC PETITION NO.047 OF 2021

The subject matter and your letter ref.NA/DDC/EDUC/2021(074) dated 11th November,2021 refers.

We have perused the contents of your letter and intensively interrogated the Public Petition No. 047 of 2021 presented to the house by Hon. Milemba Omboko on 28th September,2021.

We reiterate that the issues raised in the instant Petition are similar and subject of the Constitutional Petition filed at Nakuru Law Courts being Nakuru ELRC Petition No. 24 of 2021: Joseph Ngethe Karanja vs. Teachers Service Commission & 8 others. We confirm that the said Petition is still active in court pending hearing and determination and is set for mention for further directions on 29th November,2021.

It is notable that the Public Petition No. 047 of 2021 was presented to the house on 28th September,2021. Further, at paragraph 12 of the Petition, the Petitioner denies existence of a similar matter pending in the court of law. We therefore point out that the Nakuru ELRC Petition No. 24 of 2021 was filed on 27th September,2021 a day before the instant Petition. Accordingly, the Petitioner intentionally and with a view to misleading the house failed to disclose this material fact to the house.

While we take notice of Parliament's role under Article 95(2) and the provisions of standing order 95 (2), we bring to your attention that committee's deliberation of the issues raised in the Petition will defeat the intent and mischief sought to be cured by the doctrine of sub-judice.

By deliberating on the contents of the Petition and subsequently reaching a resolution, two Independent Constitutional organs (being the National Assembly and the High Court) are likely to arrive at conflicting decision on the same matter. This will leave the Commission in an awkward position on which decision to implement.

It is a Constitutional imperative that Parliament's oversight mandate should be exercised in obedience and full perspective of the provisions of the law and the relevant doctrines including the doctrine of separation of powers.

It is in this regard that the Commission humbly appeals to you to invoke the provisions of Standing Orders number 42B(2)(m), 42B (6) and 89(1) and defer this specific Petition to await the hearing and determination of the court matter.

We request for your intervention on the matter to deter any conflict with the law.

We have attached copies of the court Pleadings for your kind attention. We shall stand guided in that regard.

Thank you for your continued support.


CAVIN O. ANYUOR
FOR: SECRETARY/CHIEF EXECUTIVE
TEACHERS SERVICE COMMISSION

TEACHERS SERVICE COMMISSION

Telephone: Nairobi 2892000 Email: info@tsc.go.ke Web: ceo@tsc.go.ke When replying please quote Ref. N°:CS/TSC/76/VOL,IV	 The logo of the Teachers Service Commission (TSC) of Kenya. It is a circular emblem with 'TEACHERS SERVICE COMMISSION' around the top and 'KENYA' at the bottom. In the center is a shield with a book and a torch. Below the shield is a banner that reads 'EFFECTIVE SERVICE FOR QUALITY TEACHING'.	TSC HOUSE KILIMANJARO ROAD UPPER HILL PRIVATE BAG- 00100 NAIROBI, KENYA Date: 22 nd March, 2022
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Honourable Justin Muturi
Speaker of the National Assembly,
Parliament Buildings
Harambee Avenue,
P.O. Box 41842-00100,
NAIROBI.

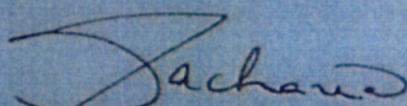
Dear Sir,

**TEACHERS SERVICE COMMISSION APPEAL AGAINST THE
DECISION OF DEPARTMENTAL COMMITTEE ON EDUCATION
AND RESEARCH REGARDING PETITION NO.047 OF 2021**

Attached herein, please find the Memorandum of Appeal of TSC against the decision of Departmental Committee on Education and Research regarding Petition No.47 of 2021.

Thank you for your continued support.

Yours Sincerely,



**DR. NANCY NJERI MACHARIA, CBS
SECRETARY/CHIEF EXECUTIVE**

TEACHERS SERVICE COMMISSION



**TSC MEMORANDUM OF APPEAL AGAINST THE RECOMMENDATIONS BY
THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH
REGARDING PETITION NO: 047 OF 2021 ON THE SUSPENSION OF
TEACHER PROFESSIONAL DEVELOPEMENT PROGRAMMES (TPD)**

Presented

to

THE HON. SPEAKER OF THE NATIONAL ASSEMBLY

By

THE TEACHERS SERVICE COMMISSION

1. INTRODUCTION

- 1.1 The Teacher Professional Development programmes are formal trainings that registered teachers are required by law to undertake in order to continuously improve their pedagogical skills, management skills, and learner outcomes.
- 1.2 Learners in the 21st century are confronted with increasingly complex social cultural, economic, technological, and global challenges; teachers therefore must prepare learners who possess sophisticated, diversified, and complementary competencies that will enable them to navigate through these challenges.
- 1.3 Like other professionals e.g. advocates, doctors, engineers, accountants, Teachers are required by the TSC Act to undertake Professional Development programmes to enhance their knowledge and skills so as to improve their competence and leadership capacity through structured programmes developed by TSC. The main objective of TPD is to professionalize the teaching service and bring it at par with other professions in Kenya and globally.
- 1.4 TPD is simply a coordinated and structured professional development programmes organized by the Commission based on the Kenya Professional Teaching Standards (KePTS), a set of competency standards that describe the current global trends in the teaching profession for improved learning outcomes. TPD is delivered through prescribed modules developed by the commission.

2. LEGAL FRAMEWORK UNDERPINNING TPD

The Constitution.

- 2.1 Article **237 (2) (a)** and **(3)** of the Constitution establishes TSC as a regulator of the Teaching Service. The two articles grant the Commission the power to regulate the Register of teachers, review the standards and training for persons entering the teaching service and to advise the national government on all matters relating to the teaching profession.

The Teachers Service Commission Act, 2012

2.2 Section **11(e)** of the TSC Act mandates the Commission to "*Facilitate Career Progression and Professional development for teachers in the teaching service ...*"

2.3 On the other hand, Section **35** of the Teachers Service Commission Act, 2012 provides for compliance with teaching standards. Instructively, it provides:

"(1) The Commission shall take all necessary steps to ensure that persons in the teaching service comply with the teaching standards prescribed by the Commission under this Act.

(2) For purposes of subsection (1), the Commission shall:

(a) Require every registered teacher to undertake career progression and professional development programmes as may be prescribed by regulations made under this Act;

(b) Require every registered teacher to take out a teaching certificate as prescribed by regulations made under this Act;

(c) Enter into agreements with any institution, body, department or agency of the Government pursuant to its functions and powers prescribed under this section; and

(d) Appoint an agent or designate a member or staff of the Commission who may enter any educational institution and make an enquiry in that regard.

(3) A teacher who fails to:

(a) Undertake a prescribed career and professional development programmes; or

(b) Take out a teaching certificate under section 35(2)(b) of this Act, shall be dealt with in accordance with the regulations."

2.4 In view of the above, TPD is therefore a statutory requirement underpinned by the provisions of section 11 and 35 of the TSC Act. The Commission has no option but to implement the provisions of the law as required of it.

The Code of Regulation for Teachers (CORT)

2.5 **Regulation 48 of the Code of Regulations for Teachers provides:**

"(1) Every teacher shall undertake the professional teacher development programmes prescribed or recommended by the Commission from time to time.

(2) The Commission shall approve training institutions to conduct teacher development programmes.

(3) The approved institutions shall issue certificates to teachers upon completion of the programme.

2.6 **Regulation 49 of the Code of Regulations for Teachers provides:**

"(1) Every teacher who successfully completes a professional teacher development programme under regulation 48 shall be issued with a teaching certificate by the Commission in the manner prescribed under the Ninth Schedule.

2.7 As may be discerned from the Constitution, statute law and regulations TPD falls within the mandate of the Commission as a Regulator of the teaching profession. Teachers have a legal obligation to comply with the regulatory requirements attendant to the profession.

3. **ENGAGEMENT OF SERVICE PROVIDERS**

3.1 The service providers being **Kenyatta University, Mt. Kenya University, Riara University and Kenya Education Management Institute** were engaged following a rigorous procurement process as per the provisions of Article 227 and the Public Procurement and Asset Disposal Act (PPAD)

3.2 The following Institutions submitted their bids; Mount Kenya University, Kenya Education Management Institute (KEMI), Riara University, Kenyatta University, Kenya Institute of Special Education (KISE), CEMASTEIA, Private Company, Moi University and the French Embassy out of which only 4 were awarded the contract.

3.3 At the expiry of the contract period, the Commission will re-advertise the same for willing institutions to bid.

4. **DELIVERY OF THE PROGRAMME**

TPD will be delivered by the service provider through physical session of 5 days only once per year. The rest of the sessions will be delivered through an online platform. The physical sessions will be undertaken at the sub county level and will be non-residential in order to minimise travelling cost for the teacher.

5. **COST OF UNDERTAKING TPD**

5.1 The Commission negotiated with the contracted service providers who agreed to reduce the cost from the initial **Kshs. 12,000** to **Kshs. 6,000** per year. The total cost of the programme as was submitted before the Committee is Kshs. **4.5 Billion** to cater for TPD Costs for all registered teachers as shown in the Table Below.

Analysis of teacher Register

	SUBJECT MATTER	NUMBER
1.	Teachers employed by the Commission	341, 760
2.	Teachers in the private sector	170,000
3.	Teachers not employed	238,686
4.	TOTAL NUMBER OF REGISTERED	750, 446
	Cost of TPD 750,446x6,000	4.5 Billion

5.2 The Commission worked out the cost of the TPD Programme at **Kshs. 6,000** per year per teacher. The cost of **Kshs.6,000** is envisaged to cater for: -

- a) Course facilitators fees;
- b) Learning and assessment resources;
- c) Online platform hosting;
- d) Online application software for subjects (e.g. virtual lab, online courses);
- e) Contract management.

6. **STAKEHOLDERS ENGAGEMENT**

6.1 The process of professionalizing the teaching profession started in **2012** with the enactment of TSC Act. The Act was subjected to vigorous stakeholder engagement before being enacted by Parliament. TPD was provided clearly under **section 11** and **35** of the Act. The Act required TSC to develop regulations before implementing the provisions of the Act.

6.2 The Code of Regulations for Teachers (CORT) on the other hand was literally negotiated by all the teacher unions and associations. The CORT were tabled before the Parliamentary Committees of Education and Delegated legislation who also conducted their own stakeholder engagement before presenting the same to the National Assembly for adoption

6.3 Prior to the launch of the Programme of the TPD programmes on **22/9/2021**, the Commission engaged all teacher unions KNUT, KUPPET and KUSNET and the professional associations who endorsed the same and gave the Commission a green light for roll out.

7. **GROUND OF APPEAL**

7.1 **SUB JUDICE RULE.**

7.1.1 In our letter dated 12/11/2021, the Commission informed the Committee that the matter was *sub judice*.

- 7.1.2 We reiterated that the issues raised in the Petition were similar and subject of the Constitutional Petition filed at Nakuru Law Courts being **Nakuru ELRC Petition No. 24 of 2021: Joseph Ngethe Karanja vs. Teachers Service Commission & 8 others.** We confirmed that the said Petition was still active in court pending hearing and determination and at the material time was set for hearing on **29th November, 2021.**
- 7.1.3 We also informed the Committee that contrary to allegations in the Petition, the Public Petition **No. 047 of 2021** was presented to the house on **28th September, 2021** while **Nakuru ELRC Petition No. 24 of 2021** was filed on **27th September, 2021** a day before the House Petition. We informed the Committee that the Petitioners were intentionally misleading the house in that they failed to disclose this material facts to the house.
- 7.1.4 By deliberating on the contents of the Petition and subsequently reaching a resolution, two independent Constitutional organs (being the National Assembly and the High Court) are likely to arrive at conflicting decision on the same matter. This will leave the Commission in an awkward position on which decision to implement. We wish to clarify that the Judgment of the Court will be delivered on **15/6/2022** and the risk of conflict of the two decisions is imminent.
- 7.1.5 It is a Constitutional imperative that Parliament's oversight mandate should be exercised in obedience and full perspective of the provisions of the law and the relevant doctrines including the doctrine of separation of powers. On this ground we request you to recall the recommendations of the Committee.

8. **ACTING ULTRA VIRES**

- 8.1 We draw your attention to the prayers in the Petition. At no point did the petitioners pray for amendment of TSC constitutional mandate. However, the Committee in their recommendations have made a determination for constitutional amendments to limit certain functions of the Commission.

8.2 It is notable that the Commission was not heard in that regard. Neither was the issue pleaded in the Petition nor canvassed by the parties.

9. **MISREPRESENTATION OF FACTS**

9.1 The legal framework highlighted at **Paragraphs 1-7** confirms that the TPD underwent a comprehensive stakeholder engagement before it was rolled out. The Regulations underpinning the programme were intensively negotiated by the teacher unions, interrogated by the National Assembly's Committee on delegated legislation and finally approved by parliament as **Legal Notice Number 196 of 2015**.

9.2 It is our submissions that in recommending that stakeholder engagement exercise be carried out a fresh, the Committee has misrepresented facts and failed to take cognisance that the regulations conformed strictly to the provisions of the statutory Instruments Act and the same received parliamentary approval.

10. **VIOLATION OF THE RIGHT TO FAIR HEARING.**

10.1 It is our contention that the Committee did not accord the Commission the right to be heard contrary to articles 47 and 50 of the Constitution. While it true that the Committee invited us for a meeting vide letter dated **11/11/2021**, we wrote back to the Committee on **12/11/2022** and informed them that the matter is in Court. ***Attached as Appendix 1 are copies of the letters dated 11/11/2021 and 12/11/2022.***

10.2 In our said letter, we informed the Committee that we shall stand guided by the Committee, however we did not receive any response. We were shocked to hear that the Petition has been dispensed with and recommendations already made. At no time did we appear before the Committee to respond comprehensively to the Petition. It is our contention that the Commission was condemned unheard contrary to law.

11. **ASSURANCE BY THE COMMITTEE DURING BUDGET MEETING**

11.1 On **9th February, 2022**, Teachers Service Commission appeared before the Departmental Committee on Education and Research to deliberate on the 2021/2022 financial year Supplementary Budget Estimates.

11.2 The Commission made elaborate presentations on the pertinent matters with implication on the budget estimates.

11.3 During the meeting, the issue of implementation of the TPD Programme was raised by a member of the Committee. Accordingly, the Commission responded off the cuff. The Committee expressed its support of the programme and agreed that they will would canvass for budgetary allocations to cushion teachers from meeting the costs of TPD. Reference may be made from the Hansard for the meeting held on **9/02/22**.

11.4 The Commission has requested for a copy of the Hansard to be attached in this Appeal through a letter dated 22nd March 2022.

Attached as Appendix 2 is a copy of the letter requesting for a copy of the Hansard for meeting held on 9/02/22.

11.5 We therefore note that the Committee seems to be giving different recommendations on the same issue. It is notable that the difference in its recommendations maybe attributed to the facts before it. We therefore reiterate that had the Committee given the Commission a chance to be heard, its recommendations might have been similar to that at the meeting held on **9th February, 2022**.

12. INTERNAL INCOSISTENCY

12.1 We draw attention to the Committee's recommendations at paragraphs 1 and 2 and note that the two recommendations are contradicting.

12.2 It is notable that, at paragraph 1 the Committee recommends suspension of the roll out and implementation of the programme pending inter alia extensive public participation. On the other hand, at paragraph 2, the Committee recommends that the programme be financed by the government.

12.3 In view of the two contradicting recommendations, it is not clear to the Commission which of the two recommendations to implement.

13. PETITIONERS MISLEADING THE HOUSE

13.1 The Petition was brought before the house by officials of KUPPET Union. The Petitioners were represented by Hon. Omboko Milemba who is also the current chair of KUPPET. Your Honour will note that KUPPET is also a party to **Nakuru ELRC Petition No. 24 of 2021: Joseph Ngethe Karanja vs. Teachers Service Commission & 8 others.**

13.2 Deceitfully, KUPPET have filed pleadings that is, Replying Affidavit and Submissions in full support of the TPD programme in court while before the House, the Chair of KUPPET who has conflict of interest is opposing the TPD. It therefore means that KUPPET are genuinely misleading the house and the same should not be countenanced by the August House.

Attached as APPENDIX 3 are copies of the KUPPET's Replying Affidavit and Submissions in Nakuru ELRC Petition No. 24 of 2021: Joseph Ngethe Karanja vs. Teachers Service Commission & 8 others.

14. CONCLUSION

14.1 Pursuant to the above submissions, the Commission prays that you set aside the recommendations passed by the Departmental Committee on Education and Research on 1/03/2022 so as to:

- i. Await the judgment of the court on 6/06/2022 to avoid conflicting decisions by two independent bodies on the same issues and/or;
- ii. Accord the Commission an opportunity for fair hearing so as to defend the implementation of the programme before the Committee

-----ENDS-----



APPX 3

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI, Kenya

Ref. NA.2/4/2022/ (187)

20th July 2022

Dr. Nancy Njeri Macharia, CBS
Secretary/Chief Executive Officer
Teachers Service Commission
TSC House, Kilimanjaro Road Upper Hill
Private Bag - 00100
NAIROBI

Dear *Nancy*,

RE: TEACHERS SERVICE COMMISSION APPEAL AGAINST THE DECISION OF THE
DEPARTMENTAL COMMITTEE ON EDUCATION & RESEARCH REGARDING
PUBLIC PETITION NO. 047/2021

The above subject matter and your letter Ref. CS/TSC/76/VOL.IV dated 22nd
March 2022 addressed to the Speaker of the National Assembly refers.

The Hon. Speaker considered the said letter and the contents therein and directed
that, in view of the constitutional petition in the Nakuru Employment and Labour
Relations Court *Petition No. 24 of 2021: Joseph Ngethe vs TSC & 8 Others*, and in
order to allow for the conclusion of the matters canvassed in the petition, the
recommendations by the Departmental Committee on Education & Research
in respect of the Public Petition No. 47 of 2021 be put in abeyance awaiting
determination of the ELRC Petition No. 24 of 2021 (*Nakuru*).

The National Assembly appreciates your continued cooperation.

Yours *Sincerely*
MP

MICHAEL SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

Copy:



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU

CONSTITUTIONAL PETITION NO. 24 OF 2021

JOSEPH NGETHE KARANJA.....PETITIONER

-VERSUS-

TEACHERS SERVICE COMMISSION.....1ST RESPONDENT

THE CABINET SECRETARY
RESPONSIBLE FOR BASIC EDUCATION2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

KENYA UNION OF POST PRIMARY
EDUCATION TEACHERS (KUPPET)4TH RESPONDENT

KENYA NATIONAL UNION OF
TEACHERS (KNUT).....5TH RESPONDENT

KENYATTA UNIVERSITY.....6TH RESPONDENT

MOUNT KENYA UNIVERSITY.....7TH RESPONDENT

RIARA UNIVERSITY.....8TH RESPONDENT

KENYA EDUCATION MANAGEMENT
INSTITUTE.....9TH RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. In a petition dated 27th September, 2021 filed in court on the same date, the Petitioner is seeking following:-

1. Declaration that in formulating and seeking to implement the teacher professional development (TPD) programme, the respondents failed to observe and uphold Articles 10, 41, 47 and 232 of the Constitution of Kenya.

2. *A permanent order of injunction restraining the Respondents or any of its employees, officers or agents from implementing and/or further enrolling teacher professional development (TPD) programme.*
 3. *A declaration that the 1st Respondent's directive requiring compulsory teacher professional development (TPD) module is illegal and unconstitutional, an affront to teachers fair labour practices and therefore null and void.*
 4. *A declaration that the Collective Bargaining Agreements between the 1st Respondent and 4th & 5th Respondents are null and void to the extent that they recognize that every member shall undertake the professional Teacher Development programmes.*
 5. *A declaration that the appointment of the 6th – 9th Respondents was irregular, illegal, and therefore null and void.*
 - ~~6. *A declaration that Regulation 48 of the Teachers Service Commission Code of Regulations for Teachers Regulations, 2015 is unconstitutional thus null and void ab initio.*~~
 7. *Costs of this petition.*
2. The petition is supported by an affidavit sworn by the Petitioner on even date with several annexures thereto.
 3. Along with the petition was filed a Notice of motion dated 27th September, 2021 seeking for some interim/conservatory orders but the same was withdrawn on 7th October, 2021 to pave way for the expeditious hearing and disposal of the petition.
 4. In response to the petition the 1st, 4th, 5th, 6th, 7th, and 8th Respondents filed replying affidavits on record to which several attachments are annexed.

5. On 7th October, 2021 Counsel for all the parties consented that the petition be heard and disposed of by way of written submissions. Subsequently, submissions were received on record from the Petitioner and the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Respondents.

II. PARTIES TO THE PETITION

6. The Petitioner, **JOSEPH NG'ETHE KARANJA**, describes himself as a Kenyan citizen and an education consultant, residing and working for gain within the Republic of Kenya. However, he has not alluded to the qualifications as such consultant and or whether he works in the education section. He is represented by **Githui & Co. Advocates** in this petition.
7. The 1st Respondent is a constitutional Commission under **Article 252 of the Constitution of Kenya** and its establishment and roles are spelt out under the **Teachers Service Commission Act No. 20 of 2021 (TSC Act)**.
8. The 2nd Respondent is the Cabinet Secretary in-charge of the ministry responsible for all matters relating to basic education in the Republic of Kenya.
9. The 3rd Respondent is the Attorney General of the Republic, the Chief legal advisor to the Government of Kenya.
10. The 4th and 5th Respondents are duly registered trade unions under the provisions of the **Labour Relations Act** representing the interests of teachers and drawing membership from members of the teaching profession.
11. The 6th, 7th, and 8th Respondents are either public or private universities duly established under the Universities Act (Cap 210B), offering various courses of higher education within the Republic and regionally.

III. PETITIONER'S CASE

12. The Petitioner posits that pursuant to Regulation 48 of the Teachers Service Commission Code of Regulation for Teachers, 2015 (Code of Regulation) every registered teacher is required to undertake a teacher professional development programme recommended by the 1st Respondent from time to time.
13. Further, the Petitioner states that vide separate collective Bargaining Agreements (CBAs) between the 1st Respondent on the one hand and the 4th and 5th Respondents on the other, both dated 13th July, 2021 the parties acknowledged the contents of the foregoing paragraph paving the way for members of the 4th and 5th Respondents to undertake the teacher professional development programme training.
14. The Petitioner alleges that on or around 22nd September, 2021 the 1st Respondent launched the aforesaid programme which shall henceforth determine the promotion and continued employment of teachers by the 1st Respondent.
15. The Petitioner alleges that all teachers are now required to undertake six (6) modules each lasting a period of five (5) years and that it shall take 30 years for each teacher to complete the training.
16. Further, the Petitioner alleges that each teacher is expected to pay Kshs.6,000/= per annum for the said training to be offered exclusively by the 6th, 7th, 8th, and 9th Respondents.
17. The Petitioner argues that the teachers and other stakeholders in the education sector were not engaged or consulted by the 1st Respondent in the developing the contents of the modules of the training. He further

argues that it is unfair for the costs of the training to be transferred to the teachers rather than being met by the 1st Respondent, the employer.

18. The Petitioner is protesting that the appointment of the 6th to 9th Respondents as the exclusive providers of the training was arbitrary and unprocedural.
19. On the basis of the forgoing allegations the Petitioner contends that the Respondents have violated various constitutional provisions as hereunder.

IV. ALLEGED CONSTITUTIONAL VIOLATIONS

20. The Petitioner alleges that in taking the steps alluded to above, the Respondents, and particularly the 1st Respondent, violated the national values and principles of governance in Article 10 of the Constitution which provides as follows:-

(1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

- (a) applies or interprets this Constitution;*
- (b) enacts, applies or interprets any law; or*
- (c) makes or implements public policy decisions.*

(2) The national values and principles of governance include—

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights non-discrimination and protection of the marginalised;*
- (c) good governance, integrity, transparency and accountability; and State and religion.*

National symbols and national days. National values and principles of governance. 16 The Constitution of Kenya

(d) sustainable development.

21. The Petitioner alleges that the 1st Respondent in conjunction with the other Respondents introduced the compulsory teacher professional development programme training without undertaking public participation, without engaging stakeholders including teachers, and unprocedurally and arbitrarily appointed the 6th to 9th Respondents as the sole providers of that service without following open and transparent tendering process as provided in law.
22. The Petitioner also alleges that the Respondents, and particularly the 1st Respondent, violated **Article 41 of the Constitution** in that subjecting the teachers to compulsory training amounts to unfair labour practice.
-
23. **Article 41 of the Constitution** provides as follows:-
41. (1) *Every person has the right to fair labour practices.*
- (2) *Every worker has the right— (a) to fair remuneration; (b) to reasonable working conditions; (c) to form, join or participate in the activities and programmes of a trade union; and (d) to go on strike.*
- (3) *Every employer has the right— (e) to form and join an employers organisation; and (f) to participate in the activities and programmes of an employers organisation.*
- (4) *Every trade union and every employers' organisation has the right –*
- (a) to determine its own administration, programmes and activities;*
- (b) to organise; and*

(c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

24. The Petitioner alleges that in pegging further employment and promotion of teachers on the said training the Respondents, and particularly the 1st Respondent, was unilaterally imposing unfair and unreasonable conditions of employment. This, the Petitioner alludes, coupled with the costs imposed on the teachers will adversely affect career and professional development of many teachers. He alleges that the 1st Respondent has acted *ultra vires* Article 41 of the Constitution on fair labour practices.
25. Further, the Petitioner alleges that the Respondents have violated and abused Article 47 by unlawfully, unreasonably, and unprocedurally denying teachers fairness in the manner that the programme has been rolled out. He argues that the implementation of the programme is an administrative action as envisaged in Article 47 of the Constitution.
26. Article 47 of the Constitution provides as follow:-
47. (1) *Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*
- (2) *If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.*
- (3) *Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—*

(a) *provide for the review of administrative action by a court or if appropriate, an independent and impartial tribunal; and*

(b) *promote efficient administration.*

27. Lastly, the Petitioner alleges that the Respondents, and particularly the 1st Respondent, violated Article 232 of the Constitution for failing to engage stakeholders, and moreso the teachers who are directly affected, before rolling out the programme.

28. Article 232 is on values and principals of public service and provides as follows:

(1) The values and principles of public service include—

(a) *high standards of professional ethics;*

(b) *efficient, effective and economic use of resources;*

(c) *responsive, prompt, effective, impartial and equitable provision of services;*

(d) *involvement of the people in the process of policy making;*

(e) *accountability for administrative acts;*

(f) *transparency and provision to the public of timely, accurate information;*

(g) *subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;*

(h) *representation of Kenya's diverse communities; and*

(i) *affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of -*

(i) men and women;

(ii) the members of all ethnic groups;

and (iii) persons with disabilities.

(2) The values and principles of public service apply to public service in-

(a) all State organs in both levels of government; and

(b) all State corporations.

(3) Parliament shall enact legislation to give full effect to this Article.

29. The Petitioner attached copies of the CBAs between the 1st Respondent and the 4th Respondent and the other one with the 5th Respondent as exhibits, among other exhibits.

30. It is on the basis of the foregoing, together with the submissions by his Counsel, that the Petitioner prayed that the orders sought for in the petition be granted.

V. 1ST RESPONDENT'S CASE

~~31.~~ The case and position taken by the 1st Respondent is contained in the replying affidavit of **DR. REUBEN NTHAMBIRI MUGWUKU** sworn on 29th November, 2021 together with the annexures thereto and the written submissions filed by its Counsel instructed by **M/S Mirugi Kariuki & Co. Advocates**.

32. The deponent states that the 1st Respondent is established under Article 237 of the Constitution as follows:-

(1) There is established the Teachers Service Commission.

(2) The functions of the Commission are—

(a) to register trained teachers;

(b) to recruit and employ registered teachers;

(c) to assign teachers employed by the Commission for service in any public school or institution;

(d) to promote and transfer teachers;

- (e) *to exercise disciplinary control over teachers;*
- (f) *to terminate the employment of teachers.*

(3) *The Commission shall -*

- (a) *review the standards of education and training of persons entering the teaching service;*
- (b) *review the demand for and the supply of teachers; and*
- (c) *advise the national government on matters relating to the teaching profession.*

33. The deponent states that the 1st Respondent has mandate to review the standards of education and training of persons joining the teaching profession and also advise the Government on matters relating to the teaching profession.

34. The 1st Respondent argues that under **Section 11 of the Teachers Service Commission Act (TSC Act) No. 20 of 2012**, which operationalises Article 237, the 1st Respondent has mandate to formulate policies to achieve its mandate, ensure that teachers comply with the prescribed teaching standards, facilitate career progression and professional development for teachers, monitor the conduct and performance of teachers in service, and do all such other things as may be necessary for the effective discharge of its functions and powers, among other things.

35. To further illuminate on its function in requiring every registered teacher to undertake career progression and professional development programmes training, the 1st Respondent has cited **Section 35 of the TSC Act and Regulations 48 and 49 of the Teachers Service Commission Code of Regulations for Teachers, 2015**. In particular, **Regulation 48** provides that *“(1) Every teacher shall undertake the professional teacher development programmes prescribed or recommended by the commission from time to time.”*

36. **Regulation 49** provides that upon completion of a professional teacher development programme each teacher shall be issued with a teaching certificate which shall indicate the effective date and shall be valid for five (5) years or for such other period as the 1st Respondent may prescribe. A teacher who fails to undertake the training, and after being allowed two years to comply, may be terminated from service. Newly registered teachers are issued with a teaching certificate which shall be valid for five (5) years.
37. The 1st Respondent disputes and discounts the allegation by the Petitioner that it will take 30 years for a teacher to complete the training and obtain a certificate. The 1st Respondent states that after taking one module the certificate will be issued and be valid for five (5) years.
38. The deponent argues that unlike other professions where members are required to take out a certificate annually, at the cost of such members, the 1st Respondent has been fair and reasonable not to burden the teachers by requiring them to pay only Kshs.6,000/= for a certificate valid for five(5) years before going back to be trained on another module and renew the certificate.
39. The deponent states that what the 1st Respondent has done in launching the training is not *ultra vires* but it is executing the mandate donated to it by **Article 237** of the **Constitution**, **Sections 11 and 35 of the TSC Act**, and **Regulations 48 and 49 of the Teachers Service Commission Code of Regulations for Teachers, 2015**.
40. The 1st Respondent posits that the 4th and 5th Respondents, being lawful representatives of the teachers, were fully engaged in the development of the modules and launching of the programme as contained in the CBAs

executed to that effect as exhibited by the Petitioner in his supporting affidavit to the petition.

41. The 1st Respondent has alluded that it had launched the programme in 2018 but the 5th Respondent successfully challenged the said launching in court. However, after a lengthy and a painful period of negotiations and consultations, the parties, including the teachers represented by the 4th and 5th Respondents, agreed that the programme be rolled out in September, 2021.
42. The 1st Respondent argues that this training for the teachers is what is referred to as continuing professional development in other professions. In the legal profession, for example, lawyers pay to attend the programmes for continuous development of their skills each year and are then issued with annual certificates. The 1st Respondent states that there is nothing unreasonable or unfair if the teachers are required to pay a meagre fee of Kshs.6,000/= to earn a certificates that is valid for five (5) years. The 1st Respondent views the arrangement as fair and reasonable considering all the relevant factors.
43. Contrary to what is alleged by the Petitioner, the 1st Respondent denies that attending the training programmes is or forms the basis for teachers promotion and states that teacher promotion is based on an entirely different criteria founded on different rules and regulations.
44. The 1st Respondent argues that besides the fact that the training is provided for in law, it is also good in improving the standards and professionalism of teachers leading to better quality education. The 1st Respondent states that the Petitioner has either misapprehended the law relevant to the programme and training or that he has deliberately set out on a mission to mislead the court in this petition.

45. For the all reasons stated above the 1st Respondent argues that the petition fails short of the standards set out in **MUMO MATEMU v TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & 5 OTHERS (2013)** eKLR and hence prays that the same be dismissed with costs.

VI. 2ND AND 3RD RESPONDENTS' CASE

46. The 2nd and 3rd Respondents did not file a replying affidavit to the petition, there is none in the court file. However, they filed joint written submissions through **CHEPKIRUI JANET**, a Senior Litigation Counsel in the office of the 3rd Respondent.

47. The 2nd and 3rd Respondents are opposed to the petition and view the same as frivolous and an abuse of the court process and pray for the dismissal of the same with costs. The submissions by counsel shall be considered along with the others at a later part of this judgment.

VII. 4TH RESPONDENT'S CASE

48. The position taken by the 4th Respondent is contained in the replying affidavit of **AKELO M. T. MISORI** and the written submissions by Counsel instructed by **TRIPPLE A ADVOCATES**. The deponent is the Secretary General of the 4th Respondent, a trade union whose membership is exclusively made of teachers.

49. The deponent states that the career progression guidelines for the teaching service were developed by the 1st Respondent and became operational with effect from 8th November, 2017. He further stated that vide a letter dated 2nd May, 2018 the 1st Respondent invited stakeholders to read and comment on the guidelines. The teachers and members of the public were free to comment as well.

50. The deponent states that several meetings were held where the teachers through their unions made their comments on and contributions to the guidelines and the modules. He states that meetings and retreats were held on 17th October, 2021, 16th, 17th September, 2021, and 11th November, 2021 wherein the feedback from the stakeholders were assessed and incorporated into the programme and the modules content.
51. He deposes that the 4th Respondent represents over 11,000 teachers and that it entered into the CBA dated 13th July, 2021 with the full consent, mandate and authority from the said membership. He states that the 4th Respondent is in full support of the programme rolled out by the 1st Respondent as mandated by **Regulations 48 and 49 of the TSC Code of Regulation for Teachers, 2015**. He argues that the programme enhances the professional capacity and performance for all the teachers.
52. While the deponent admits that there is room for improvement in the programme, he states that there is nothing unlawful in the manner the 1st Respondent launched the same and prays that the petition be dismissed with costs as the same does not meet the threshold set in the **ANARITA KARIMI NJERU** and the **MUMO MATEMU** decisions.

VIII. 5TH RESPONDENT'S CASE

53. The 5th Respondent filed a replying affidavit sworn by the Secretary General, **HENRY COLLINS OYUU**, on 17th February, 2022 and written submissions by their Counsel instructed by **Oraro & Co. Advocates**.
54. The 5th Respondent is opposed to the petition and took a similar position to that of the 4th Respondent. The 5th Respondent takes issue with the petition for not meeting the threshold set out in the **ANARITA KARIMI**

NJERU and the MUMO MATEMU decisions and prays that the petition be dismissed with costs in *li mine*.

55. The deponent alludes that the Teacher Professional Development (TPD) is properly anchored in the law specifically Sections 11 and 35 of the TSC Act and Regulations 48 and 49 of the Code of Regulations of Teachers, 2015.
56. The deponent acknowledges that the 5th Respondent had challenged the launching of the TPD programme in 2018 through court but that the case has since been compromised and the differences resolved. To that extent the deponent argues that this court has no jurisdiction to hear and determine this petition. He attached a copy of the judgment and the order of stay from the Court of Appeal.
57. The deponent states that the 5th Respondent entered into a CBA with the 1st Respondent as a representative of thousands of teachers and that the 5th Respondent is in concurrence with the 1st Respondent on the launching and rolling out of the TPD in September, 2021. He has attached a copy of the CBA.
58. On the basis of the foregoing, the 5th Respondent prays that this petition be dismissed with costs.

IX. 6TH RESPONDENT'S CASE

59. The 6th Respondent is opposed to the petition and in so doing filed a replying affidavit sworn by **DR. OLIVIA OPERE** sworn on 27th January, 2022 and written submissions by **Lawrence Mungai & Co. Advocates**. The deponent is the coordinator for TPD Programme and team leader of the same for the 6th Respondent.

60. She deposes that in February, 2018 the 1st Respondent made a public advertisement inviting qualified and competent service providers to submit their expression of interest in the provision of the TPD training and related programmes for registered teachers in Kenya. She annexed a copy of the said advertisement.
61. She states that in accordance with **Regulations 51 of the Teachers Service Code of Regulation for Teachers, 2015** the 6th Respondent expressed interest to provide the service as advertised. The said regulation allows the 1st Respondent *"to enter into agreements with such other bodies or organisations as it may consider appropriate to facilitate continuous professional teacher development programmes."*
62. The 6th Respondent submitted its expression of interest and following what the deponent considers to have been a competitive and transparent tendering process, the 6th Respondent was accredited by the 1st Respondent to be one of the institutions to offer the training in TPD programmes and modules.
63. The deponent has annexed a copy of the expression of interest document and the contract executed between the 6th Respondent and the 1st Respondent.
64. The deponent states that the Petitioner has failed to point out any irregularities in the tendering and procurement process and that the petition fails to meet the threshold set in the **ANARITA KARIMI NJERU** and the **MUMO MATEMU** decisions and prays that the petition be dismissed with costs.

X. 7TH RESPONDENT'S CASE

65. The position taken by the 7th Respondent is expressed in the replying affidavit of **DR. CHRISTOPHER MUTEMBEI** and the written submissions by **Adera & Kenyatta Advocates**.
66. Without the need of reproducing the contents, the 7th Respondent lays its case in a similar manner as that of the 6th Respondent above. The 7th Respondent expressed an interest to offer the TPD Programme training following an advertisement on the website of the 1st Respondent on 12th February, 2018.
67. After what the 7th Respondent considers to have been a transparent and lawful tendering and procurement process the 1st Respondent appointed the 7th Respondent as one of the institutions to offer the TPD training and related programmes for registered teachers in Kenya. The deponent has ~~annexed a copy of the expression of interest document and the contract~~ entered into between the 7th Respondent and the 1st Respondent for the service.
68. The deponent posits that the petition has not pointed out any irregularities in the tendering and procurement process and or violation of law or the Constitution. Further, the deponent states that the regulations, and **moreso Regulations 48 and 49**, have been in force since 2015 and the same have not been challenged and what the 1st Respondent has now undertaken is implementation of the same.
69. On the basis of the foregoing, the 7th Respondent states that the petition is baseless and misconceived and prays for dismissal of the same with costs.

XI. 8TH RESPONDENT'S CASE

70. The 8th Respondent filed a replying affidavit sworn by **DR. JULIUS OTUNDO**, the Director and acting Dean of department of education, on 26th November, 2021. There is also joint written submission for the 7th and 8th Respondents filed by **Adera & Kenyatta Advocates**.
71. To a large extent, the 8th Respondent has taken the same position as that of the 7th Respondent in opposition to the petition.
72. The 8th Respondent expressed an interest in offering the TPD programme training following an advertisement placed on the website of the 1st Respondent on 12th February, 2018.
73. Following what the 8th Respondent considers to have been a lawful tendering and procurement process it was identified as one of the suitable institutions to offer the training. The deponent has annexed a copy of the expression of interest and the contract with the 1st Respondent.
74. The 8th Respondent is of the view that the Petitioner has not pointed out any violations of the Constitution or the law and that the Petitioner has either misapprehended the entire programme and the law applicable or that he has deliberately decided to mislead the court by misrepresenting facts and the law obtaining. On the basis of the foregoing the 8th Respondent prays that this petition be dismissed with costs.

XII. 9TH RESPONDENT'S CASE

75. The 9th Respondent filed a replying affidavit sworn by **DR. MAURICE ODONGO** on 7th February, 2022 in opposition to the Notice of motion dated 27th September, 2021, but Counsel instructed by **Gathumbi & Co. Advocates** informed the court that they did not wish to file written

submissions. I have not seen any response filed in reply to the petition. The replying affidavit to the petition, allegedly sworn by the said deponent on 2nd February, 2022 as per Counsel, is not on record.

76. As such this court shall proceed without the benefit of the response from the 9th Respondent.

XIII. ISSUES FOR DETERMINATION

77. From the foregoing analysis of the various positions taken by the parties it is the view of this court that the following issues commend themselves to this court for determination:-

- (a) Is this court clothed with the necessary legal and constitutional jurisdiction to hear and determine this petition?
- (b) If (a) above is in the affirmative, does the petition meet the legal threshold required?
- (c) If (b) above is in the affirmative, is the Petitioner entitled to the orders sought?

(d) Costs.

XIV. JURISDICTION

78. The profound statement by Nyarangi J in the **Owners of Motor Vessel Lilian S v Caltex Oil (Kenya) Ltd (1989) KLR** stands and holds true to this day. A court can only handle and deal with matters that are within its legal mandate and anything done without jurisdiction is *ultra vires*, illegal, null, and void.

79. This court is established under **Article 162(1) (2)(a)** of the **Constitution** and its jurisdiction is delineated under **Section 12** of the **Employment and Labour Relations Court Act, No. 20 of 2011**.

80. There is no argument that the issues at the core of this petition relate to an employment and or labour relationship between teachers and their

employer, the 1st Respondent Other than stating that he is a consultant in matters education, there is no evidence that the Petitioner is a teacher or a registered teacher in Kenya. There is also no evidence that the Petitioner is a member of the recognised and duly registered teachers trade unions being the 4th and 5th Respondents herein.

81. However, be that as it may, this is a Constitutional Petition founded on Article 22 of the Constitution which provides as follow:-

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.*
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by-*
 - (a) a person acting on behalf of another person who cannot act in their own name;*
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;*
 - (c) a person acting in the public interest; or*
 - (d) an association acting in the interest of one or more of its members.*
- (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—*
 - (a) the rights of standing provided for in clause (2) are fully facilitated;*
 - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall,*

if necessary, entertain proceedings on the basis of informal documentation;

(c) no fee may be charged for commencing the proceedings;

(d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

(4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.

82. Going by the materials placed before court the Petitioner has anchored his petition on **Article 22(c)** of the **Constitution**, that he is acting in public interest.

83. Good quality education can only be delivered by good and well trained professional teachers and in turn affects the development of the Republic in all spheres. In this simple context, the matters in this petition are in nature of public interest. It is in the interest of every conscious nation that the foundation of its future leaders, engineers doctors, lawyers, teachers, economists, *et al*, be grounded on good educational foundation disseminated by professional and well trained teachers right from the basic education level.

84. However, the issue of jurisdiction has been raised by the 5th Respondent who argues that this matter was deliberated on by this court (ELRC) and the Court of Appeal and a decision made. The 5th

Respondent, in so many words argues that this petition is either *res judicata* or that similar issues as those raised in this petition are still pending in court.

85. This court has gone through the judgment of Ongaya J in **Nairobi ELRC Petition No. 151 of 2018** delivered on 12th July, 2019 and the consent order recorded in the Court of Appeal in **Nairobi Civil Application No. 73 of 2020**. The subject matter of the petition before Ongaya J was substantially different from the matter before this court. The parties were also different and there is no information on the status of the appeal, or intended appeal, in the Court of Appeal.
86. The Petition before Ongaya J related to legality or otherwise of a strike that had been called by the 5th Respondent herein (KNUT) as a result of which the 1st Respondent herein had gone to court to challenge the same. The parties to that petition were encouraged by the court to engage and iron out their issues including issues of TPD trainings, transfers of teachers, fees on TPD trainings, among other issues. These are very different issues from those raised by the Petitioner in this petition as outlined in Part I of this judgment.
87. It is unfortunate that as at the time of writing this judgment page 9 of the 5th Respondent's Counsel written submissions is missing and as such this court does not enjoy the benefit of the arguments therein on this issue. However, based on the foregoing paragraphs of this judgment this petition is neither *res judicata* nor *ultra vires* the legal jurisdiction and mandate of this court. The first issue is hence determined in the affirmative.

XV. THRESHOLD

88. This court shall deal with the issue of threshold simultaneously with that of burden of proof such that as the court deals with the question of whether this petition meets the constitutional and legal requirements of a petition it shall also determine whether the allegations made by the Petitioner have been proved.
89. In his petition the Petitioner alleges violation of **Rights or Fundamental Freedoms** under **Articles 10, 33, 41, 347, 232, and 237** of the **Constitution**. However, while the Petitioner has listed the particulars of alleged violation or breach of the other Articles, he has not given particulars in respect of **Articles 33 and 237**. Be that as it may, it is not adequate to plead Articles of the Constitution and providing the particulars of the alleged violations or breaches. A Petitioner must prove the petition to the required standard.
-
90. The leading authority on the threshold of a constitutional petition which has withstood the test of time and hence quoted and cited over and over again is the **Anarita Karimi Njeru** case. Among the most prominent cases that have followed and applied the same principles is the **Mumo Matemu** case. So, what is the threshold?
91. A Petitioner has to plead with clear and concise specificity the particulars provision of the constitution that are alleged to have been violated or breached. More importantly, a Petitioner has to provide and avail evidence to prove the alleged violation or breach.
92. The above two decisions have been relied upon by the Respondents in support of the argument that this petition does not meet the threshold. In

Anarita Karimi Njeru the following passage illuminates on the threshold:-

"We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, and the provision said to be infringed, and the manner in which they are alleged to be infringed."

93. Besides what is extracted above from the **Anarita Karimi Njeru** case, to state what should rather be obvious, a Petitioner, besides stating the constitutional provision(s) allegedly violated with precision and giving the particulars of the violation or breach, has to prove the same as required by law.
94. This court shall now proceed to examine each of the provisions allegedly violated or breached and determine whether the same has been proved. To reiterate the above, it is not in the nature of the law for a Petitioner to throw a petition to the face of the court alleging violation or breach of some constitutional provisions and expect the court to automatically remedy the same without proof regardless of whether the petition is defended or not.
95. The Petitioner alleges that the Respondents, and in particular the 1st Respondent, has violated Article 10 of the Constitution for purporting to introduce compulsory TPD programme without first conducting public participation. As stated in an earlier part of this judgment, it is on record that meetings were held and the representatives of the

teachers, the 4th and 5th Respondents, attended the fora and gave their input.

96. Further, the 1st Respondent entered into CBAs with the 4th and 5th Respondents to iron out the differences that existed in 2018 as captured in **Petition No. 151 of 2018** between the 1st Respondent and the 5th Respondent and the other parties thereto.
97. The 4th and 5th Respondents, duly registered trade unions, whose membership is exclusively made up of registered teachers have availed evidence of participation and consultations before the rolling out of the programme in their respective replying affidavits and the annextures thereto.
98. The Petitioner has not provided any evidence that any member in the teaching profession or public who wished to give an input was denied the opportunity of doing so. As noted elsewhere in this judgment, any person who wished to participate in the introduction, launching, and rolling out of the programme was given a chance to do so by way of an open invitation from the 1st Respondent.
99. This court is of the considered opinion that unless the law otherwise provides, the basic and cardinal rule of evidence is that he who alleges must prove based on **Section 107 of the Evidence Act (Cap 80)**. This is exactly what the court restated in **Abdulmajid Ramadhan & 3 Others (2017) eKLR** when it stated that *"The onus was upon the Petitioners to show the court in what manner their constitutional rights have been threatened or violated."* Likewise, in **Dr. Rev Timothy Njoya v The AG. & Others** the court had this to say about the burden of proof:-

"The Petitioner cannot come to court to seek facts and information he intends to use to prove the very case that he is arguing before the court."

100. This court notes that what the Petitioner is challenging is not the law and or policy applied by the 1st Respondent but rather the manner of implementation of the said law and policy. This court has outlined the law applicable in the TPD training tracing the same way back from **Article 237 of the Constitution**, **Sections 11 and 35 of the TSC Act**, and **Regulations 41, 48, and 49 of the Code of Regulation for Teachers, 2015**.
101. The Petitioner has not provided any evidence on how the 1st Respondent or indeed any of the other of the Respondents violated the above provisions of the **Constitution** and the law. Likewise, there is no evidence availed by the Petitioner on how the CBAs entered separately between the 1st Respondent and the 4th and 5th Respondents respectively are unlawful or invalid.
102. The other front raised by the Petitioner is that the 6th to 9th Respondents were arbitrarily appointed by the 1st Respondent to offer training in the TPD programme. However, beyond that allegation the Petitioner has not provided any evidence of violation of the procurement laws. There is no evidence of a complaint from a bidder who failed to win the award complaining of the bidding, tendering, and procurement process. As stated elsewhere in this judgment, it is not enough for a party to make an allegation and expect the court to automatically find in its favour. A party in a case, unless the law provides otherwise, always bears the burden of proof.

103. The other Article that the Petitioner alleges has been violated by the Respondent is Article 41. The particulars given by the Petitioner is that the compulsory TPD programme amounts to unreasonable working condition as "imposed" by the 1st Respondent. Firstly, the 1st Respondent has not "imposed" the programme and the training on the teachers as it has been found above that the same is properly grounded in law. Secondly, the 1st Respondent has substantiated that the training is not the basis or criteria upon which teachers are promoted. The Petitioner did not reply to that assertion by the 1st Respondent.

104. It is a matter of public notoriety that almost all professional people in the Republic undergo professional development programmes and training and obtain an annual certificate in order for them to remain in good professional standing. Whether it is lawyers, doctors, engineers, surveyors etc, all members of these professions undergo periodic, annual, and or regular professional development programmes and training, at their own costs, in order to obtain annual licences to enable them to carry on their trade for the period indicated on the certificate and the same is renewed upon expiry.

105. This court is in agreement with Counsel for the 1st Respondent that teachers have for a long time been left behind in professional development and this gives credence to the 1st Respondent's action in implementation of TPD programme and training launched in September, 2021 which is now the subject of this petition. The giant trade unions for the teachers, 5th and 6th Respondents, negotiated with the 1st Respondent and even agreed on the cost. There is no evidence on record from any teacher or a member of the union on record to support the allegation by the Petitioner. The Petitioner is neither a teacher nor a member of the said trade unions. There is absolutely no

evidence that the Respondents, and particularly the 1st Respondent, have violated or breached the provisions of **Article 41** of the **Constitution**.

106. Further, the Petitioner alleges that the Respondents violated **Articles 47** and **232** of the **Constitution**. As stated above, the 1st Respondent fully engaged the teachers' unions, 5th and 6th Respondents, and invited members of the public and stakeholders to contribute and comment before rolling out the programme. The Petitioner has not provided any evidence on any person, including himself, who was denied a chance and or opportunity to submit views. The Petitioner has not identified the other stakeholders that he alleges were denied an opportunity to participate at giving their views. To this extent, the allegations by the Petitioner are hollow, unsupported, unsubstantiated and hence not proved.

107. For all the reasons stated above, inasmuch as the Petitioner crafted a petition alleging violation of specific Constitutional provisions and Articles, he has fallen short in adducing evidence to the required standard to prove the said violations. In fact, the petition, in my view has made generalised allegations incapable of mastering the threshold set out in the **Anarita Karimi Njeru** and **Mumo Matemu** decisions. The second issue for determination is hence returned in the negative.

XVI. RELIEFS

108. This court has by now said enough in the foregoing paragraphs to demonstrate that this petition has no merits. However, for completeness, this court has carefully examined the reliefs/prayers sought for and finds none of the prayers merited.

109. In respect of prayer 1 the court has found above that the Respondents have not breached Articles 10, 41, 47, and 232 of the Constitution as the Petitioner has failed to adduce evidence to prove the allegations made.
110. There thus exists no basis upon which a permanent order of injunction may be granted restraining the Respondent or their employees, agents or others howsoever from implementing the TPD programme and training. The petitioner in that regard falls far short of the requirement set out in *Giella v Cassman Brown*. On that account prayer 2 must fail.
111. In regard to prayer 3, the 1st Respondent is simply implementing the law as set out elsewhere in this judgment. The Petitioner has flatly failed to demonstrate how the 1st Respondent and indeed all the other Respondents are in violation of the law.
-
112. In respect of prayer 4 the same is hollow and empty and completely devoid of merit. What is illegal or unlawful in the separate CBAs between the 1st Respondent and the 5th and 6th Respondents? That is another mere allegation by the petitioner that is not supported by evidence and the same must fail.
113. Prayer 5 seeks a declaration that the appointment of the 6th to 9th Respondents to offer the TPD programme training was irregular, illegal, null, and void. This court has dealt with this issue extensively in another part of this judgment arriving at the conclusion that there is no evidence at all that the bidding, tendering, and procurement process was flawed. The court is in the circumstances denying this prayer in *toto*.

114. Prayer 6 seeks a declaration that **Regulation 48** of the **Teachers Service Commission Code for Teachers, 2015** is unconstitutional. This court has carefully gone through the petition, the supporting affidavit, and the written submissions by his counsel and there is no evidence or any legal argument in support of the allegation of unconstitutionality of **Regulation 48**.

115. For avoidance of doubt **Regulation 48** provides as follows:-

"48. Professional teacher development programmes

- (1) Every teacher shall undertake the professional teacher development programmes prescribed or recommended by the commission from time to time.*
 - (2) The commission shall approve training institutions to conduct teachers development programmes.*
 - (3) The approved institutions shall issue certificates to teachers upon completion of the programme."*
-

116. The above Regulation flows from the provisions of **Article 237** of the **Constitution** and **Sections 11** and **35** of the **TSC Act**. The Petitioner has not demonstrated how the above regulation offends **Article 237** or indeed any other provision in the Constitution. To state what is by now rather obvious, it is not sufficient for a Petitioner to make allegations of violation of constitutional provisions and give whatever details he deems to apply to such violations. A Petitioner bears the eternal duty and obligation of proving such alleged violations.

117. This court is, even if it closes its eyes to the lack of evidence on the part of the Petitioner, unable to establish anything unconstitutional about **Regulation 48** above and hence prayer 6 must, like all the others, fail.

XVII. COSTS

118. Other than stating that he is a consultant in education, the Petitioner did not disclose the qualifications that he deems to qualify him as a consultant or an expert in matters education. He did not disclose in what capacity he has filed this petition and it was left to this court to discern that he has filed this petition in an alleged public interest. There is no other capacity that may be assigned to him under **Article 22 of the Constitution**. He has not disclosed whether he is a teacher or a former teacher, a member or a former member of the 5th or 6th Respondents.
119. The Petitioner has not disclosed the other stakeholders in the education sector that he suggests he could be representing or fronting for in this petition.
120. Award of costs is to a large extent in the discretion of the court. ~~Ordinarily costs follow the event and under ordinary circumstances~~ the Petitioner should be ordered to meet the costs of this petition which has been found to have no merits on all the counts.
121. Although this petition has been found not to be *res judicata*, in view of the 2018 petition between the 1st Respondent and the 6th Respondent, the status of the appeal therefrom has not been disclosed to this court by the concerned parties and in any event the subject matter has been found by this court to be substantially different.
122. However, as far as the matters in this petition are concerned, this court hopes that through this judgment the same have been settled and that any party dissatisfied shall move to the next stage with the necessary dispatch. This is what informs this court not to award costs against

the Petitioner, notwithstanding that he has failed miserably in proving his case. For that reason each party in this petition shall meet own costs.

XVIII. GRATITUDE

123. This court thanks the parties and their respective Counsel for the industry, maturity, and effort that has gone into research all the way from the pleadings to the written submissions. This court has gone through all the materials placed before it and the same have invaluable informed the decision that this court has arrived at.
124. By way of a recommendation, this court suggests to all the Respondents to work together to ensure that the training is availed and offered across the country to enable all the registered teachers to meaningfully benefit from the same at a mitigated cost. For a while now the teaching profession is devoid of strikes and boycotts. The 1st Respondent is encouraged, as the employer, to continue engaging the other Respondents, and moreso the 5th and 6th, for continued harmony in the sector.

XIX. ORDERS

125. The net effect of all the above is that the petition dated 27th September, 2021 is hereby dismissed in its entirety and each party is ordered to meet own costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU

THIS22ND..... DAY OFSEPTEMBER.....2022.

.....*David Nderitu*.....
DAVID. NDERITU
JUDGE

ANNEXTURE 4

Submission by the Ministry of Education on the implementation status of the Report of the Departmental Committee on Education & Research on a Public Petition regarding repeal of sections of the Universities Act 2012 pertaining to the Elections of University Student Leaders.



REPUBLIC OF KENYA
MINISTRY OF EDUCATION
Office of the Cabinet Secretary

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Our Ref: MOE/HQS/CON/4/4

February 13th, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
Parliament Road
NAIROBI

Dear *Samuel*.

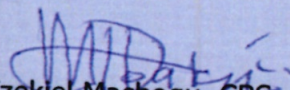
**RE: MEETING WITH THE COMMITTEE ON IMPLEMENTATION REGARDING
IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS**

This has reference to the captioned matter and to your letter dated 20th January, 2023, under Ref. No. NA/AA&OSC/COI/2023 (009). The said letter invited the undersigned to a meeting to brief the Committee on Implementation on the implementation status of the report of the Departmental Committee on Education and Research, on a public petition regarding repeal of sections of the Universities Act, 2012. The said report outlined the Departmental Committee's recommendations regarding the provisions of the Universities Act, 2012, on the election of university student leaders.

As requested vide your referenced letter, please find enclosed herewith twenty-five copies of my submissions on the subject matter. A soft copy has also been sent via email.

I remain grateful for your continued support.

Yours sincerely,


Hon. Ezekiel Machogu, CBS
CABINET SECRETARY



Copy to: Dr. Beatrice Inyangala, PhD
Principal Secretary
State Department for University Education and Research
Ministry of Education
NAIROBI

13 FEB 2023



REPUBLIC OF KENYA
MINISTRY OF EDUCATION
Office of the Cabinet Secretary

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Harambee Avenue
P. O. BOX 30040 - 00100
NAIROBI - Kenya

Ref: MOE/HQS/CON/4/4

14th February, 2023

**RE: MEETING WITH THE COMMITTEE ON IMPLEMENTATION REGARDING
IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS**

Background

Honourable Chair and Honourable Members,

1. By a Petition dated 5th August, 2021, Mr. Amos Kamotho Ndung'u petitioned the National Assembly to repeal Sections 18 (1C); 18 (1D) and 18 (1E) of the Universities (Amendment) Act. The effect of the said amendment provisions was to amend the Universities Act, 2012, to introduce a collegiate system of electing student leaders. This collegiate system replaced the direct popular vote.
2. The Petitioner argued that these amendments are contrary to the Constitution, because they curtail universal suffrage by denying students the right to directly participate in the election of their leaders.
3. The Departmental Committee on Education and Research held meetings with various stakeholders, including the then Cabinet Secretary, Ministry of Education. The Ministry expressed the view that student leaders should be elected democratically through universal suffrage. The Ministry also proposed that regulations should be formulated by individual universities to guide on peaceful, fair and transparent conduct of student elections.
4. Having considered the Petition and submissions by stakeholders, the Departmental Committee on Education and Research held that the electoral college system of electing student leaders is not in tandem with the Constitution, under which national elections are done through universal suffrage.

5. The Committee therefore recommended that:

- a. Section 41 of the Universities Act, 2012 be amended to provide for election to the students' council through election by student associations comprising all students, as opposed to electoral colleges.
- b. Each university, in consultation with the students' association of the University, should formulate and enact regulations on good academic standing to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.

Implementation Status

Honourable Chair and Honourable Members,

6. The recommendations by the Departmental Committee on Education and Research were made on 3rd March, 2022.
7. At the time that these recommendations were made, the Universities (Amendment) Bill, 2021 was pending before the National Assembly. However, on 9th June, 2022, the Speaker of the National Assembly ruled that the Bill was unconstitutional on several fronts, and ordered that it be republished. The ruling was delivered during the last sitting of the 12th Parliament. The Ministry did not, therefore, have the opportunity to cause the introduction of the recommendations of the Committee to the pending Bill.

A copy of the Ruling by the Honourable Speaker is attached hereto and marked CS-1.

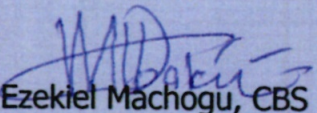
8. As Honourable Members are aware, on 30th September, 2022, His Excellency the President appointed the Presidential Working Party on Education Reform.

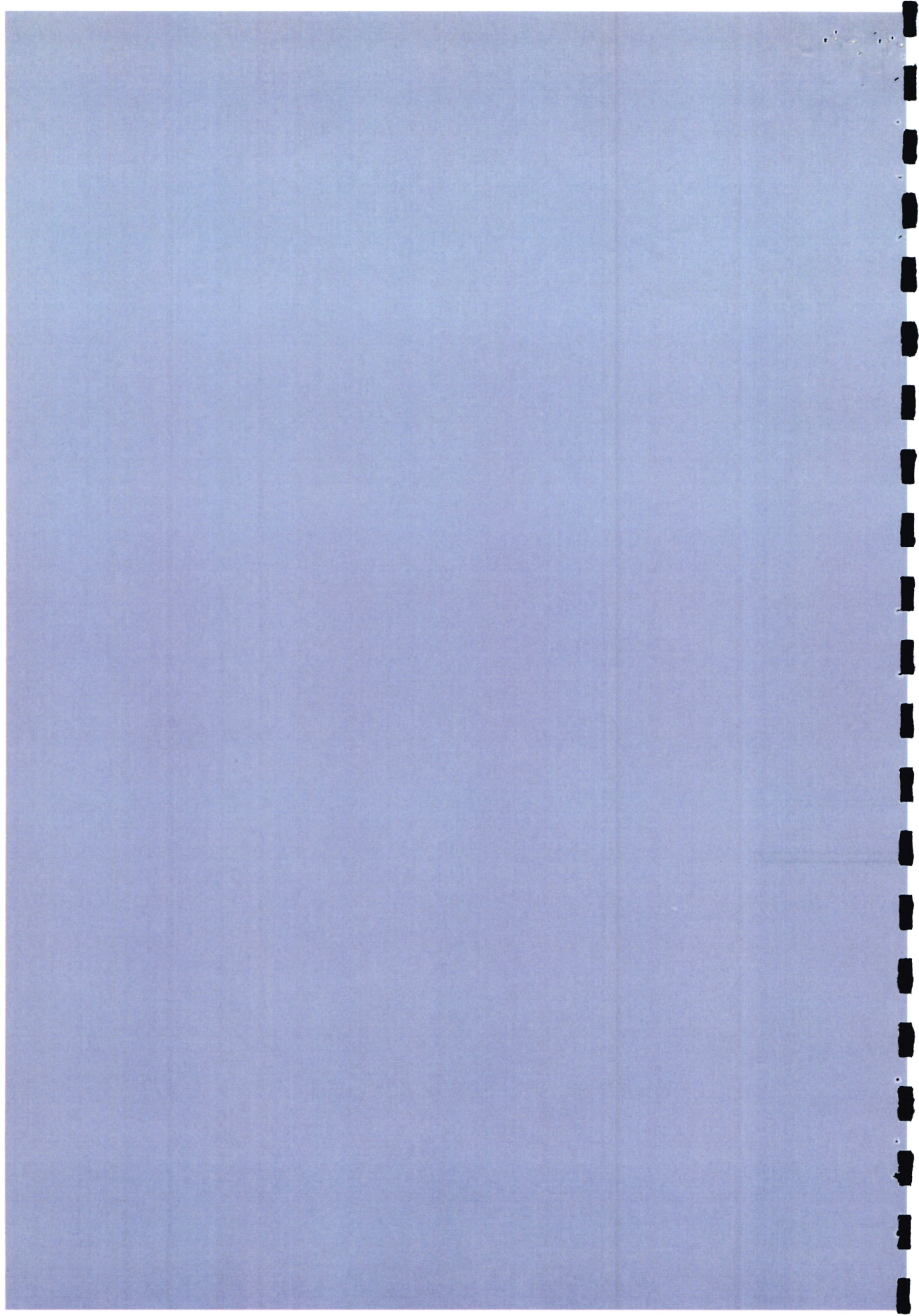
A copy of the Gazette Notice appointing the Working Party is attached hereto and marked CS-2.

9. The terms of reference of the Presidential Working Party on Education Reform are wide-ranging and include, studying all laws governing the tertiary education subsector and making recommendations for review of these legislation with a view to streamlining effectiveness and efficiency in the subsector.
10. In this regard, the Ministry has presented the report of the Committee to the Presidential Working Party
11. on Education Reform. It is the Ministry's objective to prosecute the Committee's recommendations together with the overall recommendations for law reform that will be made by the Presidential Working Party on Education Reform.

Honourable Chair and Honourable Members, I respectfully submit.

Thank you very much.


Hon. Ezekiel Machogu, CBS
CABINET SECRETARY



CS-1

CONSIDERED RULING – CONSTITUTIONAL PROPRIETY
OF UNIVERSITIES (AMENDMENT) BILL, 2021

Hon. Members, I have this Communication to make before we go to the next Order. You will recall that during the Afternoon Sitting of the House on Wednesday, 8th June, 2022, the Member for Kikuyu Constituency, Hon. Kimani Ichung'wah, rose on a point of order, and raised a number of questions on the constitutional propriety of the Universities (Amendment) Bill, 2021, that was scheduled for consideration at the Committee of the whole House stage during that Sitting. The Member referred to previous rulings and guidance by the Speaker allowing the challenge of any business before the House on the basis of its constitutionality at any stage. He then proceeded to challenge the Bill with reference to the provisions of Article 10 of the Constitution on national values and principles of governance; Article 43 providing for economic and social rights and Article 201 which provides for principles of public finance. According to the Member, by giving the Cabinet Secretary responsible for Education sweeping powers to appoint and replace Vice-Chancellors of public universities and members of university councils, Clauses 13 and 14 of the Bill violate the principles and values of governance expressly outlined in Article 10 of the Constitution.

(Several Hon Members walked into the Chamber)

Those three Members, please, make your way in quickly. Hon. Abdullswamad, you cannot make your way in when you are still reading messages on your phone.

(Hon. Joseph Oyula walked into the Chamber)

That must be the Member for Butula. Please, make your way in. Just take a seat somewhere.

Further, the Member for Kikuyu Constituency claimed that to the extent that Clause 18 of the Bill proposes to advance the existing practice of placing Government-sponsored students in private universities even in instances where there are existing vacancies in public universities, the Bill violates the provisions of Article 201(d) and (e) of the Constitution, which require that public money has to be spent in a prudent and responsible way; and financial management shall be responsible and fiscal reporting shall be clear, respectively. It was his submission that Clause 18 of the Bill automatically leads to allocation of public funds to private universities without subjecting private universities to the same stringent reporting and audit requirements that are applicable by law to public universities.

Hon. Ichung'wah also submitted that by forcibly placing Government-sponsored students in private universities despite their eligibility for placement in public universities and without due regard to their subjection to meeting a potentially higher fees requirement, the provisions of the Bill effectively curtail the right to education meant to be enjoyed by all Kenyans under Article 43(1)(f) of the Constitution. The Member further noted that the issues highlighted in his point of order had been raised at a very early stage, in conjunction with concerns from other Members, and had led to a directive from the Speaker that the Departmental Committee on Education and Research conducts a winnowing process to harmonise the proposals made by Members on the subject.

According to the Member and others who spoke after him, the winnowing process did not meet the requirements of Standing Order No.131 dealing with referral of proposed

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amendments to Committee, as it did not see the concerned Members invited nor did it take into account the peculiar demands and circumstances of those who had expressed an interest in amending the Bill.

The nature, extent and quality of public participation over the Bill was also brought into question, with allegations made that the exercise was not representative of key stakeholders in the education sector that stand to be affected by the passage of the Bill. It was argued that the Departmental Committee on Education and Research devoted most of the time committed to the public participation exercise to private universities, their representatives and the affiliated bodies, to the disadvantage of public universities.

In the ensuing debate, several Members were in support of the points raised by Hon. Ichung'wah, including Hon. Gitonga Murugara, Hon. Owen Baya, Hon. (Dr.) Robert Pukose, Hon. John Kiarie and Hon. Joseph Limo, who requested the Speaker to make a ruling on the matters before proceeding with consideration of the Bill at the Committee of the whole House. The Leader of the Majority Party; the Member for Uriri, Hon. Mark Nyamita; Hon. Abel Ogutu and Hon. (Dr.) Wilberforce Ojiambo Oundo noted the need for the Speaker to consider the continuity of public entities and equal treatment of all students by the Government.

I will resume my seat to allow those three Members to make their in. Hon. Member for Karachuonyo, I was just allowing Members to make their way in.

(Several Hon Members walked into the Chamber)

From the general debate, I isolated the following issues for resolution with regard to the Universities (Amendment) Bill, 2021:

- 1) Whether the Bill violates Articles 10, 201, 229(5) and 43(1)(f) of the Constitution;
- 2) Whether the Bill concerns county governments;
- 3) Whether sufficient public participation was conducted on the Bill in terms of Article 118 of the Constitution with regard to the involvement of public universities; and,
- 4) Whether harmonisation of the proposed amendments to the Universities (Amendment) Bill, 2021 was conducted in terms of Standing Order No.131.

While I note that I reserved the foregoing issues raised by Members for a considered ruling today, I must admit that the period between yesterday's Sitting and today's afternoon Sitting has not been sufficient for the exhaustive consideration of the issues touching on the constitutionality of the Bill. I will point out the following issues in light of the scheduled adjournment of the House to proceed on *sine die* recess after today's sittings:

In the circumstances, and for the convenience of the House, I have consciously decided to provide an interim guidance for purposes of continuity of the business of the House.

I am fully cognisant of previous rulings that I have issued, pursuant to Standing Order No.47, where I have noted that an issue touching on the constitutionality of any business before the House may be raised at any stage during the consideration of the affected business. The Hon. Members were, therefore, perfectly in order to raise the matters covered under their points of order.

Allow me to now examine the four issues that require my guidance this afternoon. Firstly, on the issue of whether the provisions of the Universities (Amendment) Bill, 2021, violate Articles 10, 43(1)(f) and 201 of the Constitution, I will note that from my perusal of the Bill, it does not seem to fully address the issue of the need for audit of the utilisation of public funds directed towards private universities. No provision in the Bill addresses how funds proposed to

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be directed to the tuition of students placed in private universities are to be audited to ensure that the expenditure of the funds is legally and prudently spent in accordance with the requirements of Articles 201(d) and 229(5) of the Constitution.

Let me resume my seat to allow those Hon. Members to also make their way in.

(Several Hon. Members walked into the Chamber)

Member for Emurua Dikirr, do not run into the Chamber. You are an honourable Member. Just stroll in majestically, as you normally do.

Indeed, Clause 18 of the Bill, which seeks to repeal section 54 of the Universities Act, 2012, has established the Universities Fund Board without providing the standard provisions on auditing and reporting normally found in legislation which have established Funds. I note that Articles 226 and 229 of the Constitution as read together with the Public Audit Act, 2015, require the Auditor-General to audit any entity that is funded from public funds.

The Bill ought to have expressly actualised these standard provisions in Clause 18 with specificity. Certainly, to have a Bill without audit provisions where public funds are to be advanced to private entities is tantamount to negating the provisions of Articles 201, 226 and 229 of the Constitution. Simply put, to establish a board or a fund without auditing provisions is certainly putting the cart before the horse.

Hon. Members, what troubles me is the fact that from the outset, this was not a consideration that informed the introduction of the Bill in the House. However, I note that the Members for Kikuyu and Seme constituencies have, in their proposed amendments to the Bill, provided for the requirement for the audit of the public funds directed to private universities.

I am quite uncomfortable to leave the inclusion of a provision seeking to reflect a constitutional principle to the vagaries of a vote of the House, which may go either way, or be withdrawn by the Mover. Indeed, the Speaker has no power to order that a proposed amendment by a Member be carried in the House to cure a constitutional deficiency. To this end, it is my considered view that any provisions in the Bill seeking to address any concerns raised with regard to its constitutionality, ought to have been addressed at its publication.

Any revision at this particular stage of the Bill through amendment fails to properly address the constitutional concerns raised, as the amendments may be defeated by a simple majority of the Members of the House present and voting, and lead to an absurd result. Though unable to pronounce myself with finality on the constitutionality of the cited provision at this stage, I am perfectly able to direct that the issues raised are valid and ought of have been addressed by the proponents of the Bill before its publication.

Hon. Members, whereas, it is notable that the Auditor-General has a constitutional obligation under Articles 226 and 229 of the Constitution to audit any entity funded by public funds, the auditing requirements ought to be included in legislation and the case presented by this Bill is not exceptional. I, therefore, urge the next House to ensure that public funds that may have been expended this year or indeed previously to entities under the Universities Act are held accountable, and the Auditor-General has certainly a constitutional obligation to audit and report on the accounts of such entities, separately.

Hon. Members, with respect to the constitutionality of the Bill with regard to Article 10 of the Constitution on the national values and principles in particular of good governance, I note that Clauses 13 and 14 of the Bill propose to give power to the Cabinet Secretary responsible for Education to appoint Vice-Chancellors of public universities, and to revoke the appointment of

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the chairperson and/or any member of the councils of the universities. Clause 13 further gives the Cabinet Secretary power to approve meetings of the councils of public universities where they propose to meet more than four times in a year.

Hon. Members, certainly clauses 13 and 14 of the Bill raise questions on whether the clauses, as couched in the Bill, would promote good governance; and it is an issue that the Committee on Education ought to have considered.

Lastly, on the constitutionality of the Bill in respect to Article 43(1)(f) of the Constitution, I will restrain myself from guiding this House on the matter, as I note that it relates to a question of violation of the right to education as an economic and social right as contained in the Bill of Rights. As I have guided this House severally, a question on the violation of a right and fundamental freedoms falls within the exclusive jurisdiction of the High Court in terms of Article 165 of the Constitution. I do not intend to depart from my previous rulings on this matter.

I resume my seat to allow Members to come in.

(Several Members walked into the Chamber)

The Member for Karachuonyo, you are in and out. You are confusing people, given your height. They do not want to tread on you. Member for Shinyalu, just walk in. I just resumed my seat to allow Members to come in. The Member for Nairobi does not want to sit. Members who are coming late, I wish to remind you, because I believe you may not know. I am sure that Hon. Jimmy Angwenyi will recall the old days in the villages, when people would choose whom to “close” school with. This being the last day, I hope the Member for Nairobi is not choosing to “close” with Hon. Wangwe.

(Laughter)

Hon. Members, moving on to the second issue, which is with regard to the issue of whether the Bill concerns county governments, I do note that despite this issue falling squarely under the province of the two Speakers of Parliament in line with the provisions of Article 110 (3) of the Constitution, an argument may still be sustained in the event amendments proposed to the Bill affect its nature. A perusal of the Bill reveals that Clause 9 of the Bill as published seeks to repeal and replace Section 26 of the Universities Act to require the Commission on University Education to ensure accessibility of public universities by all counties.

Additionally, the amendments proposed to the Bill by various Members, including those proposing partnerships between universities and counties and the committal of public land held in trust for the public by counties, may result in a designation of the Bill as a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution, as read together with Part 2 of the Fourth Schedule to the Constitution, if passed by the House. This now settles the second issue.

Hon. Members, on the third issue, I will not belabour on the question of the adequacy of public participation on the Bill. I have ruled on numerous occasions in this Parliament on the need for the procedures of the House to incorporate meaningful public participation, as directed severally by the courts. I have also, on numerous occasions, emphasised on the need for this House and its Committees to ensure that public participation is not a cosmetic process, but one of probative value. In this regard, I note that the Report of the Departmental Committee on

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Education and Research on the Bill seems not to meet the thresholds set by this House on the meaningful involvement of the public.

At face value, I am at pains to discern from the two reports tabled by the Committee any meaningful engagement with key stakeholders affected by the Bill. In the reports, there is no indication of whether the Committee, at the very least, invited the Vice-Chancellors of all the 52 chartered universities, 32 of which are public, and the 12 universities with letters of interim authority to make representations on the Bill.

There is no mention of whether the Committee invited and considered the crucial input of stakeholders such as the Commission on University Education and the existing Universities Fund Board, and whether it considered their views. If it did, there is no record of it in their Report to the House and the addendum to the Report. To my mind, a meaningful public participation exercise should mirror the current practice adopted by the Departmental Committee on Finance and National Planning, which invites its principal stakeholders to make submissions on any business appearing before them, even if they do not send any memoranda. This allows them a broad perspective over the issues under their consideration, whether or not such stakeholders opt to submit memoranda in response to a call for public participation.

The paucity of the Committee Report becomes more glaring when one takes into account the allegations made on the Floor of the House, that the response to the Committee's invitation for public participation drew rather partisan submissions, including submissions from a forum said to represent the Vice-Chancellors of universities, instead of the actual Vice-Chancellors. I am of the opinion that the exercise conducted by the Committee would have been sufficient if it involved its key stakeholders and persons directly affected by the Bill by default.

Hon. Members, finally on the fourth and last issue, which is whether the harmonisation of amendments proposed to the Bill was properly executed, I note that Standing Order No.131 is a device that assists committees to harmonise amendments thus, in effect, assisting the House and Members to avoid unnecessary objections during the Committee of the whole House stage. I, however, note that a number of Members who joined issue with the Hon. Ichung'wah noted that they proposed amendments to the Bill, but their efforts to have their issues addressed during the harmonisation process envisaged under Standing Order No.131 was less than fruitful. From the foregoing, this indicates that the harmonisation or the winnowing process under Standing Order No.131 by the Committee on Education and Research did not meet the dictates of the said Standing Order.

Hon. Members, I note that lack of the harmonisation process does not in any way impede a Member from proceeding with their amendments in the House and, indeed, as ably noted by Hon. (Dr.) Wilberforce Ojiambo Oundo, the amendments proposed by the Members were included in the Order Paper for the Afternoon Sitting of the House yesterday, and are also included in the Order Paper for this particular Sitting.

A committee directed to conduct the harmonisation process under Standing Order No.131 must demonstrate compliance with the Standing Order. It however appears – from the submissions made by the Members in yesterday's afternoon Sitting and the plethora of amendments contained in the Order Paper – that the winnowing process failed to meet the bare minimum of the expectations of Standing Order No.131.

In light of the foregoing, what then is the prudent action to be taken at this stage of the Bill, in view of the concerns raised? At the outset, I note that in addition to the concerns raised by the various Hon. Members, the Bill has attracted numerous amendments, as may be seen from the Order Paper. This, in my view, is a pointer to the need for a re-think of the Bill by its

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proponents. Insisting on prosecution of the Bill in its current form, despite the objections, questions of constitutionality, concerns on the quality of public participation undertaken on the Bill, and the numerous proposals for amendments may only easily expose any resultant Act passed by this House to easy challenges in courts of law. Conscious of the fact that the House is scheduled to adjourn *sine die* today, in view of the forthcoming General elections, I note that if the Committee had taken time to address some of these issues when they were first raised during Second Reading, we would be facing a different situation today.

Hon. Members, it is also notable that the issues raised by the Hon. Members touch on three main clauses, these being clauses 13 and 14 on the powers of the Cabinet Secretary in respect to the public universities and Clause 18 of the Bill with regard to the Universities Fund Board. These clauses form the crux, the flesh, the pith and substance of the Bill. Indeed, one may want to argue that the easy way to cure questions of constitutionality is to expunge the unconstitutional clauses in a Bill.

However, should I order the expunging of the three clauses from the Bill, this will also require me to order the expunging of other clauses and consequential amendments to the severance of the three clauses. From a perusal of the Bill, if you were to expunge clause 18 of the Bill, you may also need to expunge clauses 16, 17, 19 and 20, among other related clauses. This would leave a shell of a Bill with no clause to deliberate on. Suffice it to say, that severance of clause 18 of the Bill would also be an abdication of the watchdog and oversight role of this House of ensuring accountability on the utilisation of public funds.

In light of the foregoing I am, therefore, of the considered opinion that it is prudent and advisable for the Bill to be re-published in order to align it with the Constitution, and take into account the concerns raised by Members on the issues of constitutionality, public audit, public participation, and the nature and extent of the discrimination in the policy that seeks to commit a student eligible to attend a cheaper public university to a private university with a higher fee requirement.

Hon. Members, as your Speaker, I have previously ruled that I cannot close my eyes even when faced with competing unpleasant scenarios. In the present case, the question as to whether I should let the House commit a constitutional requirement to a vote or to stand down a Bill that has attracted serious questions by Members of the House, I would prefer standing the Bill down to allow its regularisation. Any other decision would, in my view, be reckless and would establish a defective precedent. In light of the foregoing, the Bill cannot, in its present state and form, proceed for consideration in the Committee of the whole House.

(Applause)

Hon. Members, I thank you for raising this matter and for all your contributions on the ensuing debate for valuable insights that shall undoubtedly enrich future interrogation of Bills before this House. In summary, this is my finding:

THAT, in the interim and pending further interrogation of the constitutionality of the Universities (Amendment) Bill, 2021, the Bill fails to fully actualise the provisions of Articles 201 and 229(5) of the Constitution on the need for reporting and audit of the utilisation of public funds allocated to private universities;

THAT, the Departmental Committee on Education and Research failed to propose any remedy for action by the House to actualise these two provisions. The only proposal close to actualising one of these provisions is by the Member for Seme Constituency and the Member for

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Kikuyu Constituency. However, at this stage, leaving the inclusion of a provision seeking to reflect a constitutional principle to the vagaries of a vote of the House would be imprudent;

THAT, to the extent that the Bill makes provisions touching on county governments and that various amendments, if passed, would require an interaction between universities and the functions reserved for county governments, the Bill is likely to concern county governments within the meaning of Article 110(1)(a) of the Constitution;

THAT, the public participation exercise conducted by the Departmental Committee on Education and Research was not sufficient as it did not involve its primary stakeholders and persons directly affected by the proposed legislation by default. The Committee ought to have invited, heard and considered the views of the Vice-Chancellors of, at least, a reasonable fraction of all the 52 public and private chartered universities, the 12 institutions with letters of interim authority, the Commission on University Education and the Universities Fund Board, at the very least;

THAT, based on the submissions by the Members in the House and the plethora of amendments contained in the Order Paper for yesterday and today afternoon, the harmonisation of the amendments proposed to the Bill by the Committee did not meet the dictates of Standing Order No.131; and,

THAT, the Universities (Amendment) Bill, 2021 be and is hereby, ordered to be re-published in order to take into account the concerns raised by Members and align it with the expectations of Articles 10, 43(1)(f), 201 and 229(5) of the Constitution.

The House is accordingly guided. I thank you, Hon. Members.

(Hon. (Ms.) Esther Passaris consulted loudly)

Hon. Speaker: Hon. Member for Nairobi, listen to this. At least when you come back in the 13th Parliament, you will remember this.

Hon. Members, the Order Paper provides that not later than 3.30 p.m., the House shall be moved to adjournment in accordance with the Calendar of the House. Therefore, any other business on the Order Paper falls. Those are the rules. So, anything else in the Order Paper falls. You resolved that you will be doing four hours of *Sine Die* adjournment. So, that is how it ends.

Hon. Duale.

Hon. Aden Duale (Garissa Town, JP): Hon. Speaker, I am happy that I followed the procedure. Today is the last day of the 12th Parliament but I have serious constitutional issues to raise on the Huduma Namba Bill, 2021. So, the Speaker of the 13th Parliament...

(Hon. Amos Kimunya consulted loudly)

I am talking to Hon. Speaker. He can guide me and even tell me that there is no business. So, Hon. Amos Kimunya, relax.

Hon. Speaker, I want to go on record and allow you to give me an opportunity to table my document for future reference on why the Huduma Namba Bill is unconstitutional. It wants to finish the people of northern Kenya. It is against the Muslims. It is against many people and we must oppose it. I am happy that it has died.

Hon. Speaker: Let me just guide you on this one. Hon. Duale, you are at liberty to table that document while you make your contributions to the Motion of Adjournment. During debate on the Motion for Adjournment *Sine Die*, you are at liberty to table anything. It will be collected

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and put together for the other House. All of you who are raising these Papers can table them here.

Proceed, Leader of the Majority Party.

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE *SINE DIE*

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move that pursuant to the provisions of Standing Order No.28 on the Calendar of National Assembly (Regular Sessions) this House adjourns *Sine Die*.

Let me take this opportunity to thank the leadership of this House for the guidance that it has offered throughout the tenure of this Parliament. I am glad that we have been able to process critical business that will allow smooth transition and continuity of Government services even as we head for the general elections in two months' time. We are finally at the homestretch and over the past weeks, I have used this position to highlight critical and urgent business that the House needed to prosecute.

Today is not the same as all other days because it is officially the last day of the 12th Parliament in this Chamber. Therefore, it is a moment of reflection where we look back as a House and pat ourselves on the back for the achievements that we have recorded for the last five years and take pride in the services we rendered to our great Republic. It is important for Members to know that as we adjourn today, we are Members of Parliament until 8th August and we still have some time bound business that is pending before the other House on additional revenue allocation to the county governments. Should that Bill be passed, we will consider recalling you to come and give those funds to the county governments. I said this in the morning. We are only taking a recess but we are still on duty and it is important that Members know this. Even the Huduma Namba Bill that we could not prosecute because of a technicality, we can still enact it during a Special Sitting. So, all is not lost. That is the confirmation I wanted to give Members.

I am aware that the House Business Committee has facilitated about 557 sittings, including Special and Joint Sittings. Over that period, I believe we steered the business of the House in a very fair and accommodative manner. We have managed to guide the Calendar of this House efficiently and effectively. More importantly, we have accommodated various varying interests of the House and Members.

I remember that the House Business Committee indicated that all legislative proposals by individual Members should be expedited through the process to publication. On this note, I wish to thank you, Hon. Speaker for having chaired and guided the House Business Committee over the last five years and indeed over the last 10 years. I also wish to note that the House Business Committee has consistently sat every week when the House was in session and never missed a single opportunity to sit and guide the House. I hope we have set the pace for those who will come after us now and in the future.

Hon. Speaker, we have successfully processed a number of legislative proposals. The total number of proposals that have been introduced in the House is 342, ranging from those by the Government, those by the Committees and those by individual Members. I believe we have accorded fair distribution of time to all the business, including sometimes sitting till late in the

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evening to just complete them. This is an incredible feat despite the disruption occasioned by the COVID-19 pandemic during the Fourth and the Fifth Sessions.

Over the term of the 12th Parliament, the National Assembly passed over 140 Bills out of the 342 that have been introduced. Of the 140 Bills that have been passed, 114 have been assented into law, while 26 others are being processed in the Senate. We will be following up on the progress of the Senate between now and next week at least to increase the number so that we do not have many of those 26 not being passed into law. Among the legislative proposals that have been assented to, I wish to highlight on those that have far reaching implications and are unique in nature without mentioning the obvious; the Finance and Budget associated laws, which are considered every year. They include the WAQF Bill, 2017 - which sort out the issues for the Muslim Community; the Computer Misuse and Cybercrime Bill; the Physical Planning and Land Use Bill, 2017; the Petroleum Bill; the Irrigation Bill, 2017; the Energy Bill, 2017; the Nuclear Regulatory Bill, 2018; the Parliamentary Service Bill, 2018; the County Government Retirement Service Benefit Scheme Bill, 2018; the Data Protection Bill; the Warehouse Receipts System Bill; the National Youths Service Bill; the Sectional Properties Bill, 2019; the Tea Bill, 2018; the Refugees Bill, 2019; the Early Childhood Education Bill, 2018; the Foreign Service Bill, 2021 and the County Governments Additional Allocations Bill, 2021.

In the same period, the 12th Parliament considered and approved the appointment of various persons to hold important offices in Government. It is in the 12th Parliament when we vetted and confirmed the appointment of the first female Chief Justice, Lady Justice Martha Koome. Besides, we considered the appointment of 60 Ambassadors and High Commissioners. We vetted and confirmed the appointments of Cabinet Secretaries, Principal Secretaries and Commissioners, among other key Government appointees.

It is also during the 12th Parliament that we made significant headway towards the attainment of one of our strategic pillars – enabling E-Parliament. Although we have a long way to go, we have the necessary infrastructure in place to enable us to be digitalised, including the amendments we made to our Standing Orders. I can go on and on and I certainly cannot adequately capture in enough words the work that this Parliament has done during its tenure.

I urge Members to take pride in all that we have done and have been able to achieve. Take the lessons learnt and seek to improve the sacred constitutional mandate of Parliament.

In honour of Members who rested during the tenure of this House, I wish to mention their names to allow us to accord them respect and recognition for their notable contributions to the House and the country at large. They are as follows:

(i) In December 2017, we lost Hon. Francis Mwanzia Nyenze, the Member for Kitui West Constituency;

(ii) In April 2018, we lost Hon. Grace Kipchoim, the Member for Baringo South Constituency;

(iii) In July 2019, we lost Hon. Ken Okoth, the Member for Kibra Constituency;

(iv) In March 2020, we lost Hon. Suleiman Dori Ramadhan, the Member for Msambweni Constituency;

(v) In November 2020, we lost Hon. Justus Murunga Makokha, the Member for Matungu Constituency;

(vi) In December 2020, we lost Hon. James Mukwe Lusweti, the Member for Kabuchai Constituency;

(vii) In December 2020, we lost Senator Boniface Mutinda Kabaka, the Senator for Machakos County;

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SPECIAL ISSUE



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PRESIDENTIAL WORKING PARTY ON EDUCATION REFORM

APPOINTMENT

IT IS notified for the general information of the public that William Samoei Ruto, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces has appointed a Working Party on Education Reform.

The Working Party shall comprise of the following members:

Raphael Munavu (Prof.) – *Chairperson*,
David Some (Prof.),
Halima Saado Abdilahi (Dr.),
Ciriaka Gitonga (Dr.),
Purity Mbaabu,
Edward Katue Nzinga (Dr.),
Virginia Wahome (Ms.),
Robert Juma Wamalwa,
Charles Kyalo Mutinda,
Gitahi Kiama (Prof.),
Anthony Cheruiyot Sitienei,
Bishop Geoffrey Waweru Gichoki,
Seline Chepngeno Ronoh (Rev.),
Laila Abubakar (Prof.),
Daniel Otieno Randa,
John Kamiti Munyua,
Paul Wainaina (Prof.),
Kasanga Mutheu (Ms.),
Margaret W Chege (Ms.),
James Kanya (Prof.),
Salome Eyangana (Ms.),
Wiston Akala (Prof.),
Peter Mokaya Tabichi,
Jane Kimiti (Ms.),
Kizito Wangalwa
Augusta Mwihaki Muthigani (Ms.),
Peter Barasa (Prof.),
Ahmed Yussuf (Dr.),
Jone Mose,
Hassan Mwakimako (Prof.),
Lynette Mwende Ndile (Ms.),
Wilson Kogo (Dr.),
Stephen Mbugua Ngari (Prof.),
Paul Lilan,
Richard Githinji (Dr.),
Collins Odote (Prof.),

Jane Imbunya (Dr.),
Jacinta Ngure (Ms.),
Jerono P. Rotich (Dr.),
Subira Neema (Ms.),
Bernard Kariuki Njoroge,
Peter Njenga Keiyoro (Prof.),

Secretaries:

Elyas Addi (Dr.),
Patita Tingoi (Ms.),
David Njegere (Dr.),
Jackson Too (Prof.),
Reuben Nthamburi Mugwuku (Dr.),
Richard Miano,
Eunice Gachoka (Ms.).

The terms of reference for the Working Party are:

1. On basic education –

- (a) to cause and undertake summative evaluation of Kenya competency based curriculum;
- (b) to assess and recommend an appropriate structure to implement the competency based curriculum;
- (c) to study all laws governing the basic education subsector and make recommendations for review of these legislations with a view to addressing duplication, ambiguities, efficiency constraints and improving linkages.
- (d) to study, assess and make recommendations on –
 - (i) the conceptualization and implementation of key tenets guiding the competency based approach including but not limited to value based education, community service learning, parental empowerment and engagement;
 - (ii) the assessment and examination framework;
 - (iii) the quality assurance and standards framework;
 - (iv) the teacher education and training framework for both pre-service and in-service;
 - (v) the teacher deployment framework;
 - (vi) the technology for curriculum delivery, improved learning outcomes and education management;

- (vii) the governance mechanisms of learning institutions and sharing of resources across schools and TVET institutions to ensure maximum utilization of public resources for improved learning outcomes; and
 - (viii) the public school categorization policies and implications on access, transition and cost.
 - (e) to review and recommend appropriate financing framework including capitation and minimum essential package grants for all levels of basic education;
 - (f) to review and recommend equitable access to education especially for those facing social, economic and geographic marginalization, vulnerable populations, children and persons with special needs,
 - (g) to review and recommend appropriate framework on the management and coordination of bursaries and scholarships for secondary school students;
 - (h) to review and recommend a framework for physical and e-infrastructure development and coordination of public private partnerships for improved access and quality provision; and
 - (i) to review and recommend a tracking system to capture and enroll children of school age to ensure universal access to pre-primary, primary and secondary education.
2. On tertiary and university education –
- (a) to review and recommend a governance and financing framework for TVET training and development, university education, research and training;
 - (b) to study all laws governing the tertiary education subsector and make recommendations for review of these legislations with a view to streamlining effectiveness and efficiency in the subsector.
 - (c) to recommend a framework of operationalizing the National Open University of Kenya and a framework on Open, Distance and E-line learning (ODEL);
 - (d) to make recommendations for streamlining continuity in TVET and university education transition;
 - (e) to review and recommend legislation to facilitate amalgamation of HELB, TVET and University Funding Boards with a view of harmonizing and merging all tertiary education funding entities.
3. The Working Party shall have the powers and carry out such other functions necessary to undertake any matter incidental or ancillary to the foregoing.
4. The Working Party may co-opt such other persons, who possess the appropriate competencies, as it may consider necessary or expedient for the proper performance of its functions.
5. The Working Party shall –
- (a) subsist for six (6) months;
 - (b) issue H.E the President with a progress report every two (2) months from the date hereof and a final report at the end of term;
 - (c) invite and consider views from sector stakeholders and members of the public;
 - (d) hold such number of meetings in the places and at such times as it shall consider necessary for the proper discharge of its functions;
 - (e) raise additional funding to defray its costs; and
 - (f) regulate its own procedure.
6. The Secretariat of the Working Party shall be provided by the Ministry of Education and shall be responsible to the Working Party for –
- (a) providing appropriate background briefing to it;
 - (b) preparing the reports of the Working Party and disseminating any information deemed relevant to the Working Party; and
 - (c) undertaking research and liaising with the relevant Government departments and any other institution or stakeholders in the education sector in order to gather relevant information necessary for informing the Working Party.
7. The costs incurred by the Working Party shall be defrayed from the voted funds of the Ministry of Education or such grants or donations as may be secured from Development Partners.
- Dated the 29th September, 2022.
- WILLIAM SAMOEI RUTO,
President.

ANNEXTURE 5

Submission by National Government Constituencies Development Fund Board (NG-CDG) on the implementation status of the Special Fund Accounts Committee Report on examination of Audited Financial Statements for Financial years 2013/14, 2014/15 and 2015/16 for the NG-CDF for Constituencies in Nairobi County.



National Government Constituencies Development Fund Board
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NGCDF BOARD/CEO/KNA/VOLV (14)

MARCH 15, 2023

Mr. Samuel Njoroge
The Clerk of the National Assembly
Parliament Buildings
P.O Box 41842 – 00100
NAIROBI

Dear *Sir*

RE: MEETING BETWEEN THE NATIONAL GOVERNMENT CONSTITUENCIES FUND BOARD AND THE COMMITTEE ON IMPLEMENTATION REGARDING THE IMPLEMENTATION STATUS OF HOUSE RESOLUTION: THURSDAY 15TH MARCH, 2023

Your letter Ref: NA/AA&OSC/DFAC/COI/2023/ (024) dated 3rd March 2023, on the above subject refers.

In the letter the Chief Executive Officer was required to appear before the Committee on Implementation to appraise the committee on status of implementation of the second report of the special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi County for the financial years 2013/14, 2014/15 and 2015/16:

In implementing the said recommendations, the Board has taken action as per the attached matrix:

Yours

Sincerely

YUSUF MBUNO
CHIEF EXECUTIVE OFFICER

The Chief Executive Officer
**National Government Constituencies
Development Fund Board**
P. O. Box 46682 - 00100, Nairobi

Vision: Equitable socio-economic development countrywide



ISO 9001:2008 Certified

Ally
D. [unclear]
[unclear]

EXECUTIVE SUMMARY ON IMPLEMENTATION OF RECOMMENDATIONS OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE ON THE AUDIT REPORTS FOR THE FINANCIAL YEARS 2013-14, 2014-15 & 2015/16 OF CONSTITUENCIES IN NAIROBI COUNTIES

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
1.	Disbursement of funds for implementation of NG-CDF Projects	The National Treasury expedites the process of quarterly disbursements of funds to the NG-CDF Board for timely release to Constituencies <i>Nairobi</i> <i>The Chief Executive Officer</i> <i>National Government Constituencies Development Fund Board</i> <i>P. O. Box 46682 - 00100, Nairobi</i>	Late disbursement of funds from the National Treasury thus hindering effective implementation of the NG - CDF projects	The Board in liaison with National Assembly Select Committee on NGCDF continually engages the National Treasury for prompt release of funds. The Board makes quarterly requisition to the State Department for Economic Planning in line with the provision of the NGCDF Act	The Principal Secretary for the State Department for Economic Planning communicated the National Treasury's undertaking to be releasing Ksh. 2 billion weekly so that by 31st March 2023 up to 50% of the NG-CDF allocations for the 2022/2023 financial year will have been released. This position was reinforced by the communication by the Speaker of the National Assembly during the training. Out of the Kshs.47.1899 billion allocated in 2022/23 Financial Year (Kshs.44.2899 billion initial allocation plus Kshs.2.9 billion allocated through supplementary estimate), Kshs.14 billion has been disbursed to the Board leaving a balance of

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
					Kshs.33.1899 billion.
		The National Treasury factors an amount of Ksh. 4,976,750,000 being previous year's underfunding in the supplementary budget for the financial year 2018/19 as additional allocation to NG-CDF Board. <i>The Chief Executive Officer National Government Constituencies Development Fund Board P. O. Box 46682 - 00100, Nairobi</i>	Underfunding in the financial years 2011/12(Kshs.541,750,000), 2013/14(Kshs.2,128,500,000) and 2014/15(Kshs.2,306,500,000)	The Board submitted the request to the National Treasury through the State Department for Economic Planning. Further, the Board presented the issue to the National Assembly Select Committee (NASC). Through a motion, NASC presented the matter to the National Assembly which resulted in the arrears be included in the financial year 2021/2022 supplementary estimate. However, out of Kshs. 4.9 billion included in F/Y 2021/2022 supplementary estimate, only Kshs 2 billion was disbursed to the Board leaving a balance of Kshs 2.9 billion.	The Outstanding arrears of Kshs. 2.9 billion has been factored in the supplementary estimate for 2022/2023 financial year. The Board shall continue liaising with the State Department for economic Planning to facilitate the disbursements of funds to the NGCDF account.

*The Chief Executive Officer
National Government Constituencies
Development Fund Board
P. O. Box 46682 - 00100, Nairobi*

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
2.	Failure to submit documents during audit period	(i) The Fund Account Managers (FAMs) ensure compliance with the provisions of section 62 of the Public Audit Act, no.34 of 2015 and section 68 of the public finance management Act, no.18 of 2012 (ii) The Board issues administrative circular directing Fund Account Managers to comply with the provisions of the Constitution, the Public Audit Act, No.34 of 2015, the Public Finance Act, No. 18 of 2012 and Public Procurement and Asset Disposal Act, No 33 of 2015 (iii) The Fund Account Manager maintains the original project management committee files at	The committee noted that documents for various projects were maintained and kept by the various Project Management Committees (PMC's) and that audit queries were not being responded to even after issuing sufficient time period to the Fund Account Managers to respond	The Board has issued directive requiring the Fund Account Managers to maintain project files containing original BQs, drawings, payments certificates and expenditure returns. The above is one the targets in the performance contract signed with the constituency committee every year. Further, the Board issued circulars directing FAMs to comply with the provisions of Constitution of Kenya 2010, Public Audit Act No. 34 of 2015, Public Finance Act No. 18 of 2012 and Public Procurement and Asset Disposal Act No. 33 of 2015. The Board continues to enforce compliance through monitoring and evaluation, internal audits, maintenance of	Improvement in opinions expressed by the auditor General on constituencies financial statements Analysis of the Auditor General Reports on the constituencies financial statements have shown that - unqualified opinion has increased from 5.2% in 2013/14 financial year to 9% in 2019/20 financial year - qualified opinion increased from 56.2% in 2013/14 F/Y to 88% in 2019/20 F/Y - adverse opinion has reduced from 12.8% in 2013/14 F/Y to 3% in 2019/2020 F/Y - Disclaimer opinion reduced from 6% in 2013/14 F/Y to 0% in 2019/20. The Board is enforcing the recruitment of key constituency staff through ensuring that budgetary

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
		the NG-CDF office, while the duplicate be maintained by the project management committee <i>The Chief Executive Officer National Government Constituencies Development Fund Board P. O. Box 46432 - 00100, Nairobi</i>		risk registers and monitoring and systems and spot checks. The Board has issued circular guiding constituency committees on the key officers to be recruited in the constituency including accounts clerks, records management officer and clerk of works The Board has further reviewed its training curriculum for NGCDFCs and FAMS to address the records management gap as identified by the Auditors. This will continuously form a key area of follow up during the Board's risk based audit activities. The Board has engaged full time Regional Coordinators whose supervisory role will include tracking the status of record management at the	provisions are made in the project proposals including for capacity building

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
				constituencies.	
3.	Bursary allocations and disbursements	The NGCDF Board to review the guidelines on the issuance of bursary to enhance effectiveness NGCDF-Board to fast track adoption of Electronic Fund transfer in disbursement of the bursaries The Fund Account Managers ensures that beneficiary institutions issue acknowledgement documents upon receipt of the bursaries	High incidences of delays in disbursements of bursaries to beneficiary institutions, non-presentation of issued bursary cheques to institutions and cancellation of issued bursary cheques.	Guidelines on bursary fund have been reviewed and issued to constituencies. This incorporated electronic Funds transfers and any other efficient means. Constituency committees have been guided through a circular to dispatch cheques to institutions through express mail service (EMS) or alternative safest and expeditious means who also remits back acknowledgement receipts. The Board continues to enforce compliance through monitoring and evaluation, internal audits, maintenance of risk registers and monitoring and systems and spot checks.	Incidences of stale and Unpresented cheques have significantly reduced as reflected in the Auditor-General reports The Board shall continue tracking the implementation of the guidelines. Challenges noted so far is that some constituencies still prefer use of physical cheques rather than electronic funds transfer.

*The Chief Executive Officer
National Government Constituencies
Development Fund Board
P.O. Box 46682 - 00100 Nairobi*

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
4.	Accuracy of financial statements	The Fund Account Managers complies with the International Public Sector Accounting Standards (IPSAS) framework in preparation of financial statements; and NGCDF Board in consultation with the Public Sector Accounting Standard Board (PSASB) conducts continuous capacity building on the financial reporting standard for Fund Account Managers.	The committees observed that Fund Account Managers experienced challenges in adopting International Public Sector Accounting Standards (IPSAS) reporting framework in preparation of financial statements.	Capacity building targeting Fund Account Managers, National Sub-County Accountants and Constituency Committee Chairpersons on Financial Reporting Standards is done annually upon needs assessment The Board has also incorporated the National Sub County Accountants in the preparation of the Financial statements which has reduced challenges on financial reporting.	The Board in consultations with the PSASB undertakes annual trainings of the Fund Account Managers, Sub County Accountants and Chairperson on the financial reporting template In addition, The Board reviews constituencies annual reports and financial statements to ensure compliance to the reporting template before submission to the auditor General
5.	Implementation of projects and reallocation of funds without approval of the NG-CDF Board	The NGCDF Board takes administrative action against Fund Account Managers who reallocated funds contrary to the NG-CDF Act, 2015;	Fund Accounts Managers had implemented projects and re-allocated funds without seeking approval /without prior approval of the NG CDF Board contrary to the NG CDF Act section 6(2) and section 31 and	Administrative action against the affected Fund Account Managers already taken. The Board in collaboration with the IFMIS division of the National Treasury has customized the	The Board has intensified internal risk based audits to track efficiency of management of funds across constituencies to forestall cases of weak financial managements including reallocation of fund without the Board approval.

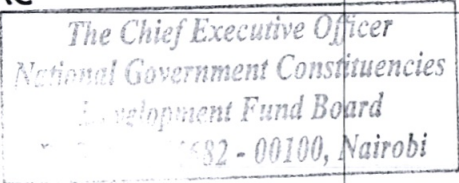
The Chief Executive Officer
 National Government Constituencies
 Development Fund Board
 P. O. Box 46682 - 00100, Nairobi

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
			regulation 54 of Public Finance Management Regulations 2015.	Votebook Management System to the NGCDF program to strengthen tracking of expenditures based on the official code list issued by the Board. This has minimized the opportunities for reallocation of funds without Board's approval Further, the Board in collaboration with the Director General Accounting Services and Quality Assurance at the National Treasury has reviewed the accounting framework in the Nairobi Region to establish four fully fledged Sub County Treasuries with adequate accounting capacity as opposed to the earlier reliance on the Regional Treasury which had limited accounting capacity.	

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	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
		The Board publishes a list of all incomplete and/or stalled projects initiated by the former Constituency Development Fund (CDF) Board before the enactment of the NG-CDF Act, 2015 The NGCDF Board in consultation with the National Treasury and Planning and other relevant authorities expedite completion of all incomplete and/or stalled projects	The Committee observed that some projects initiated by Constituency Development Fund Committees prior to enactment of NG-CDF Act, 2015, and which currently fall within the devolved functions remained stalled to date.	The Board compiled a report on incomplete and stalled projects and discussed the same with Council of Governors, NASC and State department for Economic Planning It was resolved that the Council of Governors and NASC to approach the National Treasury to consider budgeting for conditional grant to the county governments for completion of the projects.	The Board shall table the matter before NASC of the 13th Parliament for further follow up. <i>The Chief Executive Officer National Government Constituencies Development Fund Board P.O. Box 5682 - 00100, Nairobi</i>
		The NGCDF Board adopts and implements electronic monitoring and evaluation systems and tools to monitor all projects in the constituencies and have them linked to the Electronic National Government Monitoring and Evaluation Systems	The Committee noted that the NG-CDF Board had not leveraged on Information and Communication Technology (ICT) in management of projects.	The Board has developed an M&E Framework guided by the National M&E Policy (2022) which includes provision for linking to NIMES. The Board is in the process of developing an Integrated Geographic	The Board shall continuously build capacity of staff and stakeholders to effectively utilize the developed systems for effective management of the funds.

Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
	<i>The Chief Executive Officer National Government Constituencies Development Fund Board P. O. Box 46682 - 00100, Nairobi</i> 		Information System (GIS) based M&E system. For a start the Board has developed National Government Constituencies Development Fund Management Information System (NGCDFMIS) capable of online submission and processing of project proposals, automated generation of project codelist, and tracking implementation at PMC level. This is complemented by a vote book management system deployed by the National Treasury and customized to NGCDF operations to track financial management in the Fund The Board also has in place Enterprise Risk Management Systems (ERMS) for effective risk management to	  

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
				guarantee achievement of the objectives of the Fund	
6.	Un-surrendered imprest	The committee recommends that the NGCDF Board recovers all outstanding imprest from defaulting officers with interest at the prevailing Central Bank Rate as provided under Article 226(5) of the Constitution of Kenya, 2010	Recovery of outstanding imprest was slow and that in some instances, the amounts remained outstanding for long contrary to existing financial regulations	The Board has put in place mechanisms to ensure imprests are duly surrendered. Further, cases of imprest defaulters are continuously identified through the Board's internal audit and recovery instituted through the payroll and paid back to the respective constituencies	The cases of reported outstanding imprest have drastically reduced going by the observation of the latest audit reports.
7.	Transfer of assets and liabilities following split of constituencies	The committee recommends that the NGCDF Board provides a status report to the National Assembly on transfer of assets and liabilities amongst constituencies following delimitation of constituency boundaries that resulted in creation of the 290 constituencies in Kenya.	The committee noted that during delimitation of constituency boundaries that resulted in split of constituencies, there were challenges on transfer of assets and liabilities amongst the newly created constituencies.	The Board in a circular dated 16th April, 2013 guided the constituency committees on how to transfer of assets and liabilities between the parent and newly created Constituencies. The circular provided, inter alia, that: - The parent constituency shall	From the constituencies' feedback, the guidelines adequately helped constituencies transition from the old constituencies.

	Issue	Recommendation SFAC	by	Recommendation basis	Action taken	Current Status
					assume custody of all the assets held by the CDFC before it was split - Each of the constituencies resulting from the split shall assume oversight and control of projects (whether proposed, ongoing or stalled) falling within its boundaries. Reallocation of funds from any of the projects during the transition period was discouraged - Any outstanding projects funds were to be administered by the FAM of the parent constituency	

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Development Fund Board
P. O. Box 46682 - 00100, Nairobi*

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
8.	Support from the National Government Sub-County Treasury in Nairobi City County	The committee recommends that the cabinet secretary, the National Treasury and Planning establishes the office of the Regional Accountant to support Fund Account Managers in Nairobi City County.	The 17 constituencies in Nairobi City County were served by one regional accountant who is domiciled in the Ministry of Interior and Coordination of National Government.	The Board engaged the National Treasury on the matter resulting in the National Treasury establishing four National Sub-County treasuries to serve the 17 constituencies in Nairobi County as follows; 1. Dagoretti- serving Dagoretti North , Dagoretti South Kamukunji, Westlands Langata and Kibra 2. Kamkunji serving Kamkunji, Starehe, Mathare and Makadara 3. Kasarani serving Kasarani, Roysambu, Ruaraka and Embakasi North 4. Embakasi serving Embakasi Central, Embakasi South, Embakasi East and Embakasi west	The Nairobi region operation has significantly improved.

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P. O. Box 46632 - 00100, Nairobi*

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
9.	Engagement of Fund Account Managers by the National Government Constituencies Development Fund Board	The NGCDF Board reviews its policy on renewal of contracts for FAMs to provide for clearance of outstanding audit queries raised in the reports of the Auditor General in constituencies they are engaged in prior to effecting any transfers or deployment	The Committee noted that the Board had not taken appropriate measures to ensure that the FAM resolve issues raised by the Auditor General in constituency that they served before moving to another constituency.	The Board has developed a comprehensive appraisal instrument that ensures FAMs have cleared all the outstanding issues before their employment contract are renewed.	The Board continuously implements the recommendations.
		<i>The Chief Executive Officer National Government Constituencies Development Fund Board P. O. Box 46682 - 00100, Nairobi</i>			The Board has issued a comprehensive handling over template that guides the FAM on reports and records to prepare for hand over to the incoming officers which includes clearance of all outstanding audit issues Further, the Board has recruited substantive Regional Coordinators who are responsible for overseeing handling over process.

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
		The NGCDF Board fills existing vacancies for FAMs and Regional Coordinators;	The committee observed that some Fund account managers were deployed to more than one constituency, with others doubling as regional coordinators, thus creating inefficiencies in execution of their functions.	The Board has recruited substantive Regional Coordinators and continuously fills the FAMs position as they occur.	The Board continuously implements the recommendations.
		The NGCDF Board adheres to its deployment policy in relation to the maximum number of years the FAMs should serve in a constituency	The Committee noted that Some Fund Account managers had stayed in one station for more than 9 years.	The Board continuously implements the recommendation on case by case basis.	The Board continuously implements the recommendations.
10.	Operations of the National Government Constituencies Development Fund Board	The cabinet secretary, the National Treasury and planning appoints seven other persons to the NG CDF Board as provided under section 15(1)e of the NG CDF Act, 2015;	The NG CDF Board was not fully constituted as provided under section 15(1) (e) of the NG CDF Act, 2015 which has created challenges in raising quorum to transact business.	Seven Board directors for a period of three years with effect from 26 th March 2019.	Four directors have since exited the Board for various reasons hence a vacancy of 4 in the Board's composition.
		The NG CDF Board fills the position of the CEO		The position was filled with effect from 7 May 2020 for a three-year term.	The CEO is in the office.

*The Chief Executive Officer
National Government Constituencies
Development Fund Board
P. O. Box 46682 - 00100, Nairobi*

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
		The NG CDF Board restructures its operations to decentralize its services in the regions <i>The Chief Executive Officer National Government Constituencies Development Fund Board P. O. Box 46682 - 00100, Nairobi</i>		Administratively, the Board has divided the country into ten regions namely; Nairobi, Lower Eastern, Upper Eastern, Central, Coast, North Eastern, South Rift and North Rift Regions, Nyanza and Western. The Regional Offices are manned by Regional Coordinators who are the immediate supervisors of Fund Account Managers The Regional Coordinators report to the Chief Manager, Programmes and Field Services Coordination in the NG-CDF Board.	The Board is in the process of bolstering the capacity of the Regional Offices
		The NG CDF Board reviews its policy on withholding funds for constituencies with a balance of KSh. 10 million and above in their account		The Board considers requests for additional funds by constituency committees on a case by case basis based on prevailing circumstances	The Board disburses funds to constituencies as is received from the National Treasury

	Issue	Recommendation by SFAC	Recommendation basis	Action taken	Current Status
11.	Investigations by ethics and anti-corruption commission and active matters in court	The Ethics and Anti-Corruption expedites investigations into these matters and furnish a status report on the investigations to the National Assembly within three months of adoption of this report	Audit queries raised by the auditor general were either in court or under investigation by the EACC	This matter is within the mandate of the EACC.	
		The National Government Constituencies Development Fund Board suspends Fund account managers and any other officer of the Board who are under investigations by the EACC until these investigations are completed	Some audit queries raised by the auditor general were either in court or under investigation by the EACC	The Board is guided by the provisions of section 62(1) of the Anti-Corruption and Economic crimes Act No.3 of 2003 which states inter-alia "a public officer who is charged with corruption or economic crimes shall be suspended at half pay with effect from the date of the charge" when dealing with officers who are under investigations.	The Board has taken administrative action on all officers charged in court

Yours


YUSUF MBUNO
CHIEF EXECUTIVE OFFICER

*The Chief Executive Officer
National Government Constituencies
Development Fund Board
P. O. Box 46682 - 00100, Nairobi*

ANNEXTURE 6

Submission by the Kenya Ports Authority on the implementation status of the Public Investments Committee, report on the inquiry into the safety of ferries as observed in the audited accounts of Kenya Ferry Services for Financial Year 2016/17.



Kenya Ports Authority

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Office of the Managing Director

GMF/2/3/26

23rd March 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI

Dear Sir,

RE: INSPECTION VISITS BY THE COMMITTEE ON IMPLEMENTATION TO KENYA FERRY SERVICE & KENYA PORTS AUTHORITY

Your letter Ref. NA/AA&OSC-COI/CORR/2023/026 dated 10th March 2023 on the subject matter refers.

Actions taken by Management and current status of the fourteen (14) unutilized plots are as explained here below.

- 1) Details of 7 parcels of land that are so far secured are.

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
i	Plot No. MSA/XLVII/81, 82 & 83; 1.466 Acres Housing the White House Buildings, Mombasa	170143	29,700,000.00	Plots are jointly fenced off using a masonry wall and guarded by contracted private security firm. A Feasibility study for development of KPA HQ on the plots was undertaken by Symbion Consulting Group and completed in 2018. The study recommended the development of a mixed-use commercial complex, with the commercial component of the complex key in defining the success of the project.
		170144	26,000,000.00	
		170145	28,680,000.00	
ii	Plot No. LR/16121; 2.5 Ha; Located at Shimoni, Kwale	170159	9,325,550.00	Plot secure and fenced off, earmarked for utilization to complement Shimoni port. Shimoni Port whose construction is underway.

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
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iii	Plot No. MN/V/1683; 1.018 Ha Located at Miritini, Mombasa	170158	6,288,695.00	Plot occupied by squatters
iv	Plot No. MN/V/196; 63 acres, Located at Jomvu Kuu, Mombasa	170036	63,000,000.00	Plot occupied by squatters. KPA engaged the law firm of Muchoki, Kangata, Njenga & Co. Advocates which filed a suit for eviction of squatters under MSA CMCC ELC No. 36 of 2020 - Kenya Ports Authority Vs Ali Mohamed & 8 Others. Despite being served, the defendants did not appear, nor did they defend the suit. Judgment was delivered in the Authority's favour on 18th December 2020.
v	Plot No. MN/17944/45; 2.4 Ha, Located in Kisumu	170234	3,600,000.00	Preliminary engagements between KPA and NHC seeking a joint venture development of the 2 plots. The proposal has not progressed.
		170235	3,600,000.00	
vi	Plot No. LR 24588; 9.182 Ha, Located in Malaba	170233	19,650,000.00	Plot under security by contracted security firm. The Plot is covered by mature trees planted by the Authority to ward off encroachment.
vii	Plot No. MN 5325; 17.10 Hectares, Located at Taita-Taveta	140306	2,500,000.00	The plot's boundaries are well marked by a chainlink fence on precast concrete posts. Plot currently under a Temporary Occupation License (TOL) for 2 years to Taveta Juhudi youth group on a farming user condition. The youth group are in an arrangement with the Ports whereby they utilize the plot while safeguarding it on behalf of the Authority. It was meant for development of an ICD in the long term.
TOTAL			192,344,245.00	

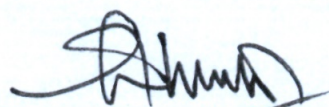
2) Details of 7 parcels of land that are not secured are.

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
i	Plot No. MN/III/528/E; 173.6 Ha, located at Takaungu, Kilifi	170232	233,783,200.00	The plot is occupied by squatters. Attempt by the Authority to fence the plot was resisted by the occupants including tearing down the fence. The Authority has previously published a caveat on the plot. The Authority was sued in MSA HC Civ. Suit 61 of 2009 filed by Juma Abdalla Chai & 5 Others but the suit was withdrawn, and the Authority was awarded costs. Subsequently, they filed yet another suit under MLD HC Pet. 9 of 2011 Juma Abdalla Chai & 4 Others vs the Registrar of Titles Mombasa & KPA as an Interested Party. When the matter came up on 25th September 2014, the Court stayed proceedings in this matter pending payment (by the 5 petitioners) of the taxed costs in the earlier matter. No further progress has been made by the petitioners. The law firm of A.B. Patel & Patel Advocates defended the Authority's interests in the matter.

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
ii	Plot No. LR/9093; 7 Ha, Located in Malindi	170160	66,585,000.00	The Authority has engaged the law firm of Cootow & Advocates to commence lawful processes for eviction of squatters. The NLC was involved, and a site visit was conducted by the Commission as a prerequisite for its further actions regarding the issue of eviction of squatters. KPA and KAA are in engagement over the acquisition of the plot for the expansion of the Malindi airport however KAA was not receptive to the proposal by KPA for KAA to seek treasury approval for KPA to surrender the land for the airport expansion to avoid risk of compensating the wrong people for public and under KPA.
iii	Plot No. MS/46/I; 5.073 Ha, Located at Likoni; Mombasa	170225	25,000,000.00	The plot is occupied by squatters (to a large extent) and a portion utilized as a playground for the local community.
iv	Plot No. MS/1682/I; 2.708 Ha, located at Likoni, Mombasa	170238	26,765,000.00	The plot is occupied by Bofu youth Group with a fish rearing project and small-scale farming. Mostly vacant with boundaries marked by hedge and barbed wire to sections.
v	Plot No. MS/137/II; 2.46 Acres, Located at Mtongwe, Mombasa	170226	21,600,000.00	Part of the plot's frontage is currently being utilized as a fish landing site. A police post on site in the form of a modified cargo container. Access road created across the plot.
vi	Plot No. MN/V/1614; 2.5 Ha, Located at Kibarani, Mombasa	170239	18,820,000.00	The Authority instructed the firm of Sisule, Munyi, Kilonzo and Associates to sue for eviction of squatters. Even in the event of a lawsuit succeeding, eviction of the squatters may be a big challenge. The entirety of the plot is occupied by squatters.

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
vii	Plot No. MN/VII/3794; 12.24 Ha, located at Chaani, Mombasa	170224	90,735,000.00	The plot is occupied by squatters. Property is subject of two suits being MSA HCCC No 84 of 2002 - Raphael Muli & Others vs Kenya Ports Authority & 2 Others & MSA HCCC Pet. No 59 of 2015 - Raphael Muli & Others vs County Commissioner, Mombasa & Others. They seek orders (against the Authority, Municipal Council of Mombasa and the Commissioner of Lands) to protect the alleged interests in the property. The law firm was A.B. Patel & Patel Advocates to defend the Authority's interests in the suits. Both suits have remained idle in Court and the case No. 84 of 2002 shall be mentioned on 15th May 2023 to show cause why the suit should not be dismissed for want of prosecution.
	TOTAL		483,288,200.00	

Yours Sincerely,



Capt. William K. Ruto AFNI
MANAGING DIRECTOR

ANNEXTURE 7

Submission by the Cabinet Secretary National Treasury and Economic Planning on the implementation status of the Report by the Departmental Committee on Labour and Social Welfare on its consideration of the Petition by the Kenya Association of Retired Officers (KARO) on improved terms for pensioners in Kenya.



REPUBLIC OF KENYA

THE NATIONAL TREASURY & ECONOMIC PLANNING

**SUBMISSION BY THE CABINET SECRETARY, NATIONAL
TREASURY & ECONOMIC PLANNING TO THE COMMITTEE ON
IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF
PUBLIC PETITION BY THE KENYA ASSOCIATION OF RETIRED
OFFICERS ON IMPROVED TERMS FOR PENSIONERS IN KENYA**

6th APRIL, 2023

The Chairperson and Honourable Members,

I am honoured to appear before this Honourable Committee of Implementation to apprise the committee on the implementation status of House Resolutions. I acknowledge **the Report on the consideration of the petition by the Kenya Association of Retired Officers on improved terms for pensioners in Kenya.** I take an early note that this is a petition that aims at affecting positively the senior citizens of our country, most of whom are at the bottom of the social pyramid. I salute the Departmental Committee on Labour and Social Welfare for the work put while attending to the petition. Upon perusing the report, I discerned the time the honourable Committee committed to listen to the petitioners and the key stakeholders.

Honourable Members, The National Treasury and Economic Planning is committed to transforming the pensions eco system into a customer centric arrangement which guarantees that retired public servants enjoy a reasonable economic welfare, and therefore a dignified retirement life, after their long service to the Government. This is a constitutional provision that resonates with the Social Pillar of vision 2030 and is in tandem with the spirit of BETA.

It is notable that the annual Public Service pension budget has surpassed the Kshs. 100 Billion mark and continues to grow with a payroll of nearly 300, 000 Pensioners and Dependants as at March 2023. In view of the geographical spread of the in-payment pensioners, pensions is probably the most effective form of social protection and resource distribution across the levels of society

The National Treasury has enhanced capacity of the Pensions Department through:

- (i) Appointment of 100 new Pension Officers in the Financial Year 2021/2022;
- (ii) Setting in motion the process of reinvigorating the electronic Pensions Management Information System (PMIS) for enhanced efficiency;
- (iii) On 29th October, 2021, the National Treasury constituted a Multi-Agency Taskforce on the Transformational Change in the Public Service Pension Arrangement with the main objective of realizing a transformed public service pension sector that is technologically driven;

- (iv) To enhance the administration of the public service pension arrangement, the National Treasury and Economic Planning is working closely with the Public Service Commission to enable the deployment of technical pension officers to all MDAs;
- (v) The National Treasury has deployed the Pensions Management Information System (PMIS) to the Teachers Service Commission and the National Police Service for initial processing of pension claims;

The National Treasury has staffed all the 52 Huduma Centres with qualified personnel, and deployed to the Huduma Centres real time PMIS to attend to all customer enquiries

On the specific recommendations in the report, I wish to respond as follows;

- a) **The Cabinet Secretary for National Treasury and Economic Planning should fast track the ongoing process on the development of National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country.**

Honourable Chair person, The National Treasury and Economic Planning has accelerated the momentum to finalize the National Retirement Benefits Policy. The National Treasury retained a consultant who continues to work with the Multi agency team under the coordination of the National Treasury. A final stakeholders forum is planned in the fourth quarter of the FY 2022/2023 whereupon a Cabinet memorandum will be drawn and submitted to the Cabinet before 30th June 2023.

Honourable Members, The policy we are developing addresses key areas of concern that include;

- a) **The pension structure and legal framework:** the policy provides for comprehensive pension system framework that follow a structure that recognizes the different level of needs, utilizes various sources of funding and reflect the various roles of stakeholders. The policy proposes a harmonized pension legal and regulatory framework.

- b) **Pension coverage:** The policy aims to broaden pension coverage in both formal and informal sectors to enhance social protection for all citizens.
 - c) **Consumer protection:** The policy provides for mechanisms of consumer protection of members and their beneficiaries of pension schemes and stakeholders.
 - d) **Transferability and Portability of Retirement Benefits:** The policy recognizes the portability of accrued benefits to another retirement savings arrangement in the country, EAC region and in other countries with bilateral arrangements with Kenya.
 - e) **Administration and Management of pension funds:** The policy advocates for innovative ways to optimize administrative costs in relation to returns in order to grow members pension savings.
 - f) **Annuities and Income Drawdown:** The policy promotes the development of the market for annuities and income drawdown in Kenya.
 - g) **Indexation:** The policy promotes indexation of pension benefits in order to avoid erosion of retirement benefits
 - h) **Mutual recognition:** The policy encourages pension supervisors to practice mutual recognition of service providers and share information pertaining to registration to allow pension players registered in one EAC Partner State to operate in another Partner State and other countries with bilateral arrangement with Kenya.
- b) **The Cabinet Secretary for National Treasury and Economic Planning should initiate the Comprehensive review/repeal of the Pensions Act, Cap 189 and the Pensions Increase Act, Cap 190 to align them with the provisions of the constitution of Kenya 2010 and enable it conform to the realities of the day. The review should consider in particular the issue of frequency of review of pension, minimum payable pension and the need for consideration of the cost of living adjustment.**

Chairperson and Honourable Members, a review of the public service pension laws has commenced under the banner of the Transformation of the

Public Service Pension Ecosystem initiative of the National Treasury and Economic Planning. The initiative has Four thematic areas, one of which is to review the public pension legal framework to be in accord with the Constitution of Kenya, 2010.

In the preliminary analysis, the team has considered the gaps in the following key laws and regulations relating to administration of public service pensions:

- a) Pension Act Cap.189
- b) Pensions Increase Act Cap.190
- c) Widows' and Children's Pensions Act Cap.195
- d) Parliamentary Pensions Act Cap.196
- e) Kenya Defence Forces (Pensions and Gratuities) Regulations 2017

Under The Pensions Act (Cap 189) several gaps have been highlighted for consideration to amend including:

- a) The provisions of Sections 3, 5, 14 & 15 which bestows enormous powers on the Government and the President (delegated to the Secretary, Pensions) to, among other things, determine whether or not an employee should get his/her pension, gratuity or other benefit at all or in the event of bankruptcy or insolvency, imprisonment etc.
 - b) The provision under section 5 (3) stipulating that the benefits vest fully in the officer and become payable after completion of 5 years of pensionable service. This period is long and limits a member's rights to pension. The general provision in Kenya, covered under the Retirement Benefits Act, is for benefits to vest immediately an employee becomes a member of a scheme.
 - c) The current Constitution of Kenya provides that any modifications to the PSPS benefits should not take away accrued benefits. This does limit the ability to reform the current system for existing staff.
- c) The Cabinet Secretary for Health in consultation with the National Treasury should fast track the implementation of the post-retirement medical scheme to cater for the health needs of the pensioners – in the interim and in cognizance of the current risks enhanced by the COVID-19 situation, to cushion current pensioners from the burden of disease, its recommended that pensioners drawing less than Kshs.5,000 in monthly pension be granted free access to comprehensive healthcare services at all public health institutions country wide. All pensioners be**

granted subsidy to make premiums affordable to those who opt to purchase insurance cover under NHIF.

Hon Chairperson and Honourable Members, the National Treasury and Economic Planning is working closely with the State Department of Public Service in implementing this resolution. A draft Post-Retirement Medical Policy has been prepared and public participation conducted with a number of stakeholders including the Kenya Association of Retired Officers. The Ministry of Health has been looped in through the NHIF, with a consultative forum planned in the second week of April, 2023. Thereafter a joint Cabinet Memo will be submitted to Cabinet for consideration.

- d) The Cabinet Secretary for the National Treasury and Economic Planning should implement the recommendations of the SRC on pensions increase policy as contained in the public sector remuneration and benefits policy 2015, launched by His Excellency the President in June 2015 and submitted to the National Treasury for implementation, should be executed in an equitable manner so as to ensure it does not perpetuate further disparity.**

Honourable Chairperson and Honourable Members, currently monthly pension paid to pensioners and their dependants is subject to a biennial increase at the rate of 3% as per the Financial Act No. 9 of 2007, which was implemented with effect 1st July 2007. In order to implement the SRC recommendations, it is necessary to undertake an actuarial review to evaluate the fiscal burden of the recommendations. The actuarial study will be factored in the F/Y 2023/2024.

- e) The Cabinet Secretary for Labour in consultation with the National Treasury should include Government pensioners currently earning less than Kshs.4,000 in monthly pension in the next listing of beneficiaries of the cash transfer for the elderly as a stop gap measure pending review to reflect the current cost of living.**

Chair and honourable members, the National Treasury shared the list of nine hundred and seventy seven (977) Government pensioners currently earning less than Kshs.4,000 in monthly pension with the Ministry of Labour for further action.

- f) **The Cabinet Secretary for the National Treasury and Economic Planning should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) to manage and administer pensions and with a wider mandate of developing and implementing the pension policy for the public service that would address issues of fairness, adequacy, affordability, and sustainability of pension benefits. In line with the ILO recognition of pensions as a form of social security, the Government should in the long run consider domiciling the management of retirement benefits sector under the state department for social protection together with other social protection initiatives.**

Honourable Members, as part of the reforms in the Public Service Pensions' Sector, on 1st January 2021, the Government implemented the Public Service Superannuation Scheme Act, 2012 establishing the Public Service Superannuation Scheme (PSSS). The scheme is contributory where the employees contribute at the rate of 7.5 % of their monthly basic salary graduated at the following rates: 2% in first year; 5% in the second year; and 7.5% in the third year. The Government contributes 15% of the basic salary.

This lessens the pension burden on the Government while guaranteeing sustainability. In line with the opening statements I made, the National Treasury Administration holds that efficiency is realized through automation as opposed to creation of new institutions. **Honourable Members**, automation and leveraging on technology will enhance efficiency and effectiveness. Indeed, new institutions increases cost eroding the benefits that could be available to pensioners. On the same note, the National Treasury and Economic Planning is resolute that employers must remit pension obligations in a timely manner for the benefit of pensioners.

I thank you for listening to me



Njuguna Ndung'u, CBS



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY
P.O. Box 20191 -00200
NAIROBI

When replying please quote

Ref: TNT/PENS/15/3/(5)

Date: 3rd March, 2021

Hon. Mutahi Kagwe, EGH
Cabinet Secretary
Ministry of Health
Afya House
NAIROBI

Dear *Waziri*,

**PUBLIC PETITION BY THE KENYA ASSOCIATION OF RETIRED OFFICERS ON
IMPROVED TERMS FOR PENSIONERS IN KENYA**

Reference is made to letter No.NA/DLP/TBO/PET/2020. (20) dated 4th December, 2020 from the National Assembly on the captioned subject.

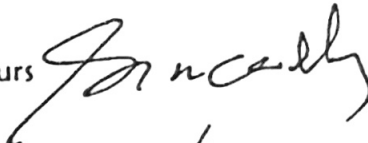
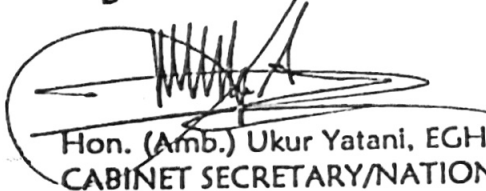
It is noted that the Departmental Committee on Labour and Social Welfare Report of December 2020 recommended that the Cabinet Secretary for Health in consultation with the National Treasury amongst others, should fast track the implementation of the post- retirement medical scheme to cater for the health needs of pensioners.

The Committee had further recommended that in the interim and in cognizance of the current risks exacerbated by the Covid-19 situation, to cushion current pensioners from the burden of the disease, pensioners drawing less than Ksh.5,000 in monthly pension be granted free access to comprehensive healthcare services at all public health institutions country wide.

It was the Committee's position that, all pensioners be granted subsidy to make premiums affordable to those who opt to purchase insurance cover under the National Hospital Insurance Fund (NHIF).

In view of the foregoing I have allowed the Secretary/Director of Pensions to share any relevant information your office may need during the deliberative stages as you consider the subject recommendation. You may wish to note that as at 1st February, 2021 a total of One Thousand Six Hundred Eighty Seven (1687) pensioners were earning less than Kshs.5,000 monthly.

Yours

Hon. (Amb.) Ukur Yatani, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy to:

Mr. Michael A. Kagika, EBS
Secretary/Director of Pensions
Pensions Department
The National Treasury
Bima House
NAIROBI



REPUBLIC OF KENYA

**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION
AND SENIOR CITIZEN AFFAIRS**

OFFICE OF THE PRINCIPAL SECRETARY

Telephone: Nairobi 2727980/4
Email: ps@socialprotection.go.ke
When replying please quote:

Social Security House, Bishops Road
P.O. BOX 40326 - 00100
NAIROBI

Ref: ML&SP/SP/9/41

Date: 5th April, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
NAIROBI

Dear *Samuel*,

RE: IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

This is in response to your letter Ref:NA/AA&OSC/CO1/2023(028) dated 15th March 2023.

The State Department of Social Protection received the report of the Departmental Committee on Labour and Social Welfare on the petition by the Kenya Association of Retired Workers regarding improved terms for pensioners in Kenya.

Please find the attached response on the Committee's recommendations on the above report.

Yours

Sincerely

Joseph M. Motari, MBS
PRINCIPAL SECRETARY

CC: Cabinet Secretary

RESPONSE ON THE IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

The State Department of Social Protection received the report of the Departmental Committee on Labour and Social Welfare on the petition by the Kenya Association of Retired Workers regarding improved terms for pensioners in Kenya.

In the report Page 21 and 22;

2.2 Submission by the Cabinet Secretary for the Ministry of Labour and Social Protection

54. During a meeting with Committee held on 25th November 2020, The Cabinet Secretary for the Ministry of Labour and Social Protection, Hon. Simon K. Chelugui made submissions with regard to the Petition regarding the welfare of pensioners in Kenya.

55. On the petitioners' prayer for inclusion of Government pensioners in the Inua Jamii 70 years and above Cash Transfer Programme.

56. The Cabinet Secretary submitted that the Government of Kenya was currently implementing three Inua Jamii cash transfer programmes namely: Older Persons' Cash Transfer, Orphans and Vulnerable Children's Cash Transfer, and Persons with Severe Disability Cash Transfer. The Government carried out a nationwide registration of Senior Citizens aged 70 years and above during the month of July and August, 2017.

57. The criteria for identification of registration of Older Persons age 70 years and above to be enrolled into the Consolidated Cash Transfer Programme in all the constituencies countrywide are that the Older Person:

- (i) Must be aged 70 years and above;
- (ii) Must be a Kenyan citizen;
- (iii) Must have a valid National Identification Card; and
- (iv) Must not be benefiting from any other Government Safety Net Programme including pensions.**

58. The government's intention is cushion all elderly persons aged 70 years and above through the regular and predictable cash transfer through the Inua jamii Cash Transfer Programme.

4.0 COMMITTEE'S RECOMMENDATIONS [PAGE 32]

4.1 General recommendation

The committee recommended that the Cabinet Secretary should include a clear framework for the engagement of retirees in the development of the

National Volunteerism Policy. This is in recognition of the fact that a large number of retirees exit the service with a substantial amount of knowledge and expertise while still relatively energetic.

The National Volunteerism Policy is currently undergoing review and one of the issues that will strongly be included is the above recommended framework to guide how the retirees can be engaged to volunteer their wide knowledge and skills in National and community development.

4.2 Specific Recommendations

5. The Cabinet Secretary for Labour in consultation with the National Treasury should include Government Pensioners currently earning less than Kshs. 4,000 in monthly pension in the next listing of beneficiaries of the Cash Transfer for the elderly as a stop gap measure pending review of pension to reflect the current cost of living.

MINISTRY'S RESPONSE

The Ministry has not been able to enroll additional older persons 70 years and above to the cash transfer programme since the year 2017. This is due to inadequate fiscal space as there has been no additional funding from the National Treasury for this programme despite the efforts made to request for the same through the normal budget-making process.

Currently, the Inua Jamii programme receives Ksh. 28 billion annually which covers the 833,000 older persons, 353,000 orphans and vulnerable children and 47,000 persons with severe disabilities beneficiaries.

As a programme the next urgent activity is to undertake cleansing of the payroll to remove any ineligible and deceased beneficiaries. We believe this will create some space to include more beneficiaries into the programme.

The Ministry is also fast tracking the establishment of the Social Assistance Fund. The fund will attract more resources from the government, private sector, development partners, philanthropists and other donors. This will enable a wider coverage of the vulnerable beneficiaries into the programme.

The recommendation to include Government Pensioners who are currently earning less than KShs. 4,000 monthly pension as a stop gap measure before the review of pensions will be considered when the Ministry is filling the gaps after cleansing of the payroll or if it gets more funding from the National Treasury. Key communications will be given when the enrolment commences.

