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TWELFTH PARLIAMENT – FIFTH SESSION - 2021

THE NATIONAL ASSEMBLY




DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

**REPORT ON THE CONSIDERATION OF  
SOCIAL ASSISTANCE (REPEAL) BILL, 2020**  
*(National Assembly Bill No. 16 of 2020)*

**AUGUST, 2021**

Directorate of Committee Services,  
National Assembly,  
Parliament Buildings,  
**NAIROBI.**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 AUG 2021	
TABLED BY:	DAY: Thurs
CLERK-AT-THE-TABLE:	Hon. Joseph Kabinga
	Murinah wanjiku

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## LIST OF ABBREVIATIONS AND ACRONYMS

AG	Attorney General
CS	Cabinet secretary
CT-OVC	Cash Transfer for Orphans and Vulnerable Children
CT-OP	Cash Transfer for the Elderly
CT-PWSD	Cash Transfer for Persons with Severe Disability
DCS	Department for Children Services
DSD	Department for Social Development
KLRC	Kenya Law Reform Commission
MP	Member of Parliament
NA	National Assembly
NGEC	National Gender and Equality Commission
NSAA	National Social Assistance Authority
PFMA,2012	Public Finance Management Act, 2012

## **LIST OF ANNEXURES**

- Annexure 1:** Minutes of Committee sittings on the consideration of the Bill
- Annexure 2** Bill No. 16 of 2020
- Annexure 3:** Adoption Schedule
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## **CHAIRPERSON'S FOREWORD**

The Social Assistance (Repeal) Bill, 2020 (National Assembly Bill No. 16 of 2020), having been read a First Time on 23rd June, 2020, was committed to the Departmental Committee on Labour and Social Welfare for review and report to the House pursuant to the provisions of Standing Order 127(1).

In summary, the Bill seeks to repeal the Social Assistance Act to provide for the enactment and operationalisation of the Public Finance Management (Social Assistance) Regulations under the Public Finance Management Act No. 18 of 2012.

The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3) invited submissions from the public on the Bill via advertisements in the daily newspapers of 13<sup>th</sup> January, 2020. During its Sittings held on 25<sup>th</sup> February, 2020, 9<sup>th</sup> October, 2020 and 23<sup>rd</sup> July, 2021, the Committee considered the submissions from key stakeholders and resolved to recommend to the House approval of the Bill without amendments.

May I take this opportunity to commend the Committee members for their devotion and commitment to duty during consideration of the Bill and express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing technical and logistical support.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Social Assistance (Repeal) Bill, 2020 (*National Assembly Bill No. 16 of 2020*).

**HON. KABINGA WACHIRA, M.P.**

**CHAIRPERSON**

## CHAPTER ONE

### 1.1. Mandate of the Committee

The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii. ***To study and review all legislation referred to it;***
- iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- vii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee is mandated to consider the following subjects: -

- i. Labour;
- ii. Labour relations;
- iii. Manpower or Human Resource Planning;
- iv. Gender;
- v. Youth;

- vi. Social Welfare and Security;
- vii. Children's Welfare; and
- viii. Persons Living with Disabilities.

### **1.2. Oversight**

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. The State Department for Labour
- ii. The State Department for Social Protection
- iii. The State Department for Gender
- iv. The State Department for Youth
- v. The State Department for Arid and Semi-Arid Lands
- vi. National Gender and Equality Commission

### **1.3. Committee Membership**

The Committee comprises of the following members -

The Hon. Kabinga Wachira, MP (**Chairperson**)

Mwea Constituency

**Jubilee Party**

The Hon. Gideon Koske Kimutai, M.P (**Vice-Chairperson**)

Chepalungu Constituency

**Chama Cha Mashinani (CCM)**

The Hon. James Onyango Koyoo, MP

Muhoroni Constituency

**Orange Democratic Movement (ODM)**

The Hon. Ronald Kiprotich Tonui, MP

Bomet Central

**Jubilee Party**

The Hon. Janet Marania Teyiaa, MP

Kajiado County

**Jubilee Party**

The Hon. Moses Malulu Injendi, MP

Malava Constituency

**Jubilee Party**

The Hon. Tom Odege, MP  
Nyatike Constituency

**Orange Democratic Movement (ODM)**

The Hon. Rose Museo, MP  
Makueni County

**Wiper Democratic Movement (WDM)**

The Hon. Caleb Amisi, MP  
Saboti Constituency

**Orange Democratic Movement (ODM)**

The Hon. Omboko Milemba, MP  
Emuhaya Constituency

**Amani National Congress Party (ANC)**

The Hon. Charles Kanyi Njagua, MP  
Starehe Constituency

**Jubilee Party**

The Hon. Fabian Kyule Muli, MP  
Kangundo Constituency

**Muongano Party**

The Hon. Abdi Mude Ibrahim, MP  
Lafey Constituency

**Economic Freedom Party (EFP)**

The Hon. Titus Mukhwana Khamala, MP  
Lurambi Constituency

**Amani National Congress Party (ANC)**

The Hon. Safia Sheikh Adan, MP  
Marsabit County

**Jubilee Party**

The Hon. Ole Sankok David, MP  
Nominated M.P.

**Jubilee Party**

The Hon. Wilson Sossion, MP  
Nominated

**Orange Democratic Movement (ODM)**

The Hon. Gideon Keter, MP  
Nominated

**Jubilee Party**

#### **1.4. Committee Secretariat**

Ms. Susan Maritim  
**Senior Clerk Assistant/ Head of Secretariat**

Mr. John Mugoma  
**Clerk Assistant II**

Ms. Doreen Nkatha  
**Legal Counsel**

Mr. James Muguna  
**Research Officer**

Ms. Sheila Jebotibin  
**Sergeant-at-Arms**

Mr. Nickson Mutai  
**Audio Officer**

## CHAPTER TWO

### 2.1 OVERVIEW OF THE SOCIAL ASSISTANCE (REPEAL) BILL, 2020

1. The Social Assistance (Repeal) Bill, 2020 seeks to repeal the Social Assistance Act, 2013. The Social Assistance Act is an Act of Parliament whose objective is to give effect to Article 43(1)(e) of the Constitution and to establish the National Social Assistance Authority and provide for the rendering of social assistance to persons in need.
2. The Bill seeks to enable the enactment and operationalisation of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act, No.18 of 2012.
3. Clause 2 deals with the definition of the terms used in the Repeal Bill. The terms are 'Board', meaning the management Board of Authority under section 3 of the repealed Act; 'Authority' meaning the National Social Assistance Authority established under section 3 of the repealed Act and 'repealed Act' means the Social Assistance Act, No. 24 of 2013
4. Clause 3 seeks to repeal the Social Assistance Act.
5. Clause 4 provides savings and transitions necessary to preserve an existing law or existing rights which would otherwise disappear when the law is repealed. This includes saving any pending court proceedings, pending administrative investigations or inquiries, pending disciplinary proceedings, appeals processes. It also saves contracts between the Authority and another person and employment contracts of those employed by the Authority, if any, by requiring their redeployment by the Public Service Commission or compensation in terms of conditions of service. As for the Board, the same will cease to exist within 30 days from the commencement of the Act
6. Article 43 of the Constitution enshrines the economic and social rights of all persons including the right to social security. Article 43(3) mandates the state to provide appropriate social security to persons who are unable to support themselves and their dependents. This duty of the State is further reiterated in Article 57 concerning assisting older members of the society. It is worth noting that Article 21(2) requires the state to take legislative, policy and other

measures, including the setting of standards, to achieve the progressive realisation of the Rights guaranteed under Article 43.

7. Social Assistance is defined under the Social Assistance Act as assistance provided in accordance with the Act to persons in need and other persons and including financial assistance and social services.
8. In Kenya, social protection and social safety are primarily entrenched in three ways:
  - (a) Through the National Social Security Fund (NSSF) which provides social security protection to formal and informal workers in form of payments upon retirement;
  - (b) Through social health insurance implemented by the National Health Insurance Fund (NHIF); and
  - (c) Through cash transfer programs where beneficiaries attest to improved household food security, retention of children in schools, access to basic health care, enhanced social support networks, self-esteem and dignity.

## **2.2 PUBLIC PARTICIPATION**

9. Through a newspaper advertisement dated 13<sup>th</sup> January 2020 (**Annexure 4**), the Committee invited the public to present submissions on the Social Assistance (Repeal) Bill, 2020.
10. The Committee received submissions from numerous stakeholders including the Ministry of Labour and Social Welfare, National Treasury, National Gender and Equality Commission (NGEC) and the Africa Platform for Social Protection and the Social Protection Actors Forum among others.
11. Details of the submissions are annexed to this Report as **Annexure 5**. The Committee extensively considered the contents of the submissions on the Bill and details of the deliberations, observations and resolutions as relates to the Bill are contained in Part C of this Chapter.

### **2.2.1 Submissions by Ministry of Labour and Social Welfare**

12. Mr. Simon Chelugui, Cabinet Secretary for Labour and Social Welfare submitted as follows –
13. The National Treasury & Planning had constituted an Inter-Agency Taskforce to establish the Social Assistance Fund under the Public Finance Management Act, 2012 (PFMA, 2012) in line with the existing Government policy that all national public funds be established by the

Cabinet Secretary responsible for finance under Section 24 (4) of the Public Finance Management Act, 2012.

14. In addition, the Inter-Agency Taskforce was required to identify any consequential amendments to any other law to pave way for the establishment of this Fund under the Public Finance Management Act, 2012. In this regard, it was noted that Parliament had enacted the Social Assistance Act, No. 24 of 2013, which was introduced through a private Member's Bill on 14<sup>th</sup> January, 2013 with the effective date of commencement being 25<sup>th</sup> January, 2013.
15. The primary purpose of the Social Assistance Act, 2013 was to establish a Social Assistance Authority and a Social Assistance Fund to provide for the rendering of social assistance to persons in need. Owing to inherent policy, operational and governance challenges in this Act and in order to align it to the existing national laws and policy provisions, the Social Assistance Act, 2013 has not been implemented.
16. In January, 2019, the Ministry of Labour and Social Protection as part of ongoing efforts to have in place a proper framework for effective coordination and oversight of all social protection programs including social assistance, social security and health insurance, sought for approval from the National Treasury to establish a Social Assistance Fund in line with Section 24 (4) of the PFMA, 2012 to achieve the same policy desired objectives as intended in the Social Assistance Act, 2013, while at the same time avail the Ministry of Labour and Social Protection the opportunity to prepare a comprehensive and coherent Bill to cater for the sector-specific issues including social protection.
17. The Statutory Instruments Act, 2013 also does not allow any House of Parliament to discuss any matter, which has been provided for in another Act of Parliament. In this regard, the National Assembly cannot discuss the establishment of a Social Assistance Fund under Section 24 (4) of the Public Finance Management Act, 2012 while the Social Assistance Act, 2013 had established another Fund on the same subject matter. Accordingly, the Inter-Agency Taskforce recommended and justified the need to repeal the Social Assistance Act, 2013 to pave way for the establishment of the new Fund under the Public Finance Management Act, 2012.
18. Justification for repeal of the Social Assistance Act No 24 of 2013 is underpinned in two broad areas namely-

(a) the need to comply with the current existing Government policy that all national public funds be established under Section 24 (4) of the Public Finance Management Act, 2012; and

(b) the fact that Social Assistance Act, 2013 is not harmonised with existing National Policy on social protection and inherent flaws in the Social Assistance Act, 2013 where it has assigned the roles of regulation, policy formulation and standards to an Authority, yet these roles are ordinarily assigned to the sector Ministry.

19. The existing policy for the establishment of National Public Funds is embedded in the PFM Act, 2012 under Section 24 (4) of the Public Finance Management Act No18 of 2012 which states that the Cabinet Secretary may establish a national government public fund with the approval of the National Assembly. The Social Assistance Act, 2013 which provides for the establishment of a National Social Assistance Fund under section 34 (i) conflicts with the Public Finance Management Act, 2012. This necessitated the need for consequential amendments to the Act of 2013 to remove all provisions relating to the operationalisation of the Fund under the Social Assistance Act to pave way for the establishment of the Social Assistance Fund under the Public Finance Management Act.

20. It has been established that once all provisions relating to the establishment of the Social Assistance Fund are removed from this Act, there will be substantive activities which can be implemented under the same Act, except the Authority established therein, hence the rationale to repeal the act and enable the development of a more comprehensive law in its place addressing all broader sector issues.

21. The Social Assistance Act, 2013 did not capture the letter and spirit of the Policy on Social Protection: Sound laws are informed by sector policies to address specific issues in society. The enacted Social Assistance Act, 2013 is not aligned to the broad policy recommendations encapsulated in the National Social Protection Policy.

22. Further, this matter has been canvassed at the High Court as a result of the Ministry of Labour and Social Protection having been sued by the National Gender and Equality Commission to implement the Social Assistance Act, 2013. Both parties made submissions to the High Court

and the High Court ruled that the Ministry of Labour and Social Protection was right to delay its implementation until a sector-wide Bill is enacted by the National Assembly. The High Court ruling was delivered on 7<sup>th</sup> December, 2016 and recognised actions by the State regarding the streamlining of the Social Assistance Act.

23. Repealing the Act and establishing the Social Assistance Fund under the Public Finance Management Act, 2012 avails the opportunity for the Government and the Ministry itself to align policy to legislation and conclusively embark on the establishment of a comprehensive law on social protection, including social assistance.
24. The Authority as established under the Social Assistance Act of 2013 was assigned policy formulation, regulation, implementations, advisory, standards settings, oversight and monitoring and evaluation mandates (Section 3 and 4), which goes against best practice in governance for the sector and thus posing a challenge to the Ministry in establishing the Authority. In this regard, the Ministry is committed to addressing these duplications, conflicts in the forthcoming law by initiating a comprehensive and coherent Bill for the sector.
25. Establishing the National Social Assistance Authority as contemplated in the Act is expensive as it will require new and or additional staff, office space, equipment and consequently additional resources for operations and maintenance.
26. The Authority was given both the functions of a regulator and implementer under the Social Assistance Act, 2013, which presents an apparent conflict of interest. This is duplication of functions between the Ministry and the Authority. The broad mandates proffered to the Authority under the Act which includes both implementation, advisory, standards settings, oversight and M&E were bound to result in conflict and duplication of efforts impacting on the efficiency and effectiveness of resource utilisation for the social protection sector.
27. Repeal of the Social assistance Act of 2013 will most certainly pave way for accommodating the emerging reforms in the social protection sector and will allow the development of a more comprehensive and coherent law. The establishment of the Social Assistance Fund is a special purpose vehicle for the Government to address specific intervention for effective funds flow and accountability framework for all social assistance granted by the Government.

28. To establish the Social Assistance Fund under the PFM Act, there is a need to propose consequential amendments to remove any provisions relating to the operationalisation of the Fund under the Social Assistance Act as this would have been a violation of the PFMA,2012. After the identification of all the provisions relating to the Social Assistance Fund under the Social Assistance Act it was observed that no substantive provisions relating to any other subject matter under the Act were left hence the recommendation to repeal the Social Assistance act.
29. Once the Social Assistance (Repeal) Bill, 2020 is approved by the National Assembly, the Public Finance Management (Social Assistance Fund) Regulations will be introduced in the National assembly proposing to establish the Social Assistance Fund under Section 24 of the Public Finance Management Act, to provide for the financing of social assistance for poor and vulnerable persons, which include: poor orphans and vulnerable children; poor elderly persons; poor persons with disability; persons in extreme poverty, among others.
30. The Social Assistance Fund's mandate will be to provide regular and predictable transfers for social assistance programmes and initiatives in the country. This will enhance pro-poor strategies by redistributing national wealth, stimulating economic activities and contributing to improved livelihoods.
31. The Fund's intervention in supporting the poor and vulnerable persons is expected to achieve the following outcomes; enhanced predictability of Safety Nets and effective delivery systems through a funds flow framework that is more accountable, predictable and efficient and effectively links beneficiaries to other government affirmative action funds. In such cases, this Fund will act as a guarantee to secure loans thus building resilience and sustainability.
32. Finally, the ring-fencing of social assistance funds through the Fund structure will improve the confidence of development partners to increase financial support for social assistance given the funds will not be comingled.
33. The Ministry responded to Stakeholder Objections to the Bill as follows-
  - (i) The key concerns raised in objection to the establishment of the Public Finance Management (Social Assistance Fund) Regulations have incorrectly assumed that the

Regulations are a replacement of the social assistance Act. This is not true as the Ministry is working towards putting in place a more comprehensive law on social protection.

(ii) The repeal of the Act is part of the first steps of aligning Government policy to legislation, the other step being the efforts made by the Ministry on revising the National Social Protection Policy to effectively cater to emerging concerns in the social protection sector, such as the unprecedented pandemics and disasters facing society.

(iii) Significant progress has been made in this space, it is expected that in the course the policy will be presented before Cabinet and shared with Parliament to guide future legislation. These initiatives will enable the Ministry to establish a proper framework for the effective implementation of Social Assistance interventions and the entire social protection sector.

(iv) It is not true that the repeal of the Social Assistance (Repeal) Bill would empower the National Treasury to govern the social protection sector simply through Regulations, which can be changed on a whim and do not confer social protection rights to citizens. It would scrap the Social Assistance Act and replace it with the Social Assistance Fund Regulations, representing an unacceptable loss of claimable rights to Kenya's citizens in the area of social protection. The policy mandate, the policy Cabinet Secretary responsible for the Fund is the Cabinet Secretary for Labour and Social Protection whereas the Administrator of the Fund is the Principal Secretary / Accounting Officer for social protection.

### **2.2.2 Submissions by the National Gender and Equality Commission**

34. At its meeting held on 27<sup>th</sup> August, 2020 with the National Gender and Equality Commission (NGEC), Dr. Joyce Mutinda, the Commission Chairperson submitted as follows -

35. The Commission is opposed to the Social Assistance (Repeal) Bill, 2020 because of the following reasons-

- (i) The Social Assistance Act, 2013 that is being repealed by the proposed Bill has never been implemented and therefore there is no evidence of its inadequacies, flaws or weaknesses.
- (ii) The Social Assistance Act, 2013 is being repealed without enacting a substitutive substantive Act meaning we anticipate a legal lacuna and failure to provide a comprehensive legal framework to govern the social assistance program and by extension the National Social Protection Policy, 2014.
- (iii) The proposed Social Assistance (Repeal) Bill, 2020 raises a legal technical and procedural question of, whether it is legally appropriate to repeal a substantive Act (the Social Assistance Act of 2013) through Regulations (in this case the Public Finance Management Act (Social Assistance Fund), 2020 of another substantive Act, namely the Public Finance Management Act No. 18 of 2012;
- (iv) The Commission noted that the act of repealing the Social Assistance Act, 2013 via the Public Finance Management Act (Social Assistance Fund) Regulations would have a substantive effect on governance. In essence, the move shall lead to splitting and transferring the functions whereby the Fund secretariat shall be domiciled in the Ministry of Labour and Social Protection and shall report to an administrator appointed by the Cabinet Secretary, National Treasury and Planning meaning administrative functions related powers shall be domiciled at the Ministry National Treasury and Planning.
- (v) The National Treasury and Planning does not have the necessary infrastructure and non-financial resources required to address and deal with issues of Social Protection other than funding the function and duties of Social Assistance.
- (vi) The Commission had been engaged in the matter of finding a comprehensive legal framework to govern the social assistance programs in Kenya since it was established in 2011 and operationalised in 2012. In Kenya, social protection and social safety are entrenched in primarily three ways:
  - a) Cash transfer programs that ought to be governed by the Social Assistance Act No 24 of 2013,

- b) National Social Security Fund (NSSF) governed by the National Social Security Fund Act
  - c) Social Health Insurance is implemented through the National Health Insurance Fund (NHIF) and governed by the National Health Insurance Act.
- (vii) In April 2014, the Ministry responsible for Labour and Social Protection had not operationalised the Social Assistance Act of 2013 which was assented into law on 14<sup>th</sup> January 2013. The most significant provision in this Act is the establishment of the National Social Assistance Authority (NSAA) and a fund known as the National Social Assistance Fund and the sources of the funds.
- (viii) The Act provides that the Fund shall be administered by the Board of Management. This means the management of the Social Assistance Fund (such as the Cash Transfer Fund) will be moved from the Ministry of Labour and Social Protection to the National Social Assistance Authority (NSAA).
- (ix) The Commission issued an advisory to the Cabinet Secretary (CS) raising the concern on non-implementation of the Act and requested the C.S. to give effect to the provisions of the Act by constituting the Management of the National Social Assistance Authority. They received a response to which the Commission found unsatisfactory and filed Petition No. 226 of 2015 in the Constitutional Court, Nairobi.
- (x) The Court on 7<sup>th</sup> December, 2016, dismissed the Petition. The Court was satisfied that indeed various actions were being undertaken by the State to streamline the Social Assistance Act 2013. The Court indicated the steps being undertaken by the Ministry were indicative that the delay in the implementation of the Act was neither deliberate nor unreasonable. The Commission, therefore, waited for the Ministry to commence implementation of the social Assistance Act, 2013.
- (xi) In 2017, the Ministry of Labour and Social Protection initiated the process of reviewing the Social Assistance Act 2013 by drafting the National Social Assistance Bill 2018. On invitations of the Ministry of Labour and Social Protection, the Commission and other stakeholders who included select members of the Parliamentary Departmental Committee on Labour and Social Welfare had the

privilege of discussing and analysing the 2018 Bill. The stakeholders made proposals to improve this Bill but most importantly is that the Bill established a National Social Assistance Trust Fund.

- (xii) The Departmental Committee for Labour and Social Welfare proposed the formation of a technical committee tasked to incorporate the new proposals amendments into the 2018 Bill and to also propose a suitable body, its composition and governance that would be responsible for the implementation of the 2018 Bill. The Commission was a member of this Committee and completed its task and submitted the draft report to the Parliamentary Departmental Committee for Labour and Social Welfare for review.
- (xiii) In July 2019 as the Commission and other members of the Technical Committee were waiting for the final product from the Parliament and Ministry of Labour and Social Protection, we learned that the Ministry of Labour and Social Protection had commenced another process of repealing the Social Assistance Act 2013 through the Public Finance Management Act (Social Assistance Fund) Regulations 2019.
- (xiv) Indeed, on 3rd September, 2019, the National Treasury and Planning through an advertisement called for public participation and submission of memoranda on the Public Finance Management Act (Social Assistance Fund) Regulations 2019 and the Commission submitted its memoranda.
- (xv) The Commission submitted among other things that the Social Assistance Act of 2013 is still in effect and substantive law and cannot be repealed using Regulations of another law.
- (xvi) the Social Assistance Act 2013 was never implemented by the Ministry and therefore its flaws have never been experienced; and
- (xvii) the proposed Public Finance Management Act (Social Assistance Fund) Regulations 2020 are not aligned to the National Social Protection Policy of 2014. These two crucial documents, i.e., the Regulations and the Social Protection Policy do not speak to each other because the National Social Protection Policy which is domiciled in the State Department of Social Protection establishes a National Social

Protection Fund while the Regulations proposed by The National Treasury and Planning under the PFMA,2012 establish a Social Assistance Fund. The Policy also speaks to the overall welfare of the vulnerable groups and has provided for a broader category of beneficiaries of the Social Assistance while the Regulations only address cash transfer.

(xviii) On the memorandum of objects and reasons- the Commission noted that the principal object of the Bill was to repeal the Social Assistance Act to enable the enactment and operationalisation of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act No 18 of 2012. On this, the Commission submitted as follows-

- (a) The reasons cited present legal technical and procedural questions on whether a substantive Act (Social Assistance Act of 2013) may be amended through Regulations of another Act (Public Finance Management Act of 2012). NGEC's understanding is that Regulations are frameworks for efficient management of a substantive Act;
- (b) The Social Assistance Act 2013 is being repealed without replacing it with another substantive Act. The Commission's understanding is that repeals without replacement are generally done when a law is no longer effective, or it is shown that a particular law has far more negative consequences than were initially envisioned. Such justifications have not been provided in the Repeal Bill of 2020;
- (c) Parliament has extensively referenced the provisions of the Social Assistance Act in other Bills and in some cases assigned additional mandate, for example, to the National Social Assistance Authority established under section 34 of the Social Assistance Act, 2013-
  - (i) the Preservation of Human Dignity and Enforcement of Economic and Social Right Bill, 2018 has made extensive reference to the Authority ; and
  - (ii) the Care and Protection of Older Members of Society Bill, 2018 has expanded the mandate of the Authority ;

- (xix) There is still adequate opportunity for Parliament to amend the Social Assistance Act, 2013 or repeal and enact a new Act to address the issues that prevented the Ministry from operationalising it as they presented in Court in 2015. As such, new Bills exist and are drafted with adequate consultations from the stakeholders. For example, the draft National Social Assistance Bill, 2018.
- (xx) The Commission notes that the net effect of establishing a Social Assistance Fund through Regulations of the Public Finance Management Act. The effect includes splitting and transferring some of the aspects of Social Assistance from the Department of Social Protection to the National Treasury and Planning.
- (xxi) The proposed Public Finance Management (Social Assistance Fund) Regulations provide for the Secretariat to be established in the State Department of Social Protection to report to an Administrator who is an appointee of Treasury. This raises governance issues as the two functions (secretarial and administration) shall be domiciled in two separate ministries.
- (xxii) The Regulations do not also create structures at the County Level, yet the beneficiaries reside in the counties which are also implementing social assistance programs. So, the assertion in the memorandum that social security is purely a function of the national Government is not necessarily accurate. Chapter 6 of the National Policy on Social Protection provides for coordination and implementation of social protection programs at National, County and sub-county levels.
- (xxiii) Social protection and social safety are entrenched in three ways namely cash transfer programs, the National Social Security Fund (NSSF), and Social Health Insurance. The Social Security and Health Insurance components are currently regulated by substantive Acts. The proposal to establish the third component of social protection which is cash transfers through Regulations relegates social assistance perhaps to a lesser component. We do submit that the three components of social protection and safety are of equal importance.
- (xxiv) The Commission further submitted that it is not mandatory for all Funds to be established under the PFMA, 2012. Section 24 (4) of the Public Finance Management

Act 2012 states that the Cabinet Secretary may establish a national government public fund with the approval of the National Assembly. The word “may” implies that there are other ways in which Funds can be established. In this case, the National Authority Assistance Fund was established vide the Social Assistance Act 2013. The Fund has governance structures that have never been constituted.

### **2.2.3 Submissions by the Africa Platform for Social Protection and the Social Protection Actors Forum**

36. The Africa Platform for Social Protection and the Social Protection Actors Forum (*hereinafter referred to as African Platform*) submitted as follows –
37. The Cabinet Secretary, Ministry of Labour and Social Protection proposes the establishment of the Social Assistance Fund under the provisions of the Public Finance Management Act, (PFMA, 2012) as “partial operationalisation” of the Social Assistance Act 2013, which, in the opinion of the secretary, was never implemented due to “ internal inconsistencies “ and “operational challenges” including, for example, the creation of an Authority under the 2013 Act with both “oversight and implementation challenges”.
38. The proposal by the Cabinet Secretary details the functions of the State Department for Social Protection, the process involved in cash transfer processes, a key component of social assistance and identifies bottlenecks experienced under the structure of budget appropriation as a basis proposing a Fund established under section 24 (4) of the PFM Act, 2012.
39. The proposal notes that Executive Order No. 1 of 2018 grants the State Department for Social Protection, a social protection mandate. In the implementation of the Order, the Department has a staff of 1004 and is structured into the Department for Social Development (DSD) and the Department for Children Services (DCS). The Social Assistance Unit has been established to coordinate cash transfers at the national level as the National Social Protection Secretariat is tasked with coordinating stakeholder coordination of the social protection sector.
40. The proposal notes that since 2004, some of the cash transfer programmes that have been implemented include the cash transfer for the elderly (CT-OP), cash transfer for Persons with Severe Disability (CT-PWSD) and cash transfers for Orphans and Vulnerable Children (CT-OVC). Cumulatively, the exchequer makes available 30 billion shillings annually for the cash transfer programmes, with each beneficiary entitled to 2000 shillings per month, payable every

second month. 1.2 million households or 6 million people benefit from the cash transfer programmes.

41. The proposal by the Cabinet Secretary makes a convincing case to the effect that the structure of budget appropriations is unsuitable for provisions of cash transfer programs and recommends the establishment of a National Fund for Social Assistance under section 24(4) of the Public Finance Management Act, 2012.
42. However, having perused the justification for the establishment of the Social Assistance Fund under Section 24 of the PFMA, 2012 and repeal of the Social Assistance Act, 2013 was made by the Cabinet Secretary as well as the draft Regulations establishing the said Social Assistance Fund. In response thereto, they submit as hereunder-
  - (i) They agree with the justification given for the need to establish the Social Assistance Fund outside the limitations and structure of budget appropriations. They concur that the inordinate delays, the inadequacy of value and coverage, limited scope and the narrowness of focus are essentially a result of the structure of budget appropriations and that the establishment of a national government Fund would mitigate against these challenges. They however disagree that the said fund should be established under S. 24(4) of the fund for the reasons to be stated herein;
  - (ii) The comparative analysis on provisions in existing Funds under the PFMA, 2012 fails to appreciate the fact that these are funds created *ab initio* under Regulations, unlike the Social Assistance aspect which has already been entrenched in a substantive Act. In any event Section 24 of the PFMA, 2012 is not absolute.
43. The establishment of the Social Assistance Fund under the PFMA is unconstitutional to the extent that –
  - (a) Article 21 (2) of the Constitution requires the state to enact legislation for the achievement of Article 43 rights, including social assistance. The constitution defines legislation to include “*an act of parliament or law made under the authority conferred by an act of parliament.*”

- (b) The Fund, the guarantor of constitutional rights, can only be enacted through *sui generis* legislation; or authority granted by legislation. A general provision conferring upon the minister power to establish funds is inadequate to anchor a constitutional right.
- (c) In recognition of the above constitutional position, two other funds, the National Social Security Fund and the National Health Insurance Fund, both relating to social protection, and Article 43 rights, have been established by substantive legislation.
- (d) In the draft Regulations, the Cabinet Secretary proposes to establish the fund not by way of legislation but by way of provisions dealing generally with matters of finance. This is unconstitutional.
- (e) Moreover, section 24 (4), of the PFMA,2012, read in totality with the rest of section 24, presupposes the establishment of a national government fund to fund national government functions, not, as in this case, to give effect to individual rights conferred by the constitution.
44. The Cabinet Secretary's proposal fails to recognise the existence of the National Social Assistance Fund, established by law in the Social Assistance Act, 2013 but is yet to be operationalised.
45. The Bill does not refer to the Fund but proceeds as if it does not exist. It does not "repeal" the 2013 Act, to nullify the 2013 Social Assistance Fund.
46. As subsidiary legislation cannot, in law, amend or repeal substantive law, the fund proposed under the PFM Act would be redundant, and of no effect.
47. The notion stated that the Act, in establishing an Authority to implement the Social Assistance programmes was in effect "duplicating" the functions of the State Department is erroneous. The Social Assistance Act, 2013, transferred the functions previously held by the State Department for Social Protection to the Authority created under the Act. This in no way deprived the state department of its mandate, as the implementation of the Act would still be under the State Department. The Act thus created a more efficient tool for the implementation of the social assistance programmes, warranting a transfer of services, not a duplication of the same.

48. The implementation structure proposed by the draft Regulations lacks internal consistency, has limited accountability structures and is littered with errors as follows-

- (a) It is not clear if the Regulations seek to establish a fund in the sense of a body corporate or Fund in the sense of an Account.
- (b) The Regulations have the Principal Secretary of Social Affairs as the Administrator and therefore Accounting Officer, suggesting the Fund as an Account. However, the establishment of a Board, and the granting of functions to the Fund, suggests a body corporate. This confusion permeates the entire draft.
- (c) Similar confusion arises in relation to administrator, staff of secretariat and DSD and their functions. Is it practical to separate persons who identify beneficiaries from those who pay? Are the payees therefore just service providers? Or do they exercise an oversight role? Then what would be the purpose of the Board? How do these positions of the Ministry fit in the legal entity proposed to be established?
- (d) The Regulations do not create an institution to exercise an inspectorate role, a best practice in such funds. There is no mechanism established for review and appeal decisions relating to grant or denial of social assistance. The accountability structures are extremely weak.
- (e) Regulations are subsidiary legislation. Can such legislation delegate to another the power to make rules as is done with the powers granted to the Cabinet Secretary?
- (f) The Principal Secretary, designated as the Administrator and thus the Accounting Officer is also the Accounting Officer of State Department that does much more, this provision may not be tenable.

## CHAPTER THREE

### 3.1 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

#### 3.1.1 COMMITTEE OBSERVATIONS

49. The Committee made the following observations-

- 1) Article 43 of the Constitution proclaims the economic and social rights of all persons including the right to social security. Article 43(3) mandates the state to provide appropriate social security to persons who are unable to support themselves and their dependents. This duty of the State is further reiterated in Article 57 with regard to assisting older members of the society.
- 2) Article 21(2) requires the State to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43. To this end, Parliament has enacted the National Social Security Fund Act, the National Hospital Insurance Fund Act and the Social Assistance Act.
- 3) The Social Assistance Act as it is, has not been implemented fully. The Ministry of Labour and Social Welfare, as the implementing authority, indicated the following various reasons for the lack of full implementation -
  - (a) it was realised that on enactment, the Social Assistance Act was not aligned to the broad policy recommendations encapsulated in the National Social Protection Policy;
  - (b) the inherent challenges in operationalising the Board of Management as it has both functions of oversight and implementation Act and unclear role of the Social Assistance Authority, that is, whether it should be involved in the direct provision of social assistance or that it would only be the regulator of social assistance programmes. This negates the spirit of good governance, which recognises that an institution cannot oversee its actions since accountability would not be ensured.
  - (c) the Act does not provide for the National Social Assistance Fund to receive funding from the Exchequer and therefore, the Fund had not been operationalised since enactment;
- 4) The Ministry of Labour and Social Welfare and other stakeholders including NGEN, met with the Committee in 2018 and 2019 to chart a way forward regarding the

implementation of the Social Assistance Act. It was agreed that a multi-stakeholder technical team is formed to prepare necessary amendments to operationalise the Act. This team embarked on its mandate and proposed repeal of the Act.

- 5) The Inter-Agency Taskforce noted that the *Inua Jamii* cash transfer program was being implemented through the budget process which faces numerous challenges including inordinate delays, budget deficits, the inadequacy of value and coverage, limited scope and the narrowness of focus. There is a need to implement the cash transfer program and other social assistance programs through a Public Fund to mitigate against the challenges of administration of funds geared towards social assistance through budget appropriations.
- 6) Whereas section 34 of the Social Assistance Act establishes, a National Social Assistance Fund, it has never been operationalised as it does not receive funding from the exchequer and further, the Ministry had been unable to operationalise it owing to the policy that Public Funds be established under the Public Finance Act, 2012 as this is the law enacted pursuant to Chapter 12 of the Constitution to govern Public Finance matters. Given the foregoing, the Taskforce recommended the establishment of the Social Assistance Fund under Section 24 (4) of the Public Finance Management Act.
- 7) To pave way for the establishment of the new Fund under the Public Finance Management Act, 2012, the provisions concerning the National Social Assistance Fund in the Social Assistance Act must be repealed. The recommendation by the Inter-Agency Taskforce to repeal the Social Assistance Act is premised on its belief that upon deletion of the provisions establishing the Fund from the Social Assistance Act, no substantive provisions relating to any other subject matter under the Act would be left.
- 8) The Committee observed that the provisions relating to the National Social Assistance Authority are substantive provisions that do not concern funding. It was also observed that the Authority had never been operationalised and the Board of Management had never been set up since enactment of the law. The Ministry advised that it could not operationalise the Authority as the State Corporations Advisory Committee has recommended against the formation of new parastatals and the same functions proposed to be undertaken by the Authority may be performed by the Ministry.

9) Justification for repeal of the Social Assistance Act No 24 of 2013 is underpinned in the following broad areas-

- (a) the need to establish a Fund that complies with the current existing Government policy that all national public funds be established under Section 24 (4) of the Public Finance Management Act, 2012; and
- (b) the fact that Social Assistance Act, 2013 is not harmonised with existing National Policy on social protection and contains inherent flaws in the Social Assistance Act, 2013 where it has assigned the roles of regulation, policy formulation and standards to an authority, yet these roles are ordinarily assigned to the sector Ministry.

10) The key concerns raised in objection to the establishment of the Public Finance Management (Social Assistance Fund) Regulations have indicated that the proposed Regulations are a replacement of the Social Assistance Act. However, the Ministry indicated that the Regulations will be anchored on legislation that governs public finance. Further, the Ministry is working towards the enactment of a comprehensive law on social protection broadly, including social assistance. The Committee noted a need to expedite the introduction, in the House, of the proposed comprehensive Bill that addresses the issues that have prevented the Ministry from operationalising the Act.

11) Another concern raised by stakeholders is that establishment of the Fund vide Regulations under PFM would empower the National Treasury to govern the social protection sector simply through Regulations that can be changed on a whim and do not confer social protection rights to citizens. It was, however observed that the National Treasury and Planning does not have the necessary infrastructure and non-financial resources required to address and deal with issues of Social Protection other than of funding the function and duties of Social Assistance. Furthermore, the Cabinet Secretary responsible for the Fund is the Cabinet Secretary for Labour and Social Protection, whereas the Administrator of the Fund is the Principal Secretary for matters concerning social protection being the Accounting Officer. This is akin to other similar Public Funds enacted having the Principal Secretary for the responsible Ministry as the


Fund Administrator and not the Cabinet Secretary to the National Treasury whose role is limited to establishing a Public Fund under PFM Act, 2012 and provide financing. Also worth noting is that the functions assigned to the Principal Secretary for Social protection are not transferred to the Cabinet Secretary to the National Treasury.

12) If the Bill is enacted into law, there is a need for Parliament to examine and amend various legislative proposals and Bills which refer to the provisions of the Social Assistance Act and in some cases have assigned the additional mandate to the National Social Assistance Authority established under section 34 of the Social Assistance Act, 2013 including-

- (a) the Preservation of Human Dignity and Enforcement of Economic and Social Right Bill, 2018;
- (b) the Care and Protection of Older Members of Society Bill, 2018; and
- (c) the Care and Protection of Child Parents Bill, 2019.

### 3.1.2 COMMITTEE RECOMMENDATION

The Committee, having considered the Social Assistance (Repeal) Bill, 2019 recommends that the House passes the Bill as it is.

SIGNED.......... DATE.....5/8/2024.....

**HON. KABINGA WACHIRA, M.P. (CHAIRPERSON)**  
**DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**MINUTES OF THE 40<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 23<sup>RD</sup> JULY, 2021 AT 10.10AM IN NDOVU CONFERENCE ROOM, BOMA HOTEL.**

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**PRESENT**

1. **The Hon. Josphat Kabinga Wachira, M.P.** - Chairperson
2. The Hon. Ronald Kiprotich Tonui, M.P.
3. The Hon. Abdi Mude Ibrahim, M.P.
4. The Hon. Caleb Amisi, M.P.
5. The Hon. Charles Kanyi Njagua, M.P.
6. The Hon. David Ole Sankok, M.P.
7. The Hon. Fabian Kyule Muli, M.P.
8. The Hon. Gideon Keter, M.P.
9. The Hon. Nelson Koech, M.P.
10. The Hon. Omboko Milemba, M.P.
11. The Hon. Safia Sheikh Adan, M.P.
12. The Hon. Titus Mukhwana Khamala, M.P.
13. The Hon. Tom Mboya Odege, M.P.
14. The Hon. Wilson Sossion, M.P.

**APOLOGY**

1. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
2. The Hon. Janet Marania Teyiaa, M.P.
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Rose Museo Mumo, M.P.

**IN ATTENDANCE**

**Committee Secretariat**

- |                           |   |                        |
|---------------------------|---|------------------------|
| 1. Ms. Susan Maritim      | - | Senior Clerk Assistant |
| 2. Mr. Adan Sora Gindicha | - | Senior Clerk Assistant |
| 3. Mr. John Mugoma        | - | Clerk Assistant II     |
| 4. Mr. Ronald Walala      | - | Legal Counsel          |
| 5. Mr. James Muguna       | - | Researcher             |
| 6. Mr. Nickson Kibet      | - | Audio Officer          |
| 7. Mr. Said Mohamed       | - | Sergeant-At-Arms       |

**AGENDA**

1. Prayers & Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sitings
  - iv. Matters Arising
2. **Consideration and adoption of the Report on Social Assistance (Repeal) Bill, 2020**
3. Any Other Business
4. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/2021/196            PRELIMINARIES**

The meeting commenced at 10.10a.m. with the Prayer followed by welcoming remarks.

The Chairperson introduced the new lead clerk, Ms. Susan Maritim, Senior Clerk Assistant to the Committee and thanked the outgoing lead clerk, Mr. Adan Gindicha, Senior Clerk Assistant and wished him well in his new Committee.

**MIN.NO. DC/LSW/2021/197            ADOPTION OF THE AGENDA**

The Agenda of the meeting was adopted having been proposed and seconded by the Hon. Safia Sheikh Adan, M.P. and the Hon. Abdi Mude Ibrahim, M.P., respectively.

**MIN.NO. DC/LSW/2021/198            CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

**MIN.NO. DC/LSW/2021/199            CONSIDERATION AND ADOPTION OF THE REPORT ON THE SOCIAL ASSISTANCE (REPEAL) BILL, 2020**

The Committee was presented with the draft Public Finance Management (Social Assistance Fund) Regulations, 2021 which the Ministry of Labour & Social Protection and the National Treasury and Planning intend to operationalise the Social Assistance Fund once the Act is repealed.

The Committee made the following observations –

- 1) The Ministry of Labour and Social Welfare, as the implementing authority, indicated the following various reasons for the lack of full implementation Social Assistance Act –
  - i. It was realized that on enactment, the Social Assistance Act was not aligned to the broad policy recommendations encapsulated in the National Social Protection Policy.
  - ii. The inherent challenges in operationalizing the Board of Management as it has both functions of oversight and implementation Act and unclear role of the Social Assistance Authority, i.e., whether it should be involved in the direct provision of social assistance or that it would only be the regulator of social assistance programmes. This negates the spirit of good governance, which recognizes that an institution cannot oversee its own actions since accountability would not be ensured.
  - iii. Section 35 of the Act does not provide for the National Social Assistance Fund to receive funding from the exchequer and therefore, the Fund had not been operationalised since enactment.
- 2) The Inter-Agency Taskforce noted that the *Inua Jamii* cash transfer program was being implemented through the budget process which faces numerous challenges including inordinate delays, budget deficits, inadequacy of value, and inadequacy of coverage,

limited scope and the narrowness of focus. There is need to implement the cash transfer program and other social assistance programs through a Public Fund in order to mitigate against the challenges of administration of funds geared towards social assistance through budget appropriations.

- 3) Whereas section 34 of the Social Assistance Act establishes, a National Social Assistance Fund, it has never been operationalised as it does not receive funding from the exchequer and further, the Ministry had been unable to operationalise it owing to the policy that Public Funds be established under the Public Finance Act, 2012 as this is the law enacted pursuant to Chapter 12 of the Constitution to govern Public Finance matters. In view of the foregoing, the Taskforce recommended establishment of the Social Assistance Fund under Section 24 (4) the Public Finance Management Act.
- 4) In order to pave way for the establishment of the new Fund under the Public Finance Management Act, 2012, the provisions concerning the National Social Assistance Fund in the Social Assistance Act must be repealed. The recommendation by the Inter-Agency Taskforce to repeal the Social Assistance Act is premised on its belief that upon deletion of the provisions establishing the Fund from the Social Assistance Act, no substantive provisions relating to any other subject matter under the Act would be left.
- 5) The provisions relating to the National Social Assistance Authority are substantive provisions that do not concern funding. It was also observed that the Authority had never been operationalised and the Board of Management had never been set up since enactment of the law. The Ministry advised that it could not operationalise the Authority as the State Corporations Advisory Committee has recommended against formation of new parastatals and the same functions proposed to be undertaken by the Authority may be performed by the Ministry.
- 6) Justification for repeal of the Social Assistance Act No 24 of 2013 is underpinned in the following broad areas-
  - i. the need to establish a Fund that complies with the current existing Government policy that all national public funds be established under Section 24 (4) of the Public Finance Management Act, 2012; and
  - ii. the fact that Social Assistance Act, 2013 is not harmonized with existing National Policy on social protection and contains inherent flaws in the Social Assistance Act, 2013 where it has assigned the roles of regulation, policy formulation and standards to an authority, yet these roles are ordinarily assigned to the sector Ministry.
- 7) The key concerns raised in objection to the establishment of the Public Finance Management (Social Assistance Fund) Regulations have indicated that the proposed Regulations are a replacement of the Social Assistance Act. However, the Ministry indicated that the Regulations were to be anchored on legislation that governs public

finance and further, the Ministry is working towards enactment of a comprehensive law on social protection broadly, including social assistance. The Committee noted that there is need to expedite the introduction, in the House, of the proposed comprehensive law on social protection that addresses the issues that have prevented the Ministry from operationalizing the Act.

- 8) The Committee noted with concern that the PFM (Social Assistance Fund) Regulations would empower the National Treasury to govern the social protection sector through Regulations with the danger of the Executive amending the Regulations and also that the National Treasury and Planning does not have the necessary infrastructure and non-financial resources required to address and deal with issues of Social Protection other than of funding the function and duties of Social Assistance.
- 9) The proposed Regulations have enhanced penalties which are in variance with the Social Assistance Act of 2013.
- 10) Repealing an Act in the promise that the Regulations will be presented and approved by the House is not a guarantee that the Fund will be operationalised immediately as envisaged by the repeal Bill.

#### **Committee Recommendation**

The Committee, having considered the provisions of the Bill recommended that the Social Assistance (Repeal) Bill, 2020 be **approved without amendments** as proposed by Hon. Safia Sheikh Adan, M.P. and seconded by Hon. Abdi Mude Ibrahim, M.P., respectively.

**MIN.NO. DC/LSW/2021/200      ANY OTHER BUSINESS**

No other business arose.

**MIN.NO. DC/LSW/2021/201      ADJOURNMENT**

There being no other business, the meeting was adjourned 1.05p.m. until 2.30p.m., same day, in the same venue.

SIGNED: .....



**THE HON. JOSPHAT KABINGA WACHIRA , M.P.  
(CHAIRPERSON)**

DATE: .....

03/08/2021

**MINUTES OF THE 35<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY 25<sup>TH</sup> JUNE, 2021 AT 10AM AT ENGLISHPOINT HOTEL.**

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**PRESENT**

1. **The Hon. Josphat Kabinga Wachira, M.P** - Chairperson
2. The Hon. Ronald Kiprotich Tonui, M.P
3. The Hon. James K'Oyoo, M.P
4. The Hon. Fabian Kyule Muli, M.P
5. The Hon. Omboko Milemba, MP
6. The Hon. Nelson Koech, M.P
7. The Hon. Caleb Amisi, M.P.
8. The Hon. Tom Mboya Odege, MP
9. The Hon. Charles Kanyi Njagua, MP
10. The Hon. David Ole Sankok, MP
11. The Hon. Wilson Sossion, MP

**APOLOGY**

1. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
2. The Hon. Rose Museo Mumo, MP
3. The Hon. Janet Marania Teyiaa, MP
4. The Hon. Moses Malulu Injendi, M.P
5. The Hon. Safia Sheikh Adan, M.P
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Titus Mukhwana Khamala, M.P
8. The Hon. Gideon Keter, MP

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Officer
4. Ms. Fiona Musili - Research Officer
5. Ms. Sheila Chebotibin - Sargent-At-Arms
6. Mr. Nickson Kibet - Audio Officer

**STATE DEPARTMENT FOR SOCIAL PROTECTION**

1. Mr. Nelson Marwa - Principal Secretary
2. Ms. Cecilia Mbaka - NSPS
3. Mr. Nicholas Kitua
4. Ms. Charity Kiilu
5. Ms. Hellen Mudora - APSP
6. Mr. Stefanie Bitengo - NSPS
7. Mr. John Gachigi - DSA
8. Ms. Mercy Kuria - DSD
9. Ms. Rebecca Mbuti - SPAF
10. Ms. Joyce Mugure - PA
11. Mr. Pepela Martin - Advocate
12. Mr. Shem Nyakutu -SCS
13. Ms. Tina Mungatana - SDSP
14. Mr. Benard Moenga - NSPS
15. Ms. Yvonne Chege - Foreign Affairs

## **AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sitings
  - iv. Matters Arising
3. **Consideration of Social Assistance (Repeal) Bill, 2020 and Challenges affecting Inua Jamii Program**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DC/LSW/169/2021:- PRELIMINARIES**

The meeting was called to order at 10am and thereafter a prayer was said. Introduction of Hon. Members and Staff present was then done.

### **MIN.NO. DC/LSW/170/2021: CONSIDERATION OF SOCIAL ASSISTANCE (REPEAL) BILL, 2020**

The Stakeholders presented on the following:-

1. **A strategic solution for short term & long term challenges of funding in the social protection sector**
  - a) **Inadequate budgetary allocations.**
    - i. A fund enables a funds flow framework that is more accountable and predictable, enhances predictability of Safety Nets and effective delivery systems.
    - ii. Ring-fencing of social assistance funds through the Fund structure improves confidence of development partners to increase financial support for social assistance given the funds will not be comingled.
  - b) **Limited coverage of poor and vulnerable households.**
    - i. Budget deficits, affects both expansion and limit the number of poor and vulnerable households and individuals that can be covered under social protection programmes. i.e rolling out the 70 plus programme in 2017 and expansion under both the OVC and PWSD.
    - ii. The Fund arrangement improves confidence of development partners to increase financial support for social assistance given the funds will not be comingled.
  - c) **Narrow focus of programme interventions**
    - i. The programs only provide cash transfers to beneficiary households with the fairly limited cash transfer value which do not diversify to the households. i.e enrolment of benefiting into NHIF and promotion of livelihood opportunities.
    - ii. There was an urgent need to consider diversification of support to households if the programme can be able to make meaningful impacts – the fund provides this opportunity.

#### **d) Objectives of the Fund**

- i. To provide for the development and promotion of social assistance programmes and initiatives in the country;
- ii. To provide for the criteria for the identification, screening, and prioritization of beneficiaries of social assistance benefit;
- iii. To provide for eligibility criteria for accessing social assistance programmes and initiatives under this Fund;
- iv. To provide for the minimum norms, standards and procedures for the delivery of social assistance programmes and initiatives;
- v. To provide for a quality assurance framework to ensure that only eligible persons benefit from the social assistance Fund;
- vi. To develop and promote programmes to render the recipients of social assistance capable of self-support and exit from social assistance benefit;
- vii. To enhance financial capacity of the recipients and their dependents through linkages with other government interventions;
- viii. To promote the incorporation of recipients into other complementary services and access to better life conditions;
- ix. To facilitate provision of psychosocial support;
- x. To coordinate, manage and operationalize a beneficiary register for social assistance programmes for the national government;
- xi. To mobilize resources from development partners and other sources for the Fund;
- xii. Provide funds for capacity and technical expertise development to improve on social assistance.

#### **2. Advantages for establishment of the PFM (Social Assistance Fund Regulations)**

The intervention in supporting the poor and vulnerable persons is expected to achieve the following outcomes:-

- i. Enhanced predictability of Safety Nets and effective delivery systems through a funds flow framework that is more accountable, predictable and efficient and effectively link beneficiaries to other government affirmative action funds. In such cases, the Fund will act as guarantee to secure loans thus building resilience and sustainability.
- ii. Greater harmony in the allocation of resources for social protection related interventions. In the current dispensation, meager resources are spread too thinly across many sectors resulting to duplications and effectively undermining meaningful impact of resources.
- iii. Ring-fencing of social assistance funds through the Fund structure will improve confidence of development partners to increase financial support for social assistance given the funds will be comingled.

#### **3. Challenges affecting Inua Jamii Program**

The following were challenges affecting Inua Jamii Program:-

- i. Budget deficit affecting the payment on payroll and migration of beneficiaries who are currently on exception and legacy lists and replacement of deceased.
  - Exceptions – 93,007

- Legacy – 29,153
  - Deceased – 23,558
  - Exited (ineligible) – 2064
- ii. Lack of budgetary allocation to bring on board eligible beneficiaries for OVCT and PWSD since 2015 and OPCT since 2017
  - iii. Delayed payment due to the late releases of exchequer leading to beneficiaries incurring debts
    - January /February cycle paid in April 2021
    - March/April and May/June cycle not yet paid
  - iv. Inadequate funds for monitoring, continuous updates, capacity building of officers, decentration of program to County and Sub County levels.
  - v. Inadequate capacity of MIS server to accommodate additional data , required speed and bandwidth for efficient functionality such as decentration.
  - vi. Inadequate facilities and equipment's and especially ICT equipment for efficient service delivery.
  - vii. Huge backlog oof beneficiaries who are legible to be enrolled in the program but cannot be brought on board. This sometimes bring complains , grievances and sometimes negative jealousy for those left out.
  - viii. Inadequate well trained staff especially at field level to support beneficiaries and other stakeholders in program service delivery.

#### **Committee Observations and Resolutions**

Committee observed and resolved the following;

1. There was need to align the Act to other existing laws and policy provisions since the Social Assistance Act has never been implemented;
2. Establishment of the Fund vide regulations under PFM would empower the National Treasury to govern the social protection sector simply through regulations which can be changed on a whim and do not confer social protection rights to citizens.
3. The proposed Regulations are a replacement of the Social Assistance Act.
4. The Committee observed that the National Social Assistance Authority had never been operationalised and the Board of Management had never been set up since enactment of the law.

#### **Committee Resolution**

**The Committee therefore resolved to consult further on the best way to handle the challenges facing the Cash Transfer Program and whether to repeal the Act thro PFM Act or implement the existing law**

#### **MIN.NO. DC/LSW/171/2021: ANY OTHER BUSINESS**

No Any Other Business Arose

**MIN.NO. DC/LSW/172/2021: ADJOURNMENT**

There being no other business, the meeting was adjourned 1.05pm

SIGNED: .....  .....

**The Hon. Josphat Kabinga Wachira , M.P**

**(Chairperson)**

DATE: ..... *29-06-2021* .....

It is not true, that the repeal of the Social Assistance (Repeal) Bill would empower the National Treasury to govern the social protection sector simply through regulations, which can be changed on a whim and do not confer social protection rights to citizens. It would scrap the Social Assistance Act and replace it with the Social Assistance Fund Regulations, representing an unacceptable loss of claimable rights to Kenya's citizens in the area of social protection. The policy mandate, the policy Cabinet Secretary responsible for the Fund is the Cabinet Secretary for Labour and Social Protection whereas the Administrator of the Fund is the Principal Secretary / Accounting Officer for social protection.

for poor and vulnerable persons, which include: poor orphans and vulnerable children; poor elderly persons; poor persons with disability; persons in extreme poverty, among others.

Social Assistance Fund's mandate will be to provide regular and predictable transfers for social assistance programmes and initiatives in the country. This will enhance pro-poor strategies by redistributing national wealth, stimulating economic activities and contributing to improved livelihoods.

The Fund's intervention in supporting the poor and vulnerable persons is expected to achieve the following outcomes; enhanced predictability of Safety Nets and effective delivery systems through a funds flow framework that is more accountable, predictable and efficient and effectively link beneficiaries to other government affirmative action funds. In such cases, this Fund will act as guarantee to secure loans thus building resilience and sustainability.

Finally, the ring-fencing of social assistance funds through the Fund structure will improve confidence of development partners to increase financial support for social assistance given the funds will not be comingled

### **Response on Stakeholder Objections**

Key concerns raised in objection to the establishment of the Public Finance Management (Social Assistance Fund) Regulations have incorrectly assumed that the Regulations are a replacement of the social assistance Act. This is not true as the Ministry is working towards putting in place a more comprehensive law on social protection.

The repeal of the Act is part of the first steps of aligning Government policy to legislation, the other step being the efforts made by the Ministry on revising the National Social Protection Policy to effectively cater for emerging concerns in the social protection sector, such as the unprecedented pandemics and disasters facing society.

Significant progress has made in this space, it is expected that in the course the policy will be presented before Cabinet and shared with Parliament to guide future legislation. These initiatives will enable the Ministry establish a proper framework for effective implementation of Social Assistance interventions and the entire social protection sector.

***Cost of establishing an Authority provided for under the Social Assistance Act, 2013,*** it's expensive to establish an authority as contemplated in the Act because it will require new and or additional staff, office space, equipment and consequently additional resources for operations and maintenance.

***Dual Functions of the Authority under Social Assistance Act, 2013:*** the Authority was given both the functions of a regulator and implementer under the Social Assistance Act, 2013, which presented apparent conflict of interest.

***Duplication of functions between the Ministry and the Authority:*** The broad mandates proffered to the Authority under the Act which includes both implementation, advisory, standards settings, oversight and monitoring and evaluation were bound to result in conflict and duplication of efforts impacting on the efficiency and effectiveness of resource utilization for the social protection sector.

Repeal of the Social assistance Act of 2013 will most certainly pave way for accommodating the emerging reforms in the social protection sector and will allow development of a more comprehensive and coherent law. Establishment of the Social Assistance Fund is a special purpose vehicle for the Government to address specific intervention for effective funds flow and accountability framework for all social assistance granted by the Government.

***Operationalization of the Fund under the Social Assistance Act:*** in order to establish the Social Assistance Fund under the PFM Act, there was need to propose consequential amendments to remove any provisions relating to the operationalization of the Fund under the Social Assistance Act as this would have been a violation of the PFM Act. After the identification of all the provisions relating to the Social Assistance Fund under the Social Assistance Act it was observed that no substantive provisions relating to any other subject matter under the Act were left hence the recommendation to repeal the Social Assistance act.

The Social Assistance Act, 2013 was not informed by policy:

#### **Advantages for establishment of the Public Finance Management (Social Assistance Fund) Regulations**

Once the Social Assistance Bill is approved by the National Assembly, the Public Finance Management (Social Assistance Fund).Regulations will be introduced in the National assembly proposing to establish the Social Assistance Fund under Section 24 of the Public Finance Management Act, to provide for financing of social assistance

relating to the operationalization of the Fund under the Social Assistance Act to pave way for establishment of the Social Assistance Fund under the Public Finance Management Act.

Further, it has been established that once all provisions relating to the establishment of the Social Assistance Fund are removed from this Act, there will be substantive activities which can be implemented under the same Act, except the Authority established therein, hence the rationale to repeal the act and enable the development of a more comprehensive law in its place addressing all broader sector issues.

**The Social Assistance Act of 2013 did not capture the letter and spirit of the Policy on Social Protection:** Sound laws are informed by sector policies to address specific issues in the society. The enacted Social Assistance Act 2013 that establishes the National Social Assistance Authority is not aligned to the broad policy recommendations encapsulated in the National Social Protection Policy.

Further, as this house may be aware, this matter has been canvassed at the high court as result of the Ministry of Labour and Social Protection having been sued by the National Gender and Equality Commission to implement the Social Assistance Act, 2013. Both parties made submissions to the High Court and the High Court ruled that the Ministry of Labour and Social Protection was right to delay its implementation until a sector wide Bill is enacted by this House. The High Court ruling was delivered on 7<sup>th</sup> December, 2016 and recognized actions by the State in regard to the streamlining of the Social Assistance Act.

Repealing the Act and establishing the Social Assistance Fund under the Public Finance Management Act, 2012 avails the opportunity for the Government and the Ministry itself to align policy to legislation and conclusively embark on establishment of a comprehensive law on social protection, including social assistance.

**The Authority as established under the Social Assistance Act of 2013 was assigned policy formulation, regulation, implementations, advisory, standards settings, oversight and monitoring and evaluation mandates (Section 3 and 4),** which goes against best practice in governance for the sector and thus posing a challenge to the Ministry in establishing the Authority. This is clearly a conflict of interest and therefore the Ministry is committed to address these duplications, conflicts in the forthcoming comprehensive and coherent Bill for the sector.

Assistance Fund in line with Section 24 (4) of the Public Finance Management Act No 18 of 2012 to achieve the same policy desired objectives as intended in the Social Assistance Act, 2013, while at the same time avail the Ministry of Labour and Social Protection the opportunity to prepare a comprehensive and coherent Bill to cater for the sector specific issues including social protection.

Finally, the Statutory Instruments Act, 2013 also does not allow any house of Parliament to discuss any matter, which has been provided for in another Act of Parliament. In this regard, the National Assembly cannot discuss the establishment of a Social Assistance Fund under Section 24 (4) of the Public Finance Management Act, 2012 while the Social Assistance Act, 2013 had established another Fund on the same subject matter. Accordingly, the Inter-Agency Taskforce recommended and justified the need to repeal the Social Assistance Act, 2013 to pave way for the establishment of the new Fund under the Public Finance Management Act, 2012.

### **Rationale for Repeal of the Social Assistance Act, 2013**

Justification for repeal of the Social Assistance Act No 24 of 2013 is underpinned in two broad areas namely:-

- a. The need to comply with the current existing Government policy that all national public funds be established under Section 24 (4) of the Public Finance Management Act, 2012;
- b. The fact that Social Assistance Act, 2013 is not harmonized with existing National Policy on social protection and inherent flaws in the Social Assistance Act, 2013 where it has assigned the roles of Regulation, policy formulation and standards to an authority, yet these roles are ordinarily assigned to the sector Ministry.

This is why the Act impedes its effective operationalization as elaborated on below:-

**Policy and Authority to establish National Public Funds:** The existing policy for establishment of National Public Funds is embedded in the PFM Act, 2012 under Section 24 (4) of the Public Finance Management Act No18 of 2012 which states that the Cabinet Secretary may establish a national government public fund with the approval of the National Assembly. The Social Assistance Act of 2013 which provides for establishment of a National Social Assistance Fund under section 34 (i) is in conflict with the Public Finance Management Act, 2012. This necessitated the need for consequential amendments to the Act of 2013 to remove all provisions



**Republic of Kenya**

**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

**STATE DEPARTMENT FOR SOCIAL PROTECTION**

**POLICY BRIEF ON THE REPEAL ON THE SOCIAL ASSISTANCE BILL, 2020 TO PAVE WAY FOR THE ESTABLISHMENT OF A SOCIAL ASSISTANCE FUND UNDER SECTION 24 OF THE PUBLIC FINANCE MANAGEMENT (SOCIAL ASSISTANCE FUND) REGULATIONS, 2020**

**I. Introduction**

The National Treasury & Planning constituted an Inter-Agency Taskforce to establish the Social Assistance Fund under the Public Finance Management Act, 2012 in line with the existing Government policy that all national public funds be established by the Cabinet Secretary responsible for finance under Section 24 (4) of the Public Finance Management Act, 2012. In addition, the Inter-Agency Taskforce was required to identify any consequential amendments to any other law to pave way for the establishment of this Fund under the Public Finance Management Act, 2012.

Towards this end, the Inter-Agency Taskforce noted that Parliament had enacted the Social Assistance Act, No 24 of 2013, which was introduced through a private Member's Bill on 14<sup>th</sup> January, 2013 with the effective date of commencement being 25<sup>th</sup> January, 2013. The main purpose of this Act was to establish an Authority and a Social Assistance Fund to provide for the rendering of Social Assistance to Persons in need. Owing to inherent policy, operational and governance challenges in this Act and in order to align it to the existing national laws and policy provisions, the Social Assistance Act, 2013 has not been implemented.

In January, 2019, the Ministry of Labour and Social Protection as part of ongoing efforts to have in place a proper framework for effective coordination and oversight of all social protection programs including social assistance, social security and health insurance, sought for approval from the National Treasury to establish a Social



**MINISTRY OF LABOUR AND SOCIAL PROTECTION  
STATE DEPARTMENT FOR SOCIAL PROTECTION  
OFFICE OF THE PRINCIPAL SECRETARY**

Telephone: Nairobi 2727980/4  
Email: [ps@socialprotection.go.ke](mailto:ps@socialprotection.go.ke)  
When replying please quote;

Social Security House, Bishops Road  
P.O. BOX 40326 - 00100  
NAIROBI

**Ref. ML&SP/SP/37/5**

**9th September, 2020**

**Michael R. Sialai, EBS**

Clerk to the National Assembly,  
Clerk's Chambers, National Assembly  
Parliament Buildings  
P. O. Box 41842-00100

**NAIROBI**

Dear,

*Michael,*

**RE: DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE:  
CONSIDERATION OF THE SOCIAL ASSISTANCE (REPEAL) BILL, 2020**

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Reference is made to your letter Ref: NA/DCLSW/2020(053).

Attached, kindly find the Policy brief on the Repeal on the Social Assistance Bill, 2020 to pave way for the establishment of a Social Assistance Fund under Section 24 of the Public Finance Management (Social Assistance Fund) Regulations, 2020

Yours

*Simon Chelugui*

Nelson Marwa Sospeter, CBS  
**PRINCIPAL SECRETARY**

**cc. Mr. Simon Chelugui**  
Cabinet Secretary  
Ministry of Labour and Social Protection  
NSSF Building, Block A  
**NAIROBI**



**ORAL SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE, ON THE SOCIAL ASSISTANCE (REPEAL) BILL 2020.**

**SUBMISSIONS BY STAKEHOLDERS IN THE SOCIAL PROTECTION SECTOR, LED BY THE AFRICA PLATFORM FOR SOCIAL PROTECTION (APSP), SOCIAL PROTECTION ACTORS FORUM (SPAF) AND HELPAGE INTERNATIONAL.**

**27<sup>TH</sup> AUGUST 2020**

1. We oppose the repeal of the Social assistance Act 2013 and instead recommend amendment of the same. Our reasons are:
2. Repeal is based on unconstitutional premise and serves an unconstitutional purpose. Social Assistance is a tool for enhancing protected fundamental right under Article 43 of the COK, and as such, under Article 21 needs to be given effect and implemented through **legislation enacted for purposes of protecting fundamental rights**. The PFMA was enacted for purposes of enhancing efficiency in public finance management, not protecting human rights.  
On the contrary, Social Assistance Act 2013 sought to be repealed was enacted in words of the act, to give effect and implement Article 43 rights. The PFMA is therefore not the constitutional tool for safeguarding social assistance rights.  
The repeal is also unconstitutional on the premise that social assistance is a national function. Social assistance is a fundamental human rights issue and is not just a “social security standard or policy” issue. As such it is the function of all government organs including both levels of government. S 24 PFMA regulations which is a tool for national government, is an unconstitutional tool for effecting social assistance.
3. The Social protection policy provides for three social protection pillars ( Health Insurance (NHIF), and Social Security (NSSF) and Social Assistance. Social Assistance should be treated legally the same as health insurance and social security. Its fund should be established by right guaranteeing legislation.
4. No Cogent reasons have been given as to why a Section 24 of the PFMA fund is a more effective tool than the legislation proposed to be repealed.
5. Social Assistance is more than payment of money to the needy and vulnerable. It is an empowerment and human rights programme which must be protected by substantive law.
6. Governance of the Fund; The draft PFMA regulations for social assistance fund creates a system lacking in transparency, with internal inconsistencies and confusing governance structures

- b. The regulations have the PS social affairs as administrator and therefore accounting officer, suggesting the fund as an account. However the establishment of a board, and the granting of functions to the fund, suggests a body corporate. This confusion permeates the entire draft.
- c. Similar confusion arises in relation to administrator, staff of secretariat and DSD and their functions. Is it practical to separate persons who identify beneficiaries from those who pay? Are the payees therefore just service providers? Or do they exercise an oversight role? Then what would be the purpose of the board? How do these positions of the Ministry fit in the legal entity proposed to be established?
- d. The regulations do not create an institution to exercise an inspectorate role, a best practice in such funds. There is no mechanism established for review and appeal decisions relating to grant or denial of social assistance. The accountability structures are extremely weak.
- e. Regulations are subsidiary legislation. Can such legislation delegate to another the power to make rules as is done with the powers granted to minister?
- f. The PS, designated as the administrator and thus accounting officer is also the accounting officer of state department that does much more. Is this tenable?
- g. The regulations provide for the fund to give grants. No rationale is given for this. This is not common practice for funds with similar purposes.
- h. In the introduction, paragraph 1.0 the last sentence states the establishment of the proposed fund constitutes a partial operationalization of the Social Assistance Act 2013. Is it a review, a repeal or operationalization. Are they regulations under the Social Assistance Act or. This opening statement in itself is ambiguous.
- i. Clause 23 on Appeals insinuates the Director is responsible for making regulations.
- j. Who is the ultimate implementer of this Fund if the same is established under the PFMA with a different Cabinet secretary and provisions.
- k. Clause 31 on allocation of resources among risk responsive components is not very clear.
- l. Clause 42 on winding up indicates that in the event the fund is wound up the fund shall be transferred to the ministry responsible for matters relating to drought. What is the rationale. Why not the ministry responsible for social protection.

- c. In recognition of the above constitutional position, two other funds, the National Social Security Fund and the National Health Insurance Fund, both relating to social protection, an article 43 right, have been established by substantive legislation.
- d. In the draft, the Cabinet Secretary proposes to establish the fund not by way of legislation but by way of provisions dealing generally with matters of finance. This is unconstitutional.
- e. Moreover, section 24 (4), of the PFMA, read in totality with the rest of section 24, presupposes the establishment of a national government fund to fund national government functions, not, as in this case, to give effect to individual rights conferred by the constitution.

10. The Cabinet Secretary's proposal fails to recognize the existence of the Social assistance fund, established by law in 2013.

- a. The Social Assistance Act, 2013, was enacted and signed into law in 2013. The Act establishes a social assistance fund which is yet to be operationalized.
- b. The draft does not make reference to the fund, proceeds as if it does not exist. It does not "repeal" the 2013 Act, in order to nullify the 2013 social assistance fund.
- c. As subsidiary legislation cannot, in law, amend or repeal substantive law, the fund proposed under the PFMA Act would be redundant, and of no effect.
- d. The notion, stated that the Act, in establishing an Authority to implement the Social Assistance programmes was in effect "duplicating" the functions of the State department is erroneous. The Social Assistance Act, 2013, transferred the functions previously held by the State department for Social Protection to the Authority created under the Act. This in not way deprived the state department of its mandate, as the implementation of the Act would still be under the State Department. The Act thus created a more efficient tool for implementation of the social assistance programmes, warranting a transfer of services, not a duplication of the same.

11. The implementation structure proposed by the draft regulations lacks internal consistency, has limited accountability structures and is littered with errors

- a. It is not clear if the regulations seek to establish a fund in the sense of a body corporate or fund in the sense of an account.

Comments on the Proposed Social Assistance Fund established under S.24 of the PFMA,2012

5. We have perused the justification for establishment of the Social Assistance Fund under S.24 of the PFMA as made by the Cabinet Secretary as well as the draft regulations establishing the said Social Assistance Fund. In response thereto, we submit as hereunder:
6. We are in agreement with the justification given for the need to establish the social assistance fund outside the limitations and structure of budget appropriations. We concur that the inordinate delays, inadequacy of value, inadequacy of coverage, limited scope and the narrowness of focus are largely a result of the structure of budget appropriations and that the establishment of national government fund would mitigate against these challenges. We however do not agree that the said fund should be established under S. 24(4) of the fund for the reasons to be stated herein.
7. Paragraph 3.2 on page 10 gives a comparative analysis on provisions in existing Funds under the PFMA . However they fail to appreciate the fact that these are funds created *abi nitio* under regulations unlike the Social Assistance aspect which has already been entrenched in a substantive Act. In any event Section 24 of the Act is not absolute. 24( 4) The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.
8. Paragraph 2 on page 10 speaks to duplication of functions as a justification for creation of the fund under the PFMA . However the rationalization therein points to the fund that is proposed to be created to being, infact a Directorate to be managed by the staff of the Ministry. Refer to 10(d) below.
9. We opine that the establishment of the Social Assistance Fund under the PFMA is unconstitutional.
  - a. Article 21 (2) of the constitution requires the state enact legislation for the achievement of article 43 rights, including social assistance. The constitution defines legislation to include “ an act of parliament or law made under the authority conferred by an act of parliament.”
  - b. The Fund, guarantor of constitutional rights, can only be enacted through *sui generis* legislation; or through authority granted by legislation. A general provision conferring upon the minister power to establish funds is inadequate to anchor a constitutional right.

## **Memorandum on Draft proposal to establish the Social Assistance Fund under the Public Finance Management Act.**

### Introduction

1. The Cabinet Secretary , Ministry of Labour and social protection proposes the establishment of the Social Assistance Fund under the provisions of the Public Finance Management Act, (PFMA, 2012) as “partial operationalization” of the Social Assistance Act 2013, which, in the opinion of the secretary, was never implemented due to “ internal inconsistencies “ and “operational challenges” including, for example, the creation of an Authority under the 2013 Act with both “oversight and implementation challenges”.

### Overview of the proposal

2. The proposal by the Cabinet Secretary details the functions of the state department for social protection, the process involved in cash transfer processes, a key component of social assistance and identifies bottlenecks experienced under the structure of budget appropriation as a basis proposing a S.24(4) Fund. The proposal notes that executive order no. 1 of 2018 grants the the state department for social protection, a social protection mandate . In implementation of the mandate, the department has a staff of 1004 and is structured into the Department for Social Development (DSD) and the Department for Children Services (DCS). The Social Assistance Unit has been established to coordinate cash transfers at national level as the National Social Protection Secretariat is tasked with coordinating stakeholder coordination of the social protection sector.
3. The proposal notes that beginning 2004, some of the cash transfer programmes that have been implemented include the cash transfer for the elderly (OP-CT), cash transfer for Persons with Severe Disability ( PWSD-CT) and cash transfer for Orphans and Vulnerable Children ( CT-OVC). Cumulatively, the exchequer makes available 30 billion shillings annually for the cash transfer programmes, with each beneficiary entitle to 2000 shillings per month, payable every second month. 1.2 households or 6 million people benefit from the cash transfer programmes.
4. The proposal by the Cabinet Secretary makes a convincing case to the effect that the structure of budget appropriations is unsuitable for provisions of cash transfer programs and recommends the establishment of a National Fund for Social Assistance under S.24(4) of the Public Finance Management Act, 2012.

**Endorsed and Signed by the following:**

Name	Organization	Logo/Stamp	Email
Helen Mudora	Africa Platform for Social Protection	 The Africa Platform For Social Protection	Hmudora@africapsp.org
Erastus Maina	HelpAge International - Kenya		erastus.maina@helpage.org
Dr. Samuel Kabue	Social Protection Actors Forum (SPAF)		Samuel.kabue@gmail.com
Monica Kinyanjui	Women for Dementia Africa (WDA)		<a href="mailto:monica@womendementiaafrica.org">monica@womendementiaafrica.org</a>
Anjeline Okola.	Ecumenical Disability Advocates Network	EDAN	<a href="mailto:aokola@edan.or.ke">aokola@edan.or.ke</a> and <a href="mailto:info@edan.or.ke">info@edan.or.ke</a>
Tom Oketch	La Vie Foundation		tomoketch@gmail.com
Titus Abworo	Age Concern Foundation		titusabworo@a-cf.org
Pst. Noah Nsubuga	Sholder Trust		noah@sholder.org
Rebecca Mbuti	BasicNeeds Kenya		Rebecca@basicneedskenya.org
Rasto Atsienga	Glowamo Organization		<a href="mailto:rasto85@yahoo.com">rasto85@yahoo.com</a>
Elijah Mwege	KARIKA		<a href="mailto:karikaageing@yahoo.com">karikaageing@yahoo.com</a>
Lucy Njoki	County Trackers Elderly Foundation		lucythaitinjoki@gmail.com
Pauline Makwaka	Senior Women's Citizen for Change		pmakwaka@yahoo.com

**Dated: Nairobi, Wednesday, 8<sup>th</sup> July 2020**

are subject to ongoing discussions among stakeholders, we discern in regulations issues of concern that support our insistence that the Social Assistance Fund be established by an Act of Parliament. These include:

- a. The regulation calls for the administration of the Fund under the Treasury. We opine that any administration of the Social Assistance Fund would require staff with experience in social and psychosocial development. Implementing a social assistance fund under the Ministry of Finance will therefore greatly disenfranchise the beneficiaries.
  - b. Since 2004, some of the social assistance programmes that have been initiated by the government include the cash transfer for the elderly (OP-CT), cash transfer for Persons with Severe Disability (PWSD-CT) and cash transfer for Orphans and Vulnerable Children (CT-OVC). These are now consolidated into one programme the “*inua jamii*” programme. Cumulatively, the exchequer makes available 30 billion shillings annually for the cash transfer programmes, with each beneficiary entitle to 2000 shillings per month, payable every second month. 1.2 households or 6 million people benefit from the cash transfer programmes. The Fund established under the PFMA regulations has a proposed Fund of 2 billion. It is not clear whether this fund will be used for the same purpose as the *inua jamii* programmes, and therefore be a duplication, or whether this is a replacement fund, in which case the funds allocated are far from adequate.
  - c. The draft regulations create a conundrum in governance of the Fund. Apart from the confusion and ambiguity caused in implementation between the Principal Secretary Finance and the Principal Secretary in charge of Social Assistance, the Board created which is both an oversight board and an executive board, a factor that hinders transparency and will no doubt create a lot of confusion in the implementation of the social assistance programmes.
7. We reject the repeal of the Social Assistance Act 2013 as proposed in the Social Assistance Repeal Bill 2020. We have severally proposed the amendment of the Social Assistance Act 2013, and in case of a repeal, the objects of such a repeal should not be to do away with the substantive legislation on Social Assistance, but rather to strengthen the provisions of such a law, including extending protection to the beneficiaries of social assistance programmes.

We attach herein our previous submissions to different processes.



freedoms, through addressing the rights and needs of vulnerable groups, in partial discharge of the mandate conferred on the state by article 21(3) and article 43.

- d. It is relevant here to point out that Parliament recognized the Social Assistance Act sought to be repealed as one that sought to “give effect to Article 43(1)(e) of the Constitution;”. It was thus always the intention of Parliament in enacting the Social Assistance Act that it was creating an instrument for fulfilling the rights and fundamental freedoms in the Bill of Rights. It is also relevant to note that Parliament enacted the Public Finance Management Act for purposes of “providing for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county Assemblies; the different responsibilities of government entities and other bodies and for connected purposes”.
- e. By repealing the Act, Parliament would be removing the one Statute that enforces social assistance as article 43 rights without replacement and replacing it with a regulatory tool for financial efficiency. We opine that this would be improper, ill considered and unconstitutional.

2. The repeal is founded on a false premise.

- a. The memorandum of objects and reasons for the Social Assistance (Repeal) Bill asserts that the Bill does not concern county governments as “social security is a function of the national government “under the constitution of Kenya 2010 (COK 2010).
- b. We take issue with this assertion. The Fourth Schedule, Part 1, line 14 of COK 2010 lists as a function of the national government, “Consumer protection, including standards for social security and professional pensions plans”. It is this provision, and possibly, as fall back, Article 186(3) of COK 2010 that the mover of Bill relies to assert that Social security is a national government function.
- c. We note on the onset that the COK 2010 refers to *standards for social security and professional pension plans*”. We thus opine that the national government rests at setting standards for social security, not the entire ambit of social security.
- d. That notwithstanding, and without getting into the conceptual debate as to what exactly is meant by social security in COK 2010; whether social security includes social assistance; or whether indeed the authors of the constitution sought to treat social protection, social security and social assistance as interchangeable; we assert that social assistance is a tool, and the Social Assistance Act, 2013 an instrument for fulfilling protected rights and fundamental freedoms.
- e. Given that the protection of rights and fundamental freedoms are mandates to be discharged by all state organs under Article 21(1) of COK 2010, and given that the constitution has to be read as a whole, it is our assertion that county governments have a social assistance mandate.
- f. To that extent, a fund established for the national government, such as funds established under S.24(4) of the PFMA, cannot be a proper and legal mechanism for meeting the objectives of a fund that would serve both national and county governments.

**MEMORANDUM BY STAKEHOLDERS IN THE SOCIAL PROTECTION SECTOR  
MEMORUNDUM ON THE SOCIAL ASSITANCE ( REPEAL) BILL 2020.**

**8<sup>th</sup> JULY 2020.**

The Social Assistance (Repeal) Bill, 2020 proposes the repeal of the Social Assistance Act, No. 24 of 2013 in order “to *enable the enactment and operationalization of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act, No. 18 of 2012.*”

Whereas the enactment and repeal of any legislation is within the mandate of Parliament, and Whereas Parliament would be within its powers to repeal the Social Assistance Act, 2013 (the Act), We the Stakeholders in the sector , beseech Parliament to reject the Social Assistance (Repeal) Bill, 2020 (hereinafter called the Bill) and instead opt for amendments to the Act, for the following reasons:

1. The repeal would serve an unconstitutional objective.

The Bill seeks to repeal a statute enacted pursuant to Articles 21 and 43 of the Constitution of Kenya 2010 (COK 2010) in implementation of human rights and fundamental freedoms and replace the same with an administrative tool for the effective management of funds. Article 21(2) of the COK 2010 commands the state to take legislative measures to achieve the rights guaranteed under Article 43. Article 21(4) also requires that the state enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms. It is worth noting that Kenya has signed and ratified conventions obliging it to offer certain social assistance interventions. Such include the Universal Declaration of Human Rights and the ILO Social Protection Floors Recommendation, 2012 (No. 202)

- a. Legislation is defined by the constitution to include “An Act of Parliament, or law made under Authority conferred by An Act of Parliament’. Though law, regulations are not Acts of Parliament. The PFMA, though an Act of Parliament, is not a statute enacted for purposes of “achieving article 43 rights” and cannot therefore be the legislation envisaged under Article 21(2).
- b. Establishing the Social Assistance Fund under a Statute that provides for the effective management of public funds denies and undermines the fact that the Social Assistance is a protected constitutional right and that, therefore, is a tool for the achievement and protection of rights and fundamental freedoms. Conversely, the fund to be created by the PFMA regulations is a tool for effective management of public finances.
- c. Even if, for arguments sake, the effectiveness of a social assistance fund would be enhanced by the application of the PFMA, a statute would still be required to establish the Fund whose sole objective is to protect rights and fundamental

8<sup>th</sup> July 2020

Mr. Michael R. Sialai  
Clerk of the National Assembly,  
P.O. Box 47842-00100  
NAIROBI

Dear Sir,

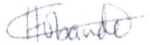
**RE: MEMORANDUM ON THE SOCIAL ASSISTANCE (REPEAL BILL) 2020.**

This follows your advertisement in the local dailies on 2<sup>nd</sup> July 2020, calling for submissions on the Social Assistance (Repeal) Bill 2020.

We hereby submit our memorandum on this Bill. We also attach two previous advisories that we have provided on the draft Social Assistance Fund Regulations 2019, which is a precursor to the Social Assistance (Repeal) bill 2020.

We are open to further discussions with Parliament on this Bill.

Thank you very much.



Helen Mudora

Secretary

people with latent TB infection a great threat in the community they are the breeding ground for TB epidemic," Kagwe wrote in report. He said the new strategy aims to

is probably lurking among people with HIV and their family members, caregivers and contacts of people with active TB. Others are healthcare workers, prisoners and patients on immuno-

He said these key groups will first be screened for the cardinal symptoms of TB such as cough, fever and weight loss. Those without such symptoms will undergo TB lab tests.

seriously injured but his colleagues managed to rescue him," he said. The chairman of Friends of Lake Naivasha Francis Muthui noted that the lake was currently at the mercy of the illegal fishermen.

## home delivery ironic patients

dropped due to Covid-19

The increase in unprofessional home deliveries at home will undo the milestones achieved in reducing maternal and neonatal morbidity and mortality as a country, whereas the low vaccination may lead to resurgence of the otherwise vanishing and even eradicated diseases like polio and measles," he said.

The unions supported reopening the economy but noted that it should be done in phases to allow the country to beef up its capacity to handle the expected surge in cases.

They recommended that priority be given to health training institutions and other tertiary institutions where they could easily observe the containment measures. Reopening of churches, primary and secondary schools should be put on hold.



Kenya National Union of Nurses secretary general Seth Panyako during a press briefing on the well-being of nurses in Nairobi yesterday  
/MERCY MUMO

### REPUBLIC OF KENYA



## NATIONAL ASSEMBLY TWELFTH PARLIAMENT – FOURTH SESSION

In the matters of consideration by the National Assembly:-

1. The Social Assistance (Repeal) Bill (National Assembly Bill No. 16 of 2020)
2. The National Aviation Management Bill (National Assembly Bill No. 18 of 2020)

### SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

**The Social Assistance (Repeal) Bill (National Assembly Bill No. 16 of 2020)** seeks to repeal the Social Assistance Act No. 24 of 2013 in order to enable the enactment and operationalization of the Public Finance Management (Social Assistance Fund) Regulations made under Public Finance Management Act No.18 of 2012.

**The National Aviation Management Bill (National Assembly Bill No. 18 of 2020)** seeks to provide for establishment of the National Aviation Council; Kenya Aviation Corporation and its operating entities to provide for their powers, functions and management and for connected purposes.

**The Social Assistance (Repeal) Bill (National Assembly Bill No. 16 of 2020)** and the **National Aviation Management Bill (National Assembly Bill No. 18 of 2020)** have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the **Departmental Committee on Labour & Social Welfare** and the **Departmental Committee on Transport, Public Works & Housing** respectively, for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the respective Committees invites interested members of the Public to submit any representations they may have on the said Bills. The Bills can be accessed from the parliamentary website at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The representations or written submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before **Wednesday, 8th July, 2020 at 5.00 pm**.

**MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY**








**THE NATIONAL ASSEMBLY  
12TH PARLIAMENT - FIFTH SESSION (2021)  
DC- LABOUR AND SOCIAL WELFARE**

**REPORT ADOPTION SCHEDULE**

**REPORT ON THE CONSIDERATION OF SOCIAL ASSISTANCE (REPEAL) BILL, 2020**

**DATE:** 23<sup>RD</sup> JULY, 2021

No.	HON MEMBER	SIGNATURE
1.	The Hon. Josphat Kabinga Wachira, M.P – (Chairperson)	
2.	The Hon. Gideon Koske Kimutai, M.P. (Vice Chairperson)	
3.	The Hon. Ronald Kiprotich Tonui, MP	
4.	The Hon. Abdi Mude Ibrahim, MP	
5.	The Hon. Caleb Amisi, M.P.	
6.	The Hon. Charles Kanyi Njagua, MP	
7.	The Hon. Fabian Kyule Muli, MP	
8.	The Hon. Gideon Keter, M.P.	
9.	The Hon. James Onyango K'Oyoo, MP	
10.	The Hon. Janet Marania Teyiaa, MP	
11.	The Hon. Moses Malulu Injendi, M.P	
12.	The Hon. Nelson Koech, M.P	
13.	The Hon. Ole Sankok David, MP	

No.	HON MEMBER	SIGNATURE
14.	The Hon. Omboko Milemba, MP	
15.	The Hon. Rose Museo, MP	
16.	The Hon. Safia Sheikh Adan, MP	
17.	The Hon. Titus Mukhwana Khamala, M.P.	
18.	The Hon. Tom Mboya Odege, MP	
19.	The Hon. Wilson Sossion, MP	

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 91 (National Assembly Bills No. 16)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2020**

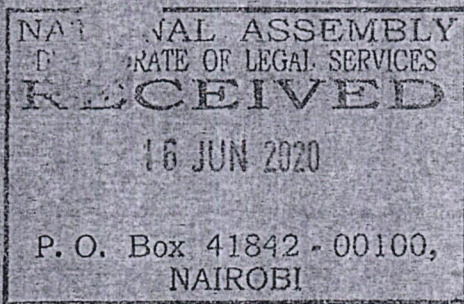
**NAIROBI, 8th June, 2020**

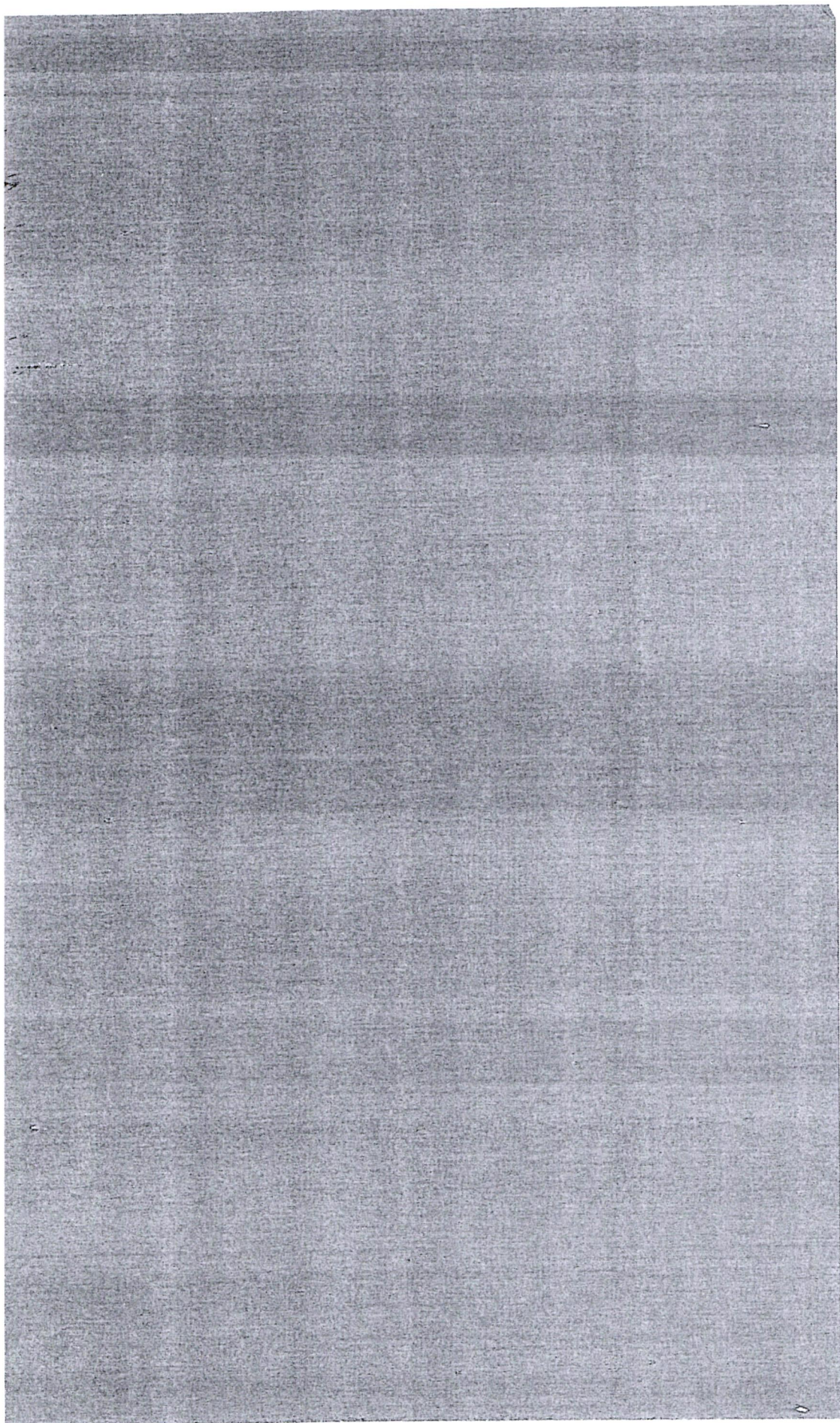
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**THE SOCIAL ASSISTANCE (REPEAL) BILL, 2020****A Bill for****AN ACT of Parliament to repeal the Social Assistance Act**

**ENACTED** by Parliament of Kenya, as follows—

1. This Act may be cited as the Social Assistance (Repeal) Act, 2020.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Board” means the Management Board of Authority established under section 5 of the repealed Act;

“Authority” means the National Social Assistance Authority established under section 3 of the repealed Act; and

“repealed Act” means the Social Assistance Act, 2013.

No. 24 of 2013.

3. Subject to section 4, the Social Assistance Act, 2013 is hereby repealed.

Repeal of No. 24 of 2013.

4. Despite section 3—

Savings and Transitional provisions.

(a) any proceedings taken against or by or pending against the Authority or any other person immediately before the commencement of this Act may be continued by or against the Authority:

Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question;

(b) any administrative investigation or inquiry instituted in terms of the repealed Act which was pending before the repeal of the Act shall be continued or disposed of;

(c) any disciplinary proceedings which immediately before the repeal of the Act was pending shall be continued until conclusion or termination;

(d) any appeal process, which immediately before the repeal of the Act was pending, shall proceed to the conclusion or termination;

- (e) the persons employed by the Authority may be re-deployed by the Public Service Commission or compensated in terms of conditions of employment;
- (f) any contract subsisting between the Authority and another person before the repeal of the Act shall continue to exist to its conclusion or termination; and
- (g) the Board established by the repealed Act shall cease to exist within thirty days from the date of commencement of this Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to repeal the Social Assistance Act, No. 24 of 2013 in order to enable the enactment and operationalization of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act, No. 18 of 2012.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

### **Statement of how the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 109(5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

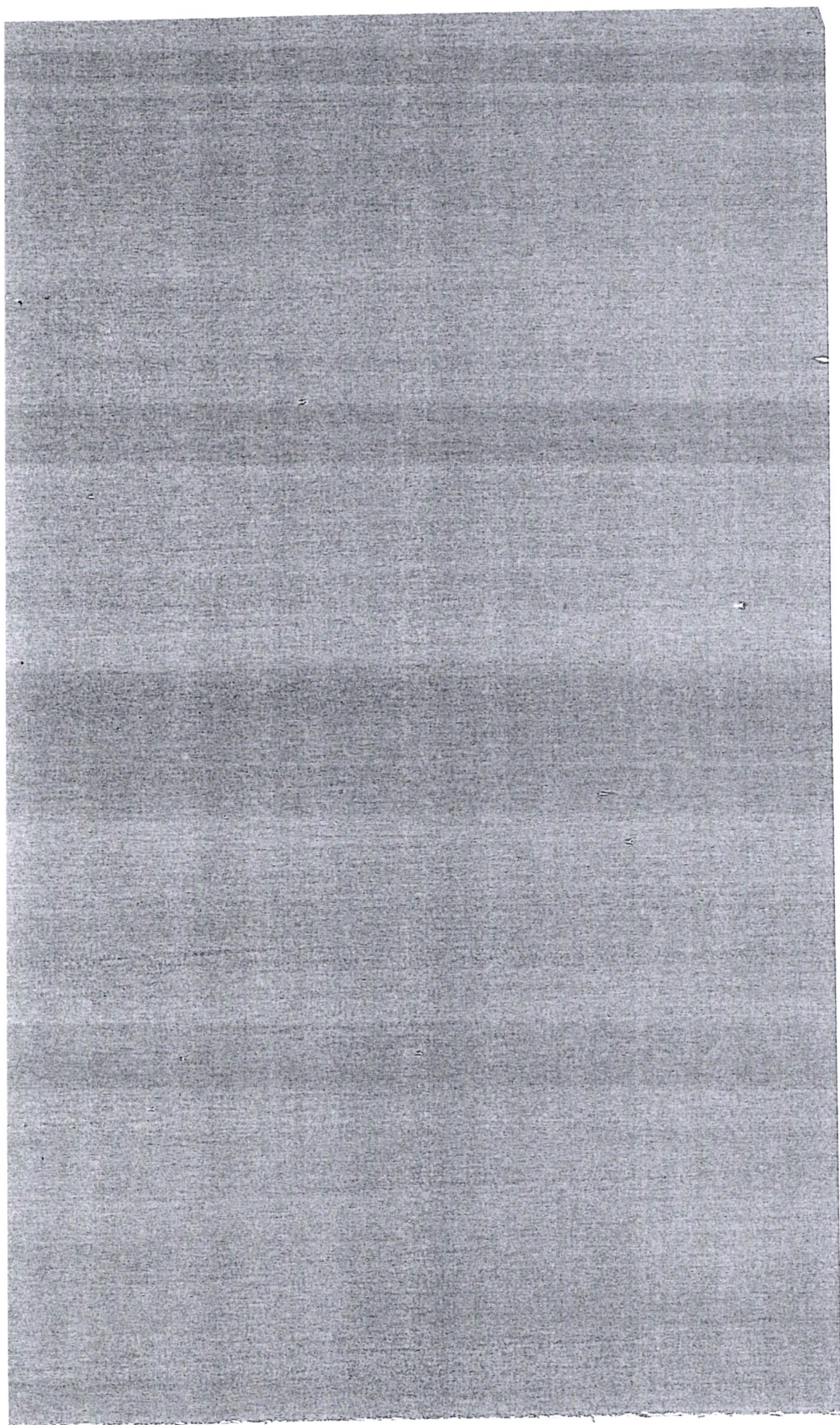
Social security is a function of the national government as provided in Part 1 of the Fourth Schedule to the Constitution.

### **Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

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

Dated the 27th May, 2020.

ADEN DUALE,  
*Leader of Majority Party.*



# **Challenges Affecting Inua Jamii Cash Transfer Program**

1. Budget deficit affecting the payment on payroll and migration of beneficiaries who are currently on exception and legacy lists and replacement of deceased.

➤ Exceptions – 93,007

➤ Legacy – 29,153

➤ Deceased – 23,558

➤ Exited (ineligible) – 2064

2. Lack of budgetary allocation to bring on board eligible beneficiaries for OVCT and PWSD since 2015 and OPCT since 2017

3. Delayed payment due to the late releases of exchequer leading to beneficiaries incurring debts

➤ January /February cycle paid in April 2021

➤ March/April and May/June cycle not yet paid

4. Inadequate funds for monitoring, continuous updates, capacity building of officers, decentration of program to County and Sub County levels

5. Inadequate capacity of MIS server to accommodate additional data , required speed and bandwidth for efficient functionality such as decentralation

6. Inadequate facilities and equipment's and especially ICT equipment for efficient service delivery

7. Huge backlog of beneficiaries who are legible to be enrolled in the program but cannot be brought on board. This sometimes bring complains, grievances and sometimes negative jealousy for those left out

8. Inadequate well trained staff especially at field level to support beneficiaries and other stakeholders in program service delivery

**CHAIRPERSON'S REMARKS BEFORE THE DEPARTMENTAL COMMITTEE ON LABOR AND SOCIAL WELFARE COMMITTEE ON THE PROPOSED SOCIAL ASSISTANCE (REPEAL) BILL, 2020 ON 27<sup>TH</sup> AUGUST 2020 AT 3. 30P.M**

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The Hon. Chairman, Hon. Peter M. Mwathi, MP for Limuru,  
Hon Vice-Chairperson, Hon. Gideon Kimutai Koske,  
Hon. members of the Committee on Labor and Social Welfare,

1. I first of all wish to congratulate you (the Chairperson and the Vice Chairperson) for your appointment to lead this committee.
2. The National Gender and Equality Commission is pleased to once again appear before you to share with the Committee its views and those of its stakeholders on the proposed Social Assistance(Repeal) Bill, 2020.
3. Now, the National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act. No. 15 of 2011 pursuant to Article 59 (4) & (5) of the Constitution of Kenya, 2010. The Commission's mandate is to promote gender equality and freedom from discrimination for all people in Kenya with focus on special interest groups, which include: women, children, youth, Persons with Disabilities (PWDs), older members of society, minority and marginalized groups. You will therefore notice that children (including orphans and vulnerable children), PWD and older members of society who are beneficiaries of the Social Assistance Programs in Kenya are among the **key groups** the Commission mandated to focus on.
4. **Honorable Chairperson and members**, our presentation is structured in three parts:

The **first part** is a general position of the Commission on the Repeal Bill. I will make short submissions on this part.

**The second part** is a brief about our past and current experiences in reviewing and providing advisories on legal frameworks developed to govern the Social Assistance Program. This will be presented by the Commission Secretary; and the

The **last part** is on a short submission of the technical grounds that is informing our position to oppose the passage of the Social Assistance Repeal Bill no 15 of 2020.

5. **Hon. Chairperson and Committee members**, the Commission is opposed to the Social Assistance (Repeal) Bill, 2020 because of the following reasons:

- a. The Social Assistance Act, 2013 that is being repealed by the proposed Bill has never been implemented and therefore there is no evidence of its inadequacies, flaws or weaknesses.
- b. The Social Assistance Act, 2013 is being repealed without enacting a substitutive substantive Act meaning we anticipate a legal lacuna and failure to provide a comprehensive legal framework to govern the social assistance program and by extension the National Social Protection Policy, 2014.
- c. The proposed Social Assistance (Repeal) Bill, 2020 raises a legal technical and procedural question of, whether it is legally appropriate to repeal a substantive Act (read the social assistance act of 2013) through regulations (in this case the Public Finance Management Act (Social Assistance Fund), 2020 of another substantive Act, namely the Public Finance Management Act No. 18 of 2012;
- d. The Commission notes that the act of the repealing the Social Assistance Act, 2013 via the Public Finance Management Act (Social Assistance Fund) Regulations would have the substantive effect on governance.

In essence the move shall lead to splitting and transferring the functions whereby the secretariat of the fund shall be domiciled in the Ministry of Labor and Social Protection and shall report to an administrator appointed by the Cabinet Secretary, National Treasury and Planning meaning administrative functions related powers shall be domiciled at the Ministry National Treasury and Planning.

The National Treasury and Planning does not have the necessary infrastructure and non-financial resources required to address and deal with issues of Social Protection other than of funding the function and duties of Social Assistance.

6. **Hon. Chairperson and members of this Committee**, with these few reasons as to why the Commission is opposed to the Social Assistance (Repeal) Bill, 2020, I hereby invite the Commission Secretary/CEO to highlight very briefly, the experiences of the Commission in reviewing past proposed laws/bills to govern National Social Assistance Programs in Kenya.

**THE TECHNICAL DETAILS SUPPORTING COMMISSION'S  
POSITION TO REJECT THE SOCIAL ASSISTANCE REPEAL BILL  
2020.**

**The Hon. Chairman and hon members:** My name is Kevin Infanta and I am a Senior Legal Officer working with the National Gender and Equality Commission. I will present to you a summary of our memoranda which we submitted on 7<sup>th</sup> June 2020. I will highlight the key reasons why we object this bill and give suggestions on how we can salvage the situation. I will follow the outline of the bill before you.

**On Clause 1-4:** The commission does not agree with content and provisions of these clauses because as earlier stated we object to the repeal of the Social Assistance Act 2013 in its entirety on grounds that:

- a) This is a law that was never implemented by the Ministry and therefore its flaws have never been experienced.
- b) Further the proposed Public Finance Management Act (Social Assistance Fund) Regulations 2020 are not aligned to the National Social Protection policy of 2014.
- c) These two crucial documents (that is the regulations and the social protection policy do not speak to each other because the National Social Protection Policy which is domiciled in the State Department of Social Protection establishes a National Social Protection Fund while the regulations proposed by The National Treasury and Planning under the PFMA establish a Social Assistance Fund. The Policy also speaks to the overall welfare of the vulnerable groups and has provided for a broader category of beneficiaries of the Social Assistance while the regulations only address cash transfer

**On the memorandum of objects and reasons:** We note that the principal object of this Bill is to repeal the Social Assistance Act to enable the enactment and operationalization of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act No 18 of 2012. On this, our submissions are as follows:

- a) The reasons cited presents legal technical and procedural question on whether you can be repealing a substantive Act (social assistance Act of 2013) through regulations of another substantive Act (Public Finance Management Act of 2012). Our understanding is that regulations are frameworks for efficient management of a substantive Act.
- b) We also note that the Social Assistance Act 2013 is being repealed without replacing it with another substantive Act. Our understanding is that repeals without replacement is generally done when a law is no longer effective, or it is shown that a law is having far more negative consequences than were originally envisioned. Such justifications have not been provided in the repeal bill, 2020.
- c) Parliament would be repealing an Act that through its legislative functions have already recognized. Parliament has extensively referenced in other bills and in some cases assigned some additional mandate for example to the National Social Assistance Authority established under art 34 of the Social Assistance Act 2013.
  - (i) The Preservation of human dignity and enforcement of Economic and social right bill of 2018 has made extensive reference to the authority
  - (ii) The care and protection of older members of society bill 2018 in senate has expanded the mandate of the authority

c) It is our submission that there is still adequate opportunity for the Parliament to **amended** the social assistance act 2013 to address the issues that prevented the Ministry from operationalizing it as they presented in Court in 2015.

d) Even still, Parliament has the opportunity to repeal the social assistance act 2013 BUT with a new act designed to address issues that prevented the Ministry from operationalizing it as since 2013 and which they presented in Court in 2015. As a matter of fact, such new bills exists and were drafted with adequate consultations from the stakeholders. For example, **the draft National Social Assistance Bill of 2018**.

e) The Commission notes that the net effect of establishing a Social Assistance Fund through Regulations of the Public Finance Management Act. The effect includes splitting and transferring some of the aspects of Social Assistance from the Department of Social Protection to the National Treasury and Planning. The proposed Public Finance Management (Social Assistance Fund) Regulations provide for the Secretariat be established in the State Department of Social Protection to report to an Administrator who is an appointee of Treasury. This raises governance issues as the two functions (secretarial and administration) shall be domiciled in two separate ministries.

f) The Regulations do not also create structures at the County Level, yet the beneficiaries reside in the counties which are also implementing social assistance programs. So the assertion in the memorandum that social security is purely a function of the national Government is not necessarily accurate. Chapter 6 of the National Policy on Social Protection provides for coordination and implementation of social protection programs at National, County and sub-county levels.

g) As earlier stated, social protection and social safety is entrenched in three ways namely cash transfer programs, the National Social Security Fund (NSSF), and Social Health Insurance. The Social Security and Health Insurance components are currently regulated by substantive Acts. The proposal to establish the third component of social protection which is cash transfers through Regulations relegates social assistance perhaps to a lesser component. We do submit that the three components of social protection and safety are of equal importance

h) The Commission submits that it is not mandatory for all funds to be established under the PFM Act. Section 24 (4) of Public Finance Management Act 2012 states that the Cabinet Secretary may establish a national government public fund with the approval of the National Assembly. The word “may” means that there are other ways in which Funds can be established. In this case the National Authority Assistance Fund was established vide the Social Assistance Act 2013. The Fund has governance structures which have never been constituted.

**Honorable Chairperson and members in conclusion:** The Commission proposes that the Social Assistance Act 2003 be operationalized and the process of amending it or Repealing it with a substitutive law be put in place to strengthen it.

The Commission therefore implores Parliament to reject the Social Assistance (Repeal), Bill (National Assembly Bill No. 15 of 2020).

When replying please quote

Ref: No:.....NGEC/CS/NAS/005/VOL.I (14)

7<sup>th</sup> June, 2020

**Mr. Michael Sialai, EBS**  
The Clerk of the National Assembly  
Clerk's Chambers  
Parliament Building  
P.O. Box 41842-00100  
**NAIROBI**  
[clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)



Dear *Mr. Sialai*

**SUBMISSION OF A MEMORANDUM BY THE NATIONAL GENDER AND  
EQUALITY COMMISSION ON THE SOCIAL ASSISTANCE (REPEAL), BILL  
(NATIONAL ASSEMBLY BILL NO. 15 OF 2020)**

The National Gender and Equality Commission (NGEC) is pleased to share with you our comments and suggestions for your consideration on **The Social Assistance (Repeal), Bill (National Assembly Bill No. 15 Of 2020)**, through the following Memorandum.

Thank you for the continued partnership.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to read "Betty Sungura-Nyabuto".

**Betty Sungura-Nyabuto, MBS**  
**COMMISSION SECRETARY/CEO**



**A MEMORANDUM BY THE NATIONAL GENDER AND EQUALITY COMMISSION ON THE SOCIAL ASSISTANCE (REPEAL), BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2020)**

Submitted on: 7<sup>th</sup> July 2020

Submitted to: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

We make reference to your call for submission of memoranda on the above named bill. In the sections that follow, please find our comments and thoughts for your consideration.

**1.0 MEMORANDUM OF OBJECTS AND REASONS**

We note that the principal object of this Bill is to repeal the Social Assistance Act to enable the enactment and operationalization of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act No 18 of 2012. Based on the objects and reasons for this Bill, the Commission wishes to draw your attention to the following short background.

**2.0 BACKGROUND**

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act, No. 15 of 2011, pursuant to Article 59 (4) & (5) of the Constitution of Kenya, 2010. The mandate of the Commission is to promote and ensure gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs): women, Persons with Disabilities (PWDs), children, youth, and older members of society, minority and marginalized groups. The special interest groups are the greatest beneficiaries of Social Assistance programs that include *Inua Jamii* for older members of society, Cash Transfer for persons with severe disabilities, cash transfer for orphans and vulnerable children as well as the hunger safety net program.

In Kenya, social protection and social safety is primarily entrenched in three ways:

1. Through cash transfer programs where beneficiaries attest to improved household food security, retention of children in schools, access to basic health care, enhanced social support networks, self-esteem and dignity;
2. Through the National Social Security Fund (NSSF) which provides social security protection to formal and informal workers in form of payments upon retirement; and
3. Through social health insurance implemented by the National Health Insurance Fund (NHIF) through their subsidy programs for orphans and vulnerable children, persons with severe disabilities and older persons.

The Commission considers it prudent to give a detailed chronology of events to guide Parliament in making informed decisions.

### **a. The Social Assistance Act 2013**

In the course of carrying out its functions, the Commission learned that the Ministry of Labor and Social Protection had not operationalized the Social Assistance Act No. 24 of 2013, which was assented into law on 14<sup>th</sup> January, 2013 with the effective date of commencement being 25<sup>th</sup> January, 2013.

The core purpose of the Act is to-;

1. Give effect to Article 43(3) of the Constitution
2. Establish the National Social Assistance Authority (NSAA) and
3. Provide for the rendering of social assistance to persons in need.

### **b. Other relevant provisions in the Act**

1. The Act provides for the functions of the Authority (NSAA) and for the composition of a Board of Management of the Authority.
2. Section 17 of the Act describes the categories of persons in need of social assistance which include orphans and vulnerable children, poor elderly and persons with disabilities and expands the bracket to include unemployed persons, persons disabled by acute chronic illness, widows and widowers and any other persons as may from time to time be determined by the Minister, in consultation with the Board.
3. Section 18 of the Act describes the types of assistance
  - ✓ Emergency not exceeding one month,
  - ✓ Short term which is less than 4 months and
  - ✓ Long term which is four or more consecutive months.
4. Section 24 of the Act further provides for the various forms of programs which include assistance of development of individuals and for increase of the ability of the beneficiary.
5. Part Four of the Act (articles 34 to 39) provides for establishment of a fund to be known as the National Social Assistance Fund (NSAF) and the sources of the funds. The fund shall be administered by the Board of Management.

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=NO.%2024%20OF%202013>

## **3.0 ACTION TAKEN BY THE COMMISSION**

- a. Having noted the lack of operationalization of the Act, the Commission issued an advisory to the Cabinet Secretary (CS) on 6<sup>th</sup> June 2014 followed by a reminder on 11<sup>th</sup> August, 2014. Both letters raised the concern and requested the CS to give effect to the provisions of the Act by establishing the Management of the National Social Assistance Authority. The letter dated 11<sup>th</sup> August 2014 also issued a notice to go to court to enforce compliance.

- b. The Ministry of Labor and Social Protection issued NGECA a response on 21<sup>st</sup> July, 2014 and to the assessment of the Commission it was not satisfactory. On 29<sup>th</sup> May, 2015 the Commission filed petition No 226 of 2015 in the Constitutional Court, Nairobi seeking the following declarations-
- i. The Ministry of Labor and Social Protection had violated the provisions of Article 43 of the Constitution
  - ii. The Ministry of Labor and Social Protection was acting ultra vires by performing the functions of the Authority
  - iii. A permanent injunction to restrain the Ministry of Labor and Social Protection from performing the functions of the Authority's.
  - iv. And an order of Mandamus compelling the Ministry of Labor and Social Protection to immediately operationalize the Social Assistance Act of 2013.

#### **4.0 THE COMMISSION'S CASE**

- i. Since the assent of the Social Assistance Act, the Ministry of Labor and Social Protection had failed, neglected and or refused to operationalize the Act without any good reason or at all which amounts to contravention of the law.
- ii. The Act expands the bracket of beneficiaries to include youth without employment, widows and widowers among others.
- iii. The delay of appointing and gazetting the Board of the Authority has adverse effects on the vulnerable persons in society as per the Social Assistance Act 2013 and is a contravention of their rights as guaranteed in Article 43(1) of the Constitution.
- iv. The Ministry of Labor and Social Protection lacks the mandate to carry out functions which are supposed to be carried out by a body established by an Act of Parliament and so its actions are ultra- vires and in total violation of the law.
- v. Laws are not made in vain and they cannot just be wished away once they have been assented to by the President.

#### **5.0 THE CASE BY THE MINISTRY OF LABOUR AND SOCIAL PROTECTION**

- i. The enacted Social Assistance Act 2013 that establishes the National Social Assistance Authority is not aligned to the broad policy recommendations encapsulated in the National Social Protection Policy. The Authority as established has implementation, advisory, standards settings, oversight and monitoring and evaluation mandates. This poses a challenge to the Ministry in establishing the Authority.
- ii. The Ministry of Labor and Social Protection was not violating the law but intended to discharge its mandate concerning social assistance in the most effective and efficient manner.

- iii. The National Social Protection Council Bill developed by the Ministry of Labor and Social Protection and which is (was then) before the National Assembly provides for the establishment of a proper framework for effective coordination and oversight for all social protection programs (*social assistance, social security and health insurance*)

## 6.0 FINDING BY THE COURT.

- a) The Court was satisfied that indeed various actions are being undertaken by the State in regard to streamlining of the Social Assistance Act.
- b) It would be premature for the Court to intervene at that point and make any orders as sought in regard to Social Assistance and Security and specifically on the implementation of the Act.

The court therefore indicated it was unable to find any violation because the steps being taken by the Ministry of Labour and Social Protection were indicative that the delay in the implementation of the Act was neither deliberate nor unreasonable. The Court dismissed NGEAC's petition in the judgement delivered on 7<sup>th</sup> December 2016 (<http://kenyalaw.org/caselaw/cases/view/132638>).

## 7.0 POST-COURT JUDGEMENT

The Ministry of Labour and Social Protection initiated the process of reviewing the Act by drafting **The National Social Assistance Bill 2018** which was considered a repeal of the 2013 Social Assistance Act. The Commission with other stakeholders who included select members of the Parliamentary Departmental Committee on Labour and Social Welfare had the privilege of discussing and analysing this Bill. **The Bill established a National Social Assistance Trust Fund.**

At the end of the two days meeting discussing this Bill, Members of the Parliamentary Departmental Committee rejected most of the proposals in the **The National Social Assistance Bill 2018** because they were geared towards retaining all the functions, the fund, the Board of management and the secretariat in the Government (Read Ministry Responsible for Social protection) and subsequently a number of major amendment proposals were made for consideration by the Ministry.

The Departmental Committee on Labor and Social Welfare then proposed formation of a Technical Committee of which NGEAC was a member and tasked it to incorporate the proposed amendments into a revised bill. The technical committee was also tasked to propose a suitable body and its composition that would be responsible for implementation of the Repealed Act.

The Technical committee completed its task as assigned and submitted the draft to the Parliamentary Departmental Committee on Labor and Social Welfare for review. **(Annexed is the submitted draft of the reviewed National Social Assistance Bill 2018 and a write up on the governance structures marked 1 a and 1b)**

As the Commission and other members of the Technical Committee were waiting for the final product for their review, the Commission learned that the Ministry of Labor and Social Protection had abandoned the proposals of the technical committee as contained in the revised National Social Assistance Bill 2018 and was now working on repealing the Social Assistance Act 2013 through the **Public Finance Management Act (Social Assistance Fund) Regulations 2019**.

In September 2019, The Technical team comprising of members from the National Gender and Equality Commission (NGEC), the Kenya National Commission on Human Rights (KNCHR) and Africa Platform for Social Protection (APSP) did a write up/Advisory to the Parliamentary Departmental Committee on Labor and Social Welfare detailing the objective of that move as follows-; (See detailed **annex marked 2**)

The main arguments are as follows:

- a) The Social Assistance Act 2013 which is a substantive Act cannot be reviewed through regulations of another Act, namely The **Public Finance Management Act (Social Assistance Fund) Regulations 2019**. This by itself takes away the Fund from the Ministry of Labor and Social Protection and hands it over to the National Treasury and Planning to manage it.
- b) The reasoning that there is a directive that funds be formed under PFMA does not suffice. This is because the provisions are very clear in the Act on how funds can be formed. Further a quick look at the funds formed/established under PFMA reveal that most of them are affirmative funds to help special interest groups to be economically empowered. On the other hand, the social protection fund is a safety net for very vulnerable and poor persons

## **8.0 THE PUBLIC FINANCE MANAGEMENT ACT (SOCIAL ASSISTANCE FUND) REGULATIONS OF 2020.**

On 3<sup>rd</sup> September, 2019, The National Treasury and Planning through an advertisement called for public participation and submission of memoranda on the **Public Finance Management Act (Social Assistance Fund) Regulations 2019** made under the Public Finance Management Act No 18 of 2012

[file:///C:/Users/user/AppData/Local/Temp/4.9.19%20Draft%20PUBLIC%20FINANCE%20MANAGEMENT%20SOCIAL%20ASSISTANCE%20FUND%20REGULATIONS%202019\\_4.9.19.pdf](file:///C:/Users/user/AppData/Local/Temp/4.9.19%20Draft%20PUBLIC%20FINANCE%20MANAGEMENT%20SOCIAL%20ASSISTANCE%20FUND%20REGULATIONS%202019_4.9.19.pdf)

Pursuant to the call and its mandate, the Commission made the submissions that include among others-;

- i. There is a Social Assistance Act of 2013 which has not been implemented nor annulled by a competent court of law
- ii. In the Constitutional Case No 226 of 2015, a case filed against the Ministry of Labor and Social Protection by the National Gender and Equality Commission prayed for

an order of Mandamus to operationalize the Social Assistance Act. The honorable court made the finding that the steps taken by the State are indicative of the fact that the delay in the implementation of the Social Assistance Act 2013 has neither been deliberate nor unreasonable”

- iii. There is no justifiable reason why the Ministry of Labor and Social Protection had decided to establish the Fund under Regulations of another Act when the two other components of social protection namely, the Health Insurance and the Social Security are established under substantive Acts, I.e. National Hospital Insurance Act (NHIF) and National Social Security Fund (NSSF) respectively.
- iv. The Secretariat of the Fund remains in the Ministry of Labor and Social Protection which raises a serious governance issue and worse still reports to an administrator appointed by Cabinet Secretary responsible for matters of Finance
- v. There are no structures at County Levels for coordination and implementation of cash transfer to the beneficiaries.
- vi. The Public Finance Management Act (Social Assistance Fund) Regulations Of 2020 is not aligned with the National Social Protection Policy 2014. <http://socialprotection.or.ke/images/downloads/Draft-Sessional-Paper-SP-Jan2014.pdf>
- vii. Section 24 of the Public Finance Management Act 2012 has more provisions on establishment of Funds than the Subsection (2) as cited. Subsection 4 provides for establishment of funds through other provisions. It is not therefore mandatory to establish funds under Regulations.
- viii. The National Assembly and the Senate are cognizant of the National Social Assistance Authority created by the Social Assistance Act 2013 and have gone ahead to draft laws to enforce implementation of Article 43 of the Constitution. Further, Parliament had expanded the mandate of the National Social Assistance Authority as envisioned in Part 3 of the Social Assistance Act 2013. That is through the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2018 which recognizes this Authority established under Article 34 of the Social Assistance Act 2013 and tasks this Authority with some functions.  
[http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2018/PreservationofHumanDignityandEnforcementofEconomicandSocialRightsBill\\_2018.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2018/PreservationofHumanDignityandEnforcementofEconomicandSocialRightsBill_2018.pdf)
- ix. The Care and Protection of Older Members of Society Bill 2018 in the Senate expands the mandate of the Authority (as established in the Social Assistance Act (2013) by tasking it with the responsibility of implementing the Care and Protection of Older members of Society Bill, 2020.  
[http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2018/CareandProtectionofOlderMembersofSocietyBill\\_2018.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2018/CareandProtectionofOlderMembersofSocietyBill_2018.pdf)

The above submissions form part of the reasons why the Commission objects to the Social Assistance (Repeal) Bill 2020 to pave way for enactment and operationalization of the Public Finance Management Act (Social Assistance Fund Regulations) 2020.

#### **9.0 THE SOCIAL ASSISTANCE (REPEAL) BILL 2020**

The Commission appreciates that the National Treasury and Planning has realized that it cannot technically repeal the Social Assistance Act 2013 and replace it with Regulations and to this end has planned to repeal the Social Assistance Act 2013 through the Social Assistance (Repeal) Bill 2020 but without a replacement with another substantive Act

Repeals without replacement are generally done when a law is no longer effective, or it is shown that a law is having far more negative consequences than were originally envisioned.

#### **10. KEY ISSUES PARLIAMENT SHOULD CONSIDER**

The Commission wishes the Departmental Committee for Labor and Social welfare to Interrogate the following issues;

1. Is the Social Assistance Act 2013 (which had already established a Fund) no longer effective or does it have more negative consequences than originally envisioned?

*The Commission submits that the Social Assistance Act 2013, as is, can still be amended to achieve the objectives of the proposed Regulations and also of the National Social Assistance Bill 2018 mentioned above.*

2. Are the Regulations intended to be enacted and operationalized comprehensive enough to deal with all aspects of Social Assistance?

*NGEC submits that the Regulations aren't comprehensive enough. There are issues on lack of adequate structures at the county level where the beneficiaries reside, issues of governance i.e. who is in charge of the fund? Is it the State Department of Social Protection or the National Treasury? What about the other attendant aspects and welfare of the beneficiaries of the Social Assistance which are not provided for in the Regulations proposed under the PFMA?*

3. Whether the State is degrading the very important component of Social Assistance by establishing it under Regulations whilst the Social Security and Health Insurance components are currently regulated by substantive Acts? i.e. NSSF and NHIF.

4. Are the intended Public Finance Management (Social Assistance Fund) Regulations, 2020 aligned to the National Social Protection policy?

*The Commission submits that the provisions therein are not aligned to the National Social Protection policy which speaks to establishing a National Social*

*Protection Fund while the Bill establishes a Social Assistance Fund. The Policy speaks to the overall welfare of the vulnerable groups who are the beneficiaries of Social Assistance while the Regulations only address cash transfer.*

5. Is it mandatory for all funds to be established under the PFM Act or are there other ways? In this case the Commission makes reference to the National Social Assistance fund already established under the Social Assistance Act 2013

*Section 24 (4) of Public Finance Management Act 2012 states that the Cabinet Secretary may establish a national government public fund with the approval of the National Assembly. The word "may" means that there are other ways in which Funds can be established.*

*The Commission submits that it is not mandatory for all funds to be established under the PFMA and calls for the operationalization of the Social Assistance Act 2013 which will enable the operationalization of the National Social Assistance Fund.*

## **11. o CONCLUSION**

1. Stakeholders and beneficiaries need a viable justification as to why the existing Social Assistance Act of 2013 cannot be operationalized, amended and or repealed for the better.

*The Commission therefore objects to the repeal of the Social Assistance Act 2013 through The Social Assistance (Repeal), Bill (National Assembly Bill No. 15 Of 2020) to enable Treasury present the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act No 18 of 2012 for enactment and operationalization.*

2. The Commission submits that the Social Assistance Act 2003 should be operationalized and the process of amending it be put in place to strengthen. Such an intervention will ensure that the function of Social Assistance shall be domiciled in the Department of Social Protection instead of being split between the state Department of Social Protection and National Treasury and Planning. Further, the interest of the beneficiaries shall be fully protected.

## ANNEX 1a

### NATIONAL SOCIAL ASSISTANCE BILL, 2018

#### A Bill for

An Act of Parliament to give effect to Article 43(1)(e) of the Constitution; to establish the National Social Assistance Fund; to provide for the rendering of social assistance to persons in need ;to provide for the administration and payment of social assistance ; to provide for the establishment of an inspectorate for social assistance and for connected purposes

**ENACTED by the Parliament of Kenya, as follows —**

#### PART I – PRELIMINARY

##### Short title

1. This Act may be cited as the National Social Assistance Act, 2018

##### Interpretation

2. In this Act unless the context otherwise requires—

“beneficiary” means a persons or households receiving social assistance from the State and non-state actors ;

“Board” means the Board of Trustees of the Fund established by section 6;

“bursary” means a financial grant awarded to orphans and vulnerable children from poor families to enable them study in a school, college or university;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to social protection;

“caregiver” means a person who has attained the age of eighteen years whether or not related to a beneficiary and takes primary responsibility for meeting daily needs of that person;

“child” means an individual who has not attained the age of eighteen years;

“child in need of assistance” means children as described under section 28;

“disability” includes any physical, sensory, mental or other pyschological or other impairment, condition or illnesss that has, or is perceived by significant sectors of the community to have, a substantial or long term effect on an individual’s ability to carry out ordinary day to day activities;

“emergency” means a serious, unexpected, and often dangerous situation requiring immediate action;

“Fund” means the National Social Assistance Trust Fund established by section 5;

“non state actor” means a public benefit organization as by the Public Benefits Organisation Act, 2013

“older person” means a person who has attained the age of 70 years;

“poor person” means an individual who lives below the National Poverty line;

“payment service provider” means a bank or other financial institution contracted under this Act to provide payment of social grants to beneficiaries

“residential institution” means an institution approved in accordance with Regulations that provide for living accommodation and temporary or continuing care for persons in need;

“shock” means a sudden upsetting or surprising event or experience;

“social assistance” means social assistance as defined in this Act;

“social insurance” means contribution based benefit payments aimed at income maintenance;

“social security” includes both social assistance and social insurance

“social services” means services, provided by the state and non state ,aimed at lessening, removal or prevention of the causes or effects of poverty and vulnerability

“social grant” means financial assistance in form of cash transfer to those who qualify

“Vulnerable” means vulnerable as defined in this Act.

**Objects and purpose of the Act**

3. The objects and purpose of this Act are to –
  - a. provide for establishment of the National Social Assistance Trust Fund
  - b. provide for the administration of the National Social Assistance Trust Fund;
  - c. provide for the eligibility criteria for Social Assistance funds;
  - d. set minimum standards for the administration of Social Assistance Funds, and
  - e. provide for mechanisms for strengthening collaboration and linkages with key partners from state and non-state actors in the provision of social assistance.
  - f. Provide for the establishment of an Inspectorate for the National Social Assistance Fund

**Application of the Act**

4. This Act shall apply to poor and vulnerable Kenyan citizens and Kenyan permanent residents including–

- a. children;
- b. older persons;
- c. persons with disabilities;
- d. any other category of persons that the Cabinet Secretary may by *Gazette*, determine.

## PART II – NATIONAL SOCIAL ASSISTANCE TRUST FUND

### Establishment of the Fund

- 5. There is established a Fund to be known as the National Social Assistance Trust Fund which shall be administered by the Board of Trustees.  
(2) The Fund shall be used for the provision of payments and others forms of social assistance to persons in need and for connected purposes

### Sources of Funds

- 6. Sources of the Fund shall be—
  - a. such monies as may be appropriated by Parliament for the purposes of the Fund;
  - b. any funds provided by bilateral or multilateral donors, with the approval of the Cabinet Secretary, for the purpose of the Fund;
  - c. monies that may accrue to or vest in the Fund in the course of the exercise of its functions under this Act;
  - d. gifts, grants, donations or endowments as may be given to the Fund;
  - e. monies from any other source provided for the Fund.

### Purposes of the Fund

- 7. (1) The Fund shall be applied to the following purposes—
  - a. provide payments and other forms of assistance to persons in need.
  - b. general administration expenses of the Fund which in each financial year shall not exceed five per cent of the monies in the Fund and the annual budget of which shall be approved by the Cabinet Secretary;
  - c. Conduct monitoring and evaluation of social assistance programmes
  - d. conduct of research in matters relating to social assistance;
  - e. any other purpose that would enhance the development and promotion of social assistance that may be approved by the Board.
- (2) The Cabinet Secretary shall, in consultation with the Board, make regulations to govern the administration of the fund, including the proportion of funds to be applied to each purpose under subsection (1)
- (3) The Cabinet Secretary shall cause a draft of the Regulations proposed to be made in exercise of the power

under subsection (2) to be laid before the National Assembly for approval before gazettelement.

**Prohibition of Investment of the Fund**

8. The Board shall not invest the Fund in any scheme or financial security, provided that interests accruing to the fund as a consequence of deposits in a bank or financial institution shall not be deemed to be investments for the purposes of this Act.

**PART III- BOARD OF TRUSTEES**

**The Board of Trustee**

9. (1) The Board of Trustees of the Fund shall consist of—
- a) the Chairman of the board who shall be appointed from among qualified Kenyan citizens by the President
  - b) 8 Members appointed by the Cabinet Secretary from among qualified Kenyan citizens representing
    - i. the Principal Secretary of the Ministry responsible for social protection;
    - ii. the Principal Secretary in the Ministry responsible for Interior and Coordination affairs;
    - iii. the Principal Secretary in the Ministry responsible for finance.
    - iv. the National Council of Children Services;
    - v. Non state actors with expertise in social protection;
    - vi. the Kenya National Commission on Human Rights ;
    - vii. the National Council for Persons with Disabilities; and
    - viii. the National Gender and Equality Commission.
    - ix. The Chief Executive Officer who shall be an ex officio Member and the Secretary to the Board

(2) The Cabinet Secretary shall appoint Members to the aboard within 2 months of coming into effect of this Act or within 2 months of a vacancy arising within the Membership of the Board

(3) The Board of Trustees shall conduct its affairs in accordance with regulations prescribed by the Cabinet Secretary and subject to the law relating to trustees.

**Disqualification from appointment**

10. A person shall not be appointed as a Trustee if the person—
- (a) is convicted of a criminal offence and sentenced to imprisonment by a court of competent jurisdiction for a period exceeding six months without the option of a fine;
  - (b) is a member of a governing body of a political party;

- (c) is currently disqualified under any written law to hold office of director in a public company, corporation or similar organization;
- (d) has been removed from public office for contravention of the provisions of the Constitution or any other written law;
- (e) Is adjudged bankrupt or enters into a composition or arrangement with his creditors; or
- (g) is disqualified under any other written law, or his holding office as such is deemed by the Cabinet Secretary as being, in any way, detrimental to the Fund;
- (h) is disqualified under chapters six of the Constitution or any other provisions thereof or any written law.

**Tenure of the Board**

- 11. (1) A Member of the Board appointed under this Act shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term.
- (2) The Cabinet Secretary shall appoint one third of the members of the Board in a staggered manner separated by six months so that the respective expiry dates of their terms shall fall at a different times
- (3) Notwithstanding subsection (1) of this section, the chairperson or a Trustee may;
  - a) at any time resign from office by notice in writing to the Cabinet Secretary
  - b) be removed from office by the Cabinet Secretary if the Trustee
    - i. has been absent from three consecutive meetings of the Board without the permission of the chairperson and is unable or has neglected to furnish any plausible reason for his absence;
    - ii. is adjudged bankrupt or enters into a composition or arrangement with his creditors;
    - iii. is disqualified under any provision of the Constitution or any other written law from holding a public office;
    - iv. is convicted of a criminal offence, which brings to question his capacity or integrity to serve as a Trustee, and sentenced to imprisonment for a term of six months or more;
    - v. is incapacitated by prolonged physical or mental illness; or
    - vi. is otherwise unable or unfit to discharge his responsibilities under section 10(3) of this Act.
    - vii. Ceases to represent the interest of the nominating body

**Powers and responsibilities of the Board**

- 12. (1) The Board shall exercise all the powers necessary for the proper performance of its responsibilities under this Act

(2) Without prejudice to the generality of subsection (1), the Board may

- (a) acquire, control, and supervise the funds and assets of the Fund in such manner that best promotes the objects for which the Fund is established;
- (b) lay down such policies and guidelines as may be necessary for the proper operations and management of all the contributions and funds collected by the Fund and for any other matter concerning the Fund;
- (c) receive grants, gifts, donations or endowments and make legitimate disbursements;
- (d) approve contracts, undertakings, hiring of senior staff and other activities entered into by the Management or otherwise undertaken in the name of the Fund whose value requires Board approval;
- (e) appoint any agent the Board may require or subcontract any person or firm of proven experience in the particular function for which appointment or subcontracting is necessary, to perform any of its functions under this Act;
- (f) open and operate an account in a bank or any registered financial institutions;
- (g) exercise such other powers as may be conferred upon the Board by this Act or any other written law.

(3) The Board may, subject to such terms and conditions as the Board may think fit and by direction in writing, delegate any of its powers under this Act to any one or more of the Board, or the Chief Executive Officer

## **Functions of the Board**

- (1) (1) The Board shall be responsible to the Cabinet Secretary for the administration and management of the fund.
- (2) Without prejudice to the generality of subsection (1) the Board shall—
  - a. Develop and Enforce standards for the conduct of social assistance programs;
  - b. Formulate comprehensive and integrated programs for social assistance at all levels;
  - c. Approve the development of guidelines for implementation, monitoring and evaluation of social assistance programs;
  - d. Provide oversight on the operations of social assistance Committees at the local levels;
  - e. mobilize resources to support and fund social assistance programs and initiatives;

- f. Consult and Engage with Government departments and agencies and non-governmental organizations to advance the purposes of this Act;
- g. Provide emergency and shock relief to a person who is eligible for such relief as may be prescribed;
- h. regularly advice and give recommendations to the Cabinet Secretary;
- i. establish management structures for implementing the social assistance fund at county and sub county levels;
- j. such other functions necessary for the implementation of this Act.

**Individual and Collective Responsibility of Board Members**

13. The Board shall individually and collectively be responsible;

- 1. (a) for ensuring that every Member of the Board;
  - i. observes the provisions of the Constitution in the performance of his duties under this Act;
  - ii. acts in the best interests of the Fund and avoids any form of conflict of interest;
  - iii. acts in good faith and with integrity at all times; and
  - iv. exercises care and skill, due diligence in the conduct of the affairs of the Board and demonstrates commitment in serving the Board

(b)enforcement of good corporate governance practices within the Board and senior management;

(c) formulation of strategy and policies of the Fund in accordance with this Act and best practices of good corporate governance;

(d)effective leadership of the Fund and guidance of the Management in their day to day management of the Fund;

(e)protection of the funds, property and assets of the Fund

(f) the effective administration and implementation of this Act; and

(g)doing all other things as are necessary to give effect to the provisions of this Act.

(2) In the performance of its responsibilities under this Act, the Board shall be accountable to the Cabinet Secretary.

(3) The seal of the Fund shall be authenticated by the signatures of the Chairperson and the Chief Executive Officer.

## Meetings of the Board

14. (1) The Board shall hold not less than four meetings in every financial year for the conduct of its business and not more than four months shall elapse between the date of one meeting and the date of the next meeting
- (2) The quorum for the conduct of meetings of the Board shall be two-thirds of the Board
- (3) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding in that capacity shall have a casting vote.
- (4) The notice of a meeting of the Board shall be seven days from the date the notice is duly sent out unless three quarters of the total members of the Board otherwise agree and, a meeting of the Board or deliberations thereof or decisions or resolutions taken thereat shall not be invalid by reason only of misdirection of notice or failure by a member to receive the notice
- (5) The chairperson shall preside at every meeting of the Board but the members present shall elect one of their members to preside whenever the chairperson is absent or otherwise unable to preside and the person so elected shall have all the powers of the chairperson with respect to the conduct of that meeting and the business transacted thereat
- (6) The Board may if it deems appropriate, invite any person to attend deliberations of the Board but such person shall have no right to vote
- (7) Subject to this Act, the Board may regulate its own procedures at their meetings.

## Committees of the Board

15. (1) The Board may for the purposes of performing its responsibilities under this Act, establish such committees of the Board as it deems necessary for the effective functioning of the Board and the Board may delegate to any such Committee such of its responsibilities as it deems fit
- (2) The Board may appoint persons, not exceeding the number of Trustees on the Committee, who are not members of the Board to Committees established under subsection (1), and such persons shall serve on such terms and conditions of service as the Board may determine
- (3) The provisions of shall, *mutatis mutandis*, apply to meetings of committees of the Board.

## Remuneration of Board Members

16. (1) There shall be paid to the members of the Board or of any Committee of the Board such remuneration, fees or allowances as the Cabinet Secretary may determine
- (2) Remuneration and allowances payable under subsection (1) shall be subject to the approval of the Salaries and Remuneration Commission

## Conflicting of interest

17. (1) If a member of the Board is present at a meeting of the Board or any Committee of the Board at which any matter

**affecting Board  
Members**

is the subject of consideration and in which matter the member, the member's spouse or the member's immediate relative or associate is directly or indirectly interested in a private capacity, the member shall as soon as practicable after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion, or vote on any question touching on such matter unless the Board determines otherwise

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Any member who contravenes the provisions of subsection (1) commits an offence and may, on conviction by a competent court, be disqualified from holding office of member of the Board in addition to any other penalty the court may deem appropriate in the circumstances.

**Appointment of  
a Chief  
Executive  
Officer**

18. (1) The Board shall appoint a Chief Executive Officer who shall hold office on such terms and conditions of service as maybe specified in the instrument of his or her appointment.

(2) The Chief Executive Officer shall be selected through a competitive process and shall be accountable to the Board in the performance of his duties

(3) The Chief Executive Officer shall, unless prematurely terminated, serve for a term of six years and shall be not be eligible for re-appointment.

(4) A person is not qualified for appointment under this section unless that person—

(a) holds a degree in a relevant field of study as may be specified by the Board from a university recognized in Kenya;

(b) has not less than ten years of working experience at managerial level in a relevant field specified by the Board and must be registered with a recognised professional body; and

(c) meets the requirement of Chapter six of the Constitution

**Functions of the  
Chief Executive  
Officer**

19. The Chief Executive Officer shall under the general direction of the Board—
- (1) ensure that the cash transfers are paid to the beneficiaries in full and in time;
  - (2) Ensure that other forms of social assistance as determined by the Cabinet Secretary are provided to the beneficiaries appropriately and in time
  - (3) Ensure the establishment of an effective complaints and redress mechanism
  - (4) with the approval of the Board, initiate programmes and strategies for advancing the objects of the Fund;
  - (5) ensure the proper management of agreements entered into by the Fund
  - (6) advise the Board from time to time to adopt policies intended to enable the Board to effectively lead the Fund;.
  - (7) Be in charge of all the staff of the Fund;
  - (8) facilitate the preparation of the budget, strategies, operational proposals, annual plans and corporate policies for discussion by the Board and implement decisions and resolutions adopted by the Board;
  - (9) consistently strive to achieve the financial and operating goals of the Fund;
  - (10) ensure the effective management of the Fund, foster a conducive corporate culture that promotes ethical practices in respect to the Fund;
  - (11) be answerable in the performance of all his duties and functions to the Board;
  - (12) be the accounting officer of the Fund and, in that capacity, keep proper books of account and cause, under the general guidance of the Board, the annual accounts of the Fund to be prepared in accordance with the provisions of the Act;
  - (13) under the guidance of the Board, cause the Fund's Annual General Meeting to be convened as provided under this Act; and
  - (14) perform such other functions as assigned by the Board from time to time.

**Vacancy in the Office of the Chief Executive Officer**

20. A vacancy may arise in the office of the Chief Executive Officer upon
- a) Death;
  - b) Resignation
  - c) Bankruptcy
  - d) Insanity
  - e) conviction of any criminal offence; is adjudged bankrupt or enters into a composition or arrangement with his creditors;
  - f) incapacity on any other ground
  - g) by operation of any written law

**Removal of Chief Executive officer**

21. The Board may remove the Managing Trustee from office on any of the following grounds
- a) Incompetence;
  - b) insubordination;
  - c) corruption;
  - d) failure to to observe any of the terms and conditions of his appointment
  - e) gross misconduct;
  - f) violation of the Constitution; or
  - g) inability to discharge his or her duties.
22. Before the Chief Executive Officer is removed from office under subsection (10) he or she
- a) may be suspended from office by the Board;
  - b) shall be informed in writing of the reasons for the intended removal; and
  - c) shall be given an opportunity to put in a defence against any such allegations and shall be afforded ample opportunity to be heard

**Staff of the Fund**

23. (1) The Board may appoint such officers and other staff of the Fund as is necessary for the proper discharge of the objectives of the Fund under this Act, upon such terms and conditions of service as it may determine
- (2) The Chief Executive Officer and the staff of the Fund are the Secretariat of the Fund

**Functions of the Secretariat**

24. Functions of Secretariat shall include to:
- a) administer social assistance in terms this Act
  - b) collect, collate, maintain and administer such information as is necessary for the payment of social assistance, as well as for the central reconciliation and management of payment of social assistance funds, in a national data base of all applicants for and beneficiaries of social assistance

- c) establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained;
- d) Collaborate with other social assistance organizations to ensure that persons in need of social assistance access to resources and services appropriate to their needs
- e) undertake research to inform, design and implement programs;
- f) Conduct monitoring, evaluation and report on social assistance programs ;
- g) render any service in implementation of this Act

#### **PART IV COUNTY SOCIAL ASSISTANCE STRUCTURES**

##### **Delegation of functions County Social Assistance Committees**

25. There shall be established in every county and sub-county social assistance committees
- 26.(1) The County Social Assistance Committee shall be comprised of the following persons:
- a. the County Commissioner who shall be the chairperson;
  - b. A representative of the Office of the Governor, as Chair alternate
  - c. Staff of the Fund appointed by the Chief Executive Officer who shall be the Secretary
  - d. the officer responsible for the Department of Children Services;
  - e. the officer responsible for the Department of Social Development;
  - f. the officer responsible for the National Council of Persons With Disability;
  - g. the officer responsible for the Department of Education
  - h. the officer responsible for the Registrar of Births and Deaths;
  - i. a representative of the County Government responsible for social services;
  - j. 3 representatives of Community based organisations engaged in the protection and advocacy of the rights of children, older persons, and persons with disability.
- (2) The County Social Assistance Committee may co-opt any person with expertise or experience in any particular subject into the membership of the Committee

- (3) The County Social Assistance Committee shall –
- a. provide oversight on operations of the Social Assistance Fund at County level including the constituency Social Assistance Committees;
  - b. deal with grievances and appeals on social assistance at County level; and
  - c. any other function as may be delegated by the Chief Executive Officer

**Sub-County  
Social  
Assistance  
Committee**

27.(1) The Sub County Social Assistance Committee shall be comprised of the following persons –

- a) The Deputy County Commissioner who shall be the chairperson;
- b) A representative of the Office of the governor as chair alternate
- c) Staff of the Fund appointed by the Chief Executive Officer who shall be the Secretary
- d) the officer responsible for Department of Children Services;
- e) the officer responsible for Department of Social Development;
- f) the officer responsible for Registrar of Persons;
- g) the officer responsible for Registrar of Births and Deaths
- h) the officer representing the National Council for Persons With Disabilities;
- i) the officer responsible for the Department of Education
- j) One Nominee of the Member of Parliament
- k) One Nominee of the County Women Representative
- l) a representative of the County Government;
- m) Two representatives of Community based organisations engaged with expertise in matters of social protection
- n) One representative of faith based organizations with expertise in social protection matters.
- o) The Sub County Social Assistance Committee may co-opt any person with expertise or experience in any particular subject into the membership of the committee who shall sit in the committee during the appropriate committee meeting.

(2) The Sub County Social Assistance Committee shall –

- a) oversee and monitor operations of social assistance fund at the constituency level;
- b) manage appeals and grievances relating to operations of social assistance fund at constituency level; and
- c) any other function as may be delegated by the Chief Executive Officer

**Beneficiary Welfare Committees**

28.(1) There shall be established a voluntary committee comprising of not more than fifteen members drawn from beneficiaries, caregivers and other stakeholders of the various social assistance programs to be known as the Beneficiary Welfare Committees at the village level.  
 (2)The Chief Executive Officer shall prescribe guidelines on the formation and operations of the Beneficiary Welfare Committees

**Role of chiefs and Assistant Chiefs in the operations of social assistance**

29.(1) The Ministry responsible for matters related to Social Protection shall collaborate with the Ministry of Interior and Coordination through the Chiefs and the assistant chiefs in the operations of the Social Assistance Fund.  
 (2)The Cabinet Secretary shall prescribe guidelines on the areas of collaboration for Chiefs and Assistant Chiefs in the operation of the Social Assistance Fund

**Implementation at County and subcounty Levels**

30.(1) The Chief Executive Officer of the fund is responsible for the implementation of social assistance programmes at County and Sub-county level

**PART V – SOCIAL ASSISTANCE**

**Social assistance to poor and vulnerable persons**

31. (1)The Board, in consultation with the Cabinet Secretary, shall in accordance with this Act provide social assistance to poor and vulnerable persons subject to subsection (3).  
 (2)The Cabinet Secretary shall, in consultation with the Board develop and publish in the *Gazette* guidelines outlining the criteria to identify poor and vulnerable persons.  
 (3)Notwithstanding subsection (2) poor and vulnerable persons in need of assistance shall include—

- a. Children;
- b. Older persons, and
- c. persons with disabilities

(4)A person shall qualify for social assistance if he or she meet the criteria set out in the guidelines.

**Forms of social assistance**

32. (1) Social assistance may be provided to a beneficiary in the form of:

- a. social grants which include cash transfers for;
  - i. Orphans and vulnerable children
  - ii. Older persons
  - iii. Persons with severe disability

b. special assistance as may be prescribed under Regulations

(2) Beneficiaries of social assistance shall be linked to other social services including education (bursaries), health (health insurance), nutrition, rehabilitation as may be relevant.

**Eligibility for social assistance**

33. (1) A person is eligible to receive social assistance if the person is poor and vulnerable and —
- (a) is a Kenyan citizen or Permanent Resident
  - (b) complies with the requirement prescribed in guidelines
- (2) The Board shall provide guidelines for additional requirements or conditions in respect of —
- d. income thresholds;
  - e. vetting process;
  - f. age limits, disabilities and care dependency;
  - g. proof of and measures to establish or verify identity, gender, age, citizenship, family relationships, care dependency, disabilities, alternative family care ;
  - h. forms, procedures and processes for applications and payments;
  - i. dispute resolution mechanism; and measures to prevent fraud and abuse.

**Identification of persons in need of social assistance**

34. (1) Beneficiaries will be identified through verifiable means as determined by the Board
- (2) Beneficiary welfare committee assist the Board in proposing poor and vulnerable persons from their communities
- (3) Identification of beneficiaries into any of the programmes, from the list proposed by the Beneficiary Welfare Committee and from other sources, shall be as provided for in the stipulated guidelines and shall be conducted by sub county staff of the Fund in collaboration with the Sub County Social Assistance Committee
- (4) The list prospective beneficiaries identified at the sub-county shall be made available to the County Social Assistance Committees for review and transmission to Secretariat of the Fund for validation and grant of social assistance.

**Information to be furnished to the Board by 3rd Parties**

35. (1) Notwithstanding anything to the contrary in any law, a state organ shall, at the request of the Board and subject to subsection (3), furnish it with relevant information relating to a prospective beneficiary or beneficiary.
- (2) A financial institution or a bank, notwithstanding anything to the contrary in any law, at the request of the Board and subject to subsection (3), furnish the Board with relevant information relating to the assets and investments of an prospective beneficiary or beneficiary as may be prescribed and with any additional information requested, if such information is necessary for a decision on a prospective beneficiary.
- (3) A person who after the commencement of this Act is under consideration for a grant hereby agrees that any

other person who holds personal information relevant to that consideration may, without requesting permission from him or her, make that information available to the Board.

**Appointment of caregiver**

36. (1) A person being considered or receiving social assistance may, appoint a caregiver, by a power of attorney, to apply or receive social assistance on his or her behalf, in accordance with the prescribed requirements.  
(2) Nothing in this section prevents a beneficiary to withdraw a power of attorney made in terms of subsection (1) to appoint another person as caregiver

**Disqualification of Power of attorney**

37. Power of attorney may be withdrawn in cases where it is proven that a care giver has misused and or abused the grant.

**Recovery and refund to Government**

38. The Board shall recover money that is erroneously paid to a person who is not entitled under this Act from that person, and if the person is deceased, from the estate of the person in accordance with this act or any other law.

**Lapse and termination of social assistance**

39. (1) Social assistance shall lapse—  
a. when a beneficiary dies;  
b. in case of a child in need of assistance, upon attainment of the age of eighteen years  
(2) Social assistance may be terminated –  
a. when the beneficiary is no longer eligible for assistance;  
b. when the beneficiary ceases to be a Kenyan resident;  
c. When a beneficiary voluntarily opts out

**PART VI- INSPECTORATE FOR SOCIAL ASSISTANCE**

**Establishment of the Inspectorate for Social Assistance**

40. (1) There is established the the Inspectorate for Social Assistance to ensure the efficiency and integrity of the National Social assistance Fund.  
(2) The Inspectorate shall function independently of both the Ministry and the Secretariat and no person may in any way interfere with, hinder or obstruct any member of the Inspectorate in the performance of his or her functions.  
(3) All organs of state must accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Inspectorate in the performance of its functions.  
(4) The Inspectorate is funded by money appropriated by Parliament for that purposes within the Ministry

**Functions of the Inspectorate**

41. Functions of the Inspectorate

- a) conduct investigations; to ensure the maintenance of the integrity of the social assistance Fund
- b) execute internal financial audits and audits on compliance by the Secretariat with assistance frameworks and systems; regulatory and policy measures and instruments;
- c) investigate fraud, corruption and other forms of financial and service mismanagement and criminal activity, within the Secretariat and in connection with its functions, duties and operations;
- d) establish a complaints mechanism; and
- e) in general, do everything necessary to combat the abuse of social assistance.

**Powers of the Inspectorate**

42. The Inspectorate shall have power

- a) of its own accord or upon receipt of a complaint, investigate any alleged contravention of this Act by any person, and may, where appropriate, refer such investigation to the National Police Service, the Secretariat or Office of the Director of Public Prosecutions or any other organ of state established by law which has the appropriate powers to investigate and act on any alleged contravention of this Act;
- b) to investigate any matter in respect of social assistance referred to the it by the Cabinet Secretary, the Board or the Chief Executive Officer of the Secretariat.

**Power of Inspectorate to request information and to issue summons**

43. (1) An organ of state must at the request of Chief Inspector of Social Assistance furnish the Inspectorate with the prescribed information relating to prospective beneficiary or beneficiary and with any additional information requested, if such information is necessary for an investigation in terms of this Act.

- a. A financial institution must at the request of Chief Inspector furnish him or her with the prescribed information relating to the assets and investments of a prospective beneficiary or beneficiary, and with any additional information requested 'if such information is necessary for an investigation in terms of this Act.
- b. A person who after the commencement of this Act is under consideration for a grant hereby agrees that any other person who holds personal information relevant to that application may, without requesting permission from him or her, make that information available to the Board.
- c. The Chief Inspector may for the purposes of performing the functions contemplated this sections issue summons to a person who can furnish information of material importance concerning a matter under investigation, or who is reasonably

assumed to have under his or her control a book, document or thing that may have a bearing on the investigation, to appear before him or her within a reasonable period and to produce that book, document or thing, as the case may be; and may administer an oath to that person or cause that person to make an affirmation if that person was or could have been summoned and he or she is present at the enquiry; and cross-examine any person so summoned

d. A summon to appear before an inspector must be in the prescribed form and must be served on the person by registered mail or in the same manner in which it would have been served if it had been summons issued by a registrar of a magistrate's court

(2) The rules with regard to privilege which are applicable in the case of a person who has been summoned to give evidence or to produce a book, document or thing before a court of law apply in respect of the examination of a person and the production of a book, document or thing contemplated.

**Chief Inspector  
of Social  
Assistance**

44. (1) The Inspectorate shall be headed by a Chief Inspector of Social Assistance appointed competitively by the Board

(2) The Chief Inspector of Social Assistance shall be responsible to the Board for the functions of the Inspectorate.

**PART IV – MISCELLANEOUS PROVISIONS**

**Offences**

45. (1) A person commits an offence if the person knowingly—
- a. makes a false or misleading statement in any documentation under this Act or gives information or report that by reason of non-disclosure of facts is false or misleading;
  - b. provides any person employed in the administration or enforcement of this Act with any statement or information that is false in any material part;
  - c. receives benefits to which he or she is not entitled;
  - d. being a member of the Board, the Secretariat or the Inspectorate, communicates or allows to be communicated to any person privileged information or allows a person to inspect or have access to a statement or other writing containing any such information without following due procedures as guided by the board ; or
  - e. being an agent of the Fund engages in any act or omission with the intention of denying a beneficiary his or her benefits or any part thereof;

- f. persistently refuses or neglects to maintain any other person for whose maintenance the person is liable.

(2) A person who is convicted of an offence under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding Five million shillings or imprisonment for a term not exceeding five years, or both.

**General penalty**

46. A person who is found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding Five Million shillings or imprisonment for a term not exceeding Five years, or to both such fine and imprisonment

**Regulations**

47. The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the forgoing, the Cabinet Secretary, may make Regulations—

- a. prescribing procedures for the consideration of information and the granting of social assistance;
- b. providing for the vetting of applications in order to determine the eligibility of applicants;
- c. in respect of financial resources and the manner in which they are considered in determining eligibility for social assistance;
- d. in respect of kinds and amounts of social assistance that may be granted to an applicant and the manner and time in which such assistance may be given;
- e. prescribing the forms to be used under this Act;
- f. prescribing the approval of residential institutions and the granting of social assistance to the residents of those residential institutions;
- g. in respect of the recovery of overpayment of social assistance and repayments of monies granted or paid under this Act;
- h. on any condition or limitations subject to which any assistance shall be made;
- i. on the postponement of any payment of social assistance pending any relevant inquiry;
- j. on transition of children who are 18 and are still in need of assistance or are in school; and
- k. on any matter which it is necessary to prescribe for the effective carrying out or furtherance of the provisions or objects of this Act.

**TRANSITIONAL PROVISIONS**

**Transfer of staff**

48. (1) In recruiting the Secretariat and the Inspectorate, the Chief Executive officer and the Chief Inspector of Social Assistance, shall, respectively, subject to the approval of the Cabinet Secretary, retain and transfer to the secretariat and the Inspectorate, suitably qualified staff of the Ministry whose responsibilities are, at the commencement of the Act,

in the implementation of social assistance programmes and projects managed by the Ministry.

(2) A person transferred to the Secretariat and the Inspectorate shall not, by reason only of the said transfer, lose any rights and privileges accruing to him or her by reason of service in the ministry in Social Assistance or other matters

**Transfer of social assistance administration to the Board.**

49. (1) At the commencement of the Act, the Cabinet Secretary shall, after due consultations with the Board, transfer the administration and management of all social assistance programmes, in existence on the commencement date, to the Board, and shall ensure that during the process of transfer, the interruption of assistance to the beneficiaries is minimal.

(2) Where as a result of the commencement of the act, the social assistance to a beneficiary is reduced or discharged, the board shall inform the beneficiary in writing of the reasons for such reduction or discharge, and shall, where the beneficiary is eligible for a new form of social assistance, admit, after due process, the beneficiary to the social assistance form to which he or she is eligible.

(3) The Board shall cause all transfers to the management and administration of the Fund to be completed within one year of commencement of the Act.

**Repeal of the Social Assistance Act 2013**

50. The Social Assistance Act, 2013 is hereby repealed.

**Commencement**

51. This Act shall come into operation on a date determined by the Minister.

## **Annex 1b**

### Governance and Coordination

#### 6.2.2 Governance and Coordination mechanisms

The 2011/2012 NSPP had foreseen the establishment of the National Social Protection Council (NSPC) to “*coordinate and oversee the development, implementation, and integration of social protection strategies, programmes, and resources*”.

However, the required legislation to formally establish the NSPC was never adopted. In the absence of the NSPC, the NSPS has assumed many of the responsibilities of the NSPC. Without a legal mandate to coordinate the sector (and the system), the Secretariat has only limited power to take decisions and enforce them when it comes to sectors outside the State Department for Social Protection. As for intergovernmental coordination, no coordinating structure has been established at the county and sub-county levels as foreseen in the 2011/12 NSPP.

The lack of coordinating structures between national and county level is of concern as a recent mapping of social protection programmes, including complementary programmes, has identified 448 programmes operating in 46 counties. This mapping reveals the important role that complementary programmes are playing, especially in facilitating access to health, nutrition, education, livelihood support and income generating activities. These are the typical interventions that make up the core of the new Pillar 4 as per the new NSPP and do need to be better integrated with the other pillars and national programmes to improve the coherence and effectiveness of the social protection system in Kenya.

In this context, the NSPP recommends the establishment of the National Steering Committee on (NSCSP) which shall bring together ministries, national institutions – including those

representing county governments - and development partners involved in the implementation of the four pillars of the social protection sector. The NSCSP shall ensure coordination across the four pillars of the social protection system. It will be responsible for putting forward guidelines with a view to maximizing synergies, coordination and coherence within the social protection system. The NSCSP shall have a minimal administrative structure and rely on the support of the NSPS for technical and administrative assistance. It will report directly to the Cabinet Secretary of the Ministry of Labour and Social Protection.

*Comment: The policy, from my brief overview of the same, structures social protection along four pillars – income security (to include social assistance, pensions, unemployment income etc), health insurance, emergency assistance and exit/sustainability programmes. All these are expected to be delivered in various ways by various agencies, governed in very many different ways. Has the National Social Protection Secretariat been tapped into the various secretariats? Has it been administering and coordinating them? I think not.*

*The Policy should thus first seek the establishment of a social protection secretariat that brings together all the social protection sector secretariats.*

*Comment: NSCSP makes sense if it's secretariat is the reconfigured NSPS*

The following policy measures are necessary to structure this new coordination mechanism.

- i. Establish National Steering Committee on Social Protection (NSCSP) to provide policy direction and facilitate implementation of the SP policy;

*Comment: Possibly to harmonize policy and set standards as most ministries, national institutions – including those representing*

*county governments - and development partners involved in the implementation of the four pillars of the social protection sector will already have policy making bodies and implementing secretariats.*

ii. Strengthen the national SP secretariat to provide technical support to the National Steering committee and coordinate the implementation of social protection programs;

*Comment: Consider that represented ministries, institutions etc will have implementing secretariats. Possibly exercise some inspectorate over the secretariats ( the way bank supervision unit does over banks) to check on fraud, quality and fit for purpose. Also ensure lack of duplication*

iii. Establish a County Steering Committee on Social Protection (CSPSC) to oversee the implementation of both national and county social protection policies;

iv. Establish sub county SP steering committee to oversee the implementation of social protection and complementary programmes;

*Comment: The CSPSC and SCSPSC should be structures of the NSPS.*

v. Strengthen the participation of beneficiaries and civil society organization to discuss the design, implementation and monitoring and evaluation processes and results with a view to ensuring social accountability.

vi. Establish a National Social Protection Fund Board with a legal mandate to implement the NSSP and ensure coordination across pillars.

*Comment: For same reasons stated above, which is that each constituent ministry, national institutions – including those representing county governments - and development partners involved in the implementation of the four pillars of the social*

*protection sector will already have funds that they manage, the establishment of a National Social Protection Fund is no sequitur. Its establishment sets up the NSCSP as another social protection facility, and not a coordinating/ harmonizing agency.*

**Suggested in replacement of the National Steering Committee on Social Protection.**

**National Social Protection Authority**

- National Social Protection Authority (NSPA) to be established as a regulatory body to oversee all social protection funds and services ( *More like Central Bank regulates all Banks and providers of financial services*).
- It would be established by statute, and the National Social Protection Authority Act would be the primary legislation that speaks to the constitutional provisions on social protection.
- NSPA Board Members, would be nominated by stakeholders in a representative manner, appointed by CS
- Primary purpose: Regulatory body- Oversight and regulation of all social protection Funds and services. Include the registration thereof. This envisages the establishment of other special purpose funds-for example the Social Assistance Fund (SAF) or the Basic Income Fund ( BIF) or , with separate management boards and implementing secretariats, in the manner of the currently existing NSSF/ NHIF. It would not interfere with the current management structures, other than to require compliance with its standards and regulations.
- Secondary purpose: Audit and Inspection of social protection funds and services.
- Secretariat ( which the National Social Protection Authority ) is conceived as the expanded and reconfigured National Social Protection Secretariat, headed by a CEO/Chief Administrator.

## **Annex 2**

### **Memorandum on Draft proposal to establish the Social Assistance Fund under the Public Finance Management Act.**

#### **Introduction**

1. The Cabinet Secretary , Ministry of Labour and social protection proposes the establishment of the Social Assistance Fund under the provisions of the Public Finance Management Act, (PFMA, 2012) as “partial operationalization” of the Social Assistance Act 2013, which, in the opinion of the secretary, was never implemented due to “ internal inconsistencies “ and “operational challenges” including, for example, the creation of an Authority under the 2013 Act with both “oversight and implementation challenges”.

#### **Overview of the proposal**

2. The proposal by the Cabinet Secretary details the functions of the state department for social protection, the process involved in cash transfer processes, a key component of social assistance and identifies bottlenecks experienced under the structure of budget appropriation as a basis proposing a S.24(4) Fund.
3. The proposal notes that executive order no. 1 of 2018 grants the state department for Social Protection, a social protection mandate. In implementation of the mandate, the department has a staff of 1004 and is structured into the Department for Social Development (DSD) and the Department for Children Services (DCS). The Social Assistance Unit has been established to coordinate cash transfers at national level as the National Social Protection Secretariat is tasked with coordinating stakeholder coordination of the social protection sector.
4. The proposal notes that beginning 2004, some of the cash transfer programmes that have been implemented include the cash transfer for the elderly (OP-CT), cash transfer for Persons with Severe Disability (PWSD-CT) and cash transfer for Orphans and Vulnerable Children (CT-OVC). Cumulatively, the exchequer

makes available 30 billion shillings annually for the cash transfer programmes, with each beneficiary entitle to 2000 shillings per month, payable every second month. 1.2 households or 6 million people benefit from the cash transfer programmes.

5. The proposal by the Cabinet Secretary makes a convincing case to the effect that the structure of budget appropriations is unsuitable for provisions of cash transfer programs and recommends the establishment of a National Fund for Social Assistance under S.24(4) of the Public Finance Management Act, 2012.

### **Comments on the Proposed Social Assistance Fund established under S.24 of the PFMA, 2012**

6. We have perused the justification for establishment of the Social Assistance Fund under S.24 of the PFMA as made by the Cabinet Secretary as well as the draft Regulations establishing the said Social Assistance Fund. In response thereto, we submit as hereunder:
7. We are in agreement with the justification given for the need to establish the Social Assistance Fund outside the limitations and structure of budget appropriations. We concur that the inordinate delays, inadequacy of value, inadequacy of coverage, limited scope and the narrowness of focus are largely a result of the structure of budget appropriations and that the establishment of national government fund would mitigate against these challenges. **We however do not agree that the said fund should be established under S. 24(4) of the fund for the reasons to be stated herein.**
8. Paragraph 3.2 on page 10 gives a comparative analysis on provisions in existing Funds under the PFMA. However they fail to appreciate the fact that these are funds created *abi nitio* under regulations unlike the Social Assistance aspect which has already been entrenched in a substantive Act. In any event Section 24 of the Act is not absolute. 24(4) The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.

9. Paragraph 2 on page 10 speaks to duplication of functions as a justification for creation of the fund under the PFMA. However the rationalization therein points to the fund that is proposed to be created to being, in fact a Directorate to be managed by the staff of the Ministry. Refer to 10(d) below.
10. We opine that the establishment of the Social Assistance Fund under the PFMA is unconstitutional.
  - a. Article 21 (2) of the constitution requires the state enact legislation for the achievement of article 43 rights, including social assistance. The constitution defines legislation to include “an act of parliament or law made under the authority conferred by an act of parliament.”
  - b. The Fund, guarantor of constitutional rights, can only be enacted through sui generis legislation; or through authority granted by legislation. A general provision conferring upon the minister power to establish funds is inadequate to anchor a constitutional right.
  - c. In recognition of the above constitutional position, two other funds, the National Social Security Fund and the National Health Insurance Fund, both relating to social protection, an Article 43 right, have been established by substantive legislation.
  - d. In the draft, the Cabinet Secretary proposes to establish the fund not by way of legislation but by way of provisions dealing generally with matters of finance. This is unconstitutional.
  - e. Moreover, section 24 (4), of the PFMA, read in totality with the rest of section 24, presupposes the establishment of a national government fund to fund national government functions, not, as in this case, to give effect to individual rights conferred by the constitution.
11. The Cabinet Secretary’s proposal fails to recognize the existence of the Social assistance fund, established by law in 2013.

- a. The Social Assistance Act, 2013, was enacted and signed into law in 2013. The Act establishes a Social Assistance Fund which is yet to be operationalized.
  - b. The draft does not make reference to the fund, proceeds as if it does not exist. It does not “repeal” the 2013 Act, in order to nullify the 2013 Social Assistance Fund.
  - c. As subsidiary legislation cannot, in law, amend or repeal substantive law, the fund proposed under the PFMA Act would be redundant, and of no effect.
  - d. The notion, stated that the Act, in establishing an Authority to implement the Social Assistance programmes was in effect “duplicating” the functions of the State department is erroneous. The Social Assistance Act, 2013, transferred the functions previously held by the State department for Social Protection to the Authority created under the Act. This in no way deprived the state department of its mandate, as the implementation of the Act would still be under the State Department. The Act thus created a more efficient tool for implementation of the social assistance programmes, warranting a transfer of services, not a duplication of the same.
12. The implementation structure proposed by the draft regulations lacks internal consistency, has limited accountability structures and is littered with errors
- a. It is not clear if the regulations seek to establish a fund in the sense of a body corporate or fund in the sense of an account.
  - b. The regulations have the PS social affairs as administrator and therefore accounting officer, suggesting the fund as an account. However the establishment of a board, and the granting of functions to the fund, suggests a body corporate. This confusion permeates the entire draft.
  - c. Similar confusion arises in relation to administrator, staff of secretariat and DSD and their functions. Is it

practical to separate persons who identify beneficiaries from those who pay? Are the payees therefore just service providers? Or do they exercise an oversight role? Then what would be the purpose of the Board? How do this positions of the Ministry fit in the legal entity proposed to be established

- d. The regulations do not create an institution to exercise an inspectorate role, a best practice in such funds. There is no mechanism established for review and appeal decisions relating to grant or denial of social assistance. The accountability structures are extremely weak.
- e. Regulations are subsidiary legislation. Can such legislation delegate to another the power to make rules as is done with the powers granted to minister?
- f. The PS, designated as the administrator and thus accounting officer is also the accounting officer of state department that does much more. Is this tenable?
- g. The regulations provide for the fund to give grants. No rationale is given for this. This is not common practice for funds with similar purposes.
- h. In the introduction, paragraph 1.0 the last sentence states the establishment of the proposed fund constitutes a partial operationalization of the Social Assistance Act 2013. Is it a review, a repeal or operationalization? Are they regulations under the Social Assistance Act?. This opening statement in itself is ambiguous.
- i. Clause 23 on Appeals insinuates the Director is responsible for making regulations.
- j. Who is the ultimate implementer of this Fund if the same is established under the PFMA with a different Cabinet secretary and provisions?
- k. Clause 31 on allocation of resources among risk responsive components is not very clear.

1. Clause 42 on winding up indicates that in the event the fund is wound up the fund shall be transferred to the ministry responsible for matters relating to drought. What is the rationale? Why not the ministry responsible for social protection.

LEGAL NOTICE NO.....

**THE PUBLIC FINANCE MANAGEMENT ACT, 2012**  
(No. 18 of 2012)

**THE PUBLIC FINANCE MANAGEMENT (SOCIAL ASSISTANCE FUND)  
REGULATIONS, 2020**

**ARRANGEMENT OF REGULATIONS**

*Regulation*

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- 4— Sources of funds
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**THE PUBLIC FINANCE MANAGEMENT ACT**  
*(No. 18 of 2012)*

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

**THE PUBLIC FINANCE MANAGEMENT (SOCIAL ASSISTANCE FUND) REGULATIONS, 2020**

Citation.

1. These Regulations may be cited as the Public Finance Management (Social Assistance Fund) Regulations, 2020.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Administrator” means a person designated as such under regulation 14(1) of these Regulations;

“Board” means the Social Assistance Fund Oversight Board established under regulation 8;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“child” has the meaning assigned to it under Article 260 of the Constitution;

“complementary programmes” include interventions that promote livelihoods, foster labour and social economic inclusion, build resilience, facilitate access to social services such as health care, nutrition, education and training; and strengthen social welfare structures and the capacity of social workers to promote people’s solidarity and community strengthening;

“disability” has the meaning assigned to it under Article 260 of the Constitution;

“Fund” means the Social Assistance Fund established under regulation 3;

“person in extreme poverty” means a person who suffers from severe deprivation of basic human needs, including access to food, safe drinking water, sanitation facilities, health, shelter, education and access to information on the same;

“poor person” means an individual who lives below the National Poverty line as determined by the national government;

“psychosocial support” means initiatives to help individuals to heal the psychological wounds and rebuild social structures after an emergency or critical event and is meant to help change people into active survivors rather than victims;

“residential institution” means an institution approved in accordance with these Regulations that provide for living accommodation and temporary or continuing care for persons in need;

“social assistance” means support to poor and vulnerable persons issued in accordance with these Regulations; and

“vulnerable” means a person suffering from deterioration in standards of living which results into inability to meet basic needs.

## PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a fund to be known as the Social Assistance Fund.

Source of funds.

4. The funds for the Fund shall consist of—

- (a) such moneys as may be appropriated by the National Assembly;
- (b) income generated from the proceeds of the Fund;
- (c) any moneys accruing to or received by the Fund from any other lawful source; and
- (d) grants and donations.

Expenditure on the Fund.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programs, plans and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programs, plans and of any cost estimate, shall be referred to the Board for approval.

Initial capital of the Fund.

6. The initial capital of the Fund shall be two billion shillings appropriated by Parliament in the financial year 2020/2021.

Object and purpose of the Fund

7. The objects and purpose of the Fund is to provide funding for the provision of social assistance for poor and vulnerable persons, and in particular—

- (a) to provide for the development and promotion of social assistance programmes and initiatives in the country;
- (b) to provide for the criteria for the identification, screening, and prioritization of beneficiaries of social assistance benefit;
- (c) to provide for the eligibility criteria for accessing social assistance under this Fund;
- (d) to provide for the minimum norms, standards and procedures for the delivery of social assistance programmes and initiatives;
- (e) to provide for a quality assurance framework to ensure that only eligible persons benefit from the social assistance Fund;
- (f) to develop and promote programmes to render the beneficiaries of social assistance who are capable of self-support exit from social assistance benefit;
- (g) to enhance financial capacity of the beneficiaries and their dependents through linkages with other government interventions;
- (h) to promote the incorporation of beneficiaries into health insurance schemes and access to better life conditions;
- (i) to facilitate provision of psychosocial support and other complementary programmes;

- (j) to establish, update, coordinate, manage and operationalize a beneficiary register for social assistance programmes, provided that the register shall be updated at least once in every two years following the last update;
- (k) to mobilise resources from development partners and other sources for the Fund;
- (l) provide funds for capacity and technical expertise development to improve on social assistance.

### PART III – ADMINISTRATION OF THE FUND

Establishment of the Social Assistance Fund Board.

8. (1) There is established a board to be known as Social Assistance Fund Oversight Board.

(2) The Board shall consist of—

- (a) a Chairperson appointed by the President from outside the public service on the recommendation of the Cabinet Secretary responsible for matters relating to social assistance;
- (b) the Principal Secretary for the time being responsible for matters relating to finance;
- (c) the Principal Secretary for the time being responsible for matters relating to social assistance;
- (d) the Principal Secretary for the time being responsible for matters relating to health;
- (e) the Principal Secretary for the time being responsible for matters relating to drought;
- (f) the Principal Secretary for the time being responsible for matters relating to coordination of national government functions;

(g) three persons to be appointed by the Cabinet Secretary responsible for social assistance of whom

(i) one shall be nominated by a faith-based organization;

(ii) one shall be a representative of the interests of children or persons with disabilities, who shall be nominated by relevant organizations;

(iii) one shall be a representative of the interests of elderly persons.

(3) In the absence of the Chairperson in any meeting of the Board, the members present shall elect one of them to chair the meeting.

(4) The members under paragraph (2)(b) to (f) may attend in person or designate an alternate in writing.

(5) The Board may, from time to time, co-opt other members as it may deem necessary, for the proper and efficient discharge of its oversight functions over the Fund.

(6) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(7) The quorum for the conduct of meetings of the Board shall be five members.

(8) The Board shall regulate its own procedure.

(9) The Administrator of the Fund shall be the Secretary to the Board.

(10) Persons appointed under regulation 8(2) (a) and (g) shall reflect regional balance, gender and persons with disability as provided for under article 27 of the Constitution.

Qualifications of members of the Board.

9. A person shall be eligible for appointment as a member of the Board under regulation 8(2)(a) and (g) if that person—

(a) holds a university degree from a university

recognized in Kenya in any of the following fields—

- (i) social science;
  - (ii) public administration;
  - (iii) finance;
  - (iv) law;
  - (v) accounting;
  - (vi) health;
  - (vii) economics;
  - (viii) education or
  - (ix) project management;
- (b) has experience of at least seven years and of which three shall be at senior management level; and
- (c) meets the requirements of Chapter Six of the Constitution.

Tenure and  
vacation of office.

**10.** (1) The Chairperson and members of the Board appointed under regulation 8(2) (a) and (g) respectively shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms.

(2) The office of the Chairperson or a member becomes vacant if the holder—

- (a) dies;

- (b) resigns from office by notice, in writing, addressed to the appointing authority;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) is adjudged bankrupt; or
- (e) is removed from office for any of the grounds set out in regulation 11(1).

Removal from office.

**11.** (1) The Chairperson or a member may be removed from office by the appointing authority, on recommendation of the Board—

- (a) for serious violation of the Constitution or any other law;
- (b) for gross misconduct, whether in the performance of the office holder's functions or otherwise;
- (c) for physical or mental incapacity to perform the functions of office;
- (d) for incompetence or neglect of duty;
- (e) for absence from three consecutive meetings of the Board without a reasonable explanation; or
- (f) if that person is otherwise unable or unfit to discharge the functions of office.

(2) Before the appointing authority makes a decision under paragraph (1), the person shall be given an opportunity to provide a defence against any of the allegations.

Filling of vacancy.

**12.** If a vacancy occurs in the membership of the Board under regulation 10 or 11, the appointing authority may, if the vacancy relates to any of the positions specified under section 8(2)(a) or (g), appoint a new member in accordance with these Regulations.

Functions of the Board.

**13.** The functions of the Board shall be—

- (a) to provide oversight on the administration and management of the Fund;
- (b) to formulate policies to achieve the objects and purpose of the Fund;

- (c) to approve estimates of revenue and expenditure of the Fund for each financial year;
- (d) to receive, review and approve statutory and management reports of the Fund before submission to the Auditor-General with copies to the National Treasury and Controller of Budget;
- (e) to give prior approval for the opening of any bank account of the Fund before seeking approval from the National Treasury in accordance with section 28 of the Act;
- (f) to advise the Cabinet Secretary responsible for matters relating to social assistance and the Cabinet Secretary on the proper administration of the Fund;
- (g) to approve the ceilings for funding under poor elderly persons, poor orphans and vulnerable children, poor persons with disability, persons in extreme poverty and any other category as may be specified in a Gazette in each financial year;
- (h) to develop policy guidelines relating to identification, prioritization and efficient disbursements by the Fund;
- (i) to ensure that the list of all beneficiaries is validated at least once every two years, and published in accordance with the Act;
- (j) to monitor and evaluate the programmes and activities under the Fund;
- (k) to facilitate and develop sectoral linkages to the

Fund;

- (l) to review policy on the management of assets, equipment and all properties under the Fund;
- (m) to receive reports on the performance of the Fund;
- (n) to develop administrative guidelines on how to replace beneficiaries who have exited the social assistance programme;
- (o) to facilitate public awareness, education and access to social assistance programmes; and
- (p) to perform such other duties as may be considered necessary by the Cabinet Secretary responsible for matters relating to social assistance from time to time for the proper administration and management of the Fund and such a duty shall be assigned in writing.

Administrator of  
the Fund.

**14.** (1) The Administrator of the Fund shall be the Accounting Officer responsible for matters relating to social assistance.

(2) The Administrator of the Fund shall—

- (a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank to be approved by the Board and the National Treasury in accordance with the Act;
- (b) supervise and control the administration of the Fund;
- (c) implement the decisions of the Board;
- (d) coordinate the policies and programmes of the Fund to effectively address the issues and problems attendant to social assistance;

No. 34 of 2015.

- (e) consult with the Board on matters relating to the administration of the Fund;
- (f) cause to be kept proper books of accounts and other books and records relating to all activities and undertakings financed from the Fund;
- (g) prepare, sign and transmit to the Auditor-General, upon the approval by the Board, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Accounting Standards Board shall prescribe in accordance with the provisions of the Act and Public Audit Act, 2015;
- (h) furnish additional information to the Auditor General as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015;
- (i) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the Act, and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Board for approval and subsequent transmission to the National Treasury and the Controller of Budget; and
- (j) be the custodian of all the assets, equipment and properties under the Fund.

(3) Every statement of account referred to under paragraph (2) e and (g) shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund.

The Secretariat of  
the Fund.

15. (1) The State Department responsible for social assistance, including its officers deployed at the county and sub-county levels, shall provide secretarial services to the Fund.

(2) The Secretariat of the Fund shall be reporting to the Administrator of the Fund, and shall—

- (a) be responsible for the day to day administration and management of the Fund;
- (b) develop a predictable, transparent and accountable financial internal control systems for the Fund;
- (c) prepare and submit for approval by the Board estimates of revenue and expenditure, annual work programs and work plans, costs estimates, annual procurement plans and annual cash flow plans;
- (d) monitor and provide reports to the Board, on a bi-monthly basis, on efficiency and effectiveness of social assistance programs supported by the Fund;
- (e) prepare and validate social assistance payment schedules for submission to the Board for approval;
- (f) implement projects, programs and coordinate with other national government ministries, county governments and non-state actors at the national and county level in the realization of the objects and purpose of this Fund;
- (g) monitor and evaluate programs financed from the Fund and provide reports to the administrator of the Fund regularly;
- (h) prepare statutory and management reports of the Fund and submit them to the administrator of the Fund for approval before submission to the Board; and

- (i) maintain proper records of the Fund; and
- (j) liaise with the Registrar of Persons to confirm the status of beneficiaries of the Fund at least once every six months.

(3) Despite paragraph (1), the Administrator of the Fund may assign any other duty to the Secretariat for the proper administration and management of the Fund.

#### **PART IV – SOCIAL ASSISTANCE AND ELIGIBILITY CRITERIA**

Eligibility for  
social assistance.

**16.** (1) A person is entitled to social assistance under the Fund if that person—

- (a) is in need as provided for under regulation 17; and
- (b) is a Kenyan citizen.

(2) A person shall not be eligible for social assistance under these Regulations if that person benefits from any other Fund or programme, either public or private, which provides social assistance:

Provided that this provision shall not apply to bursary social assistance.

Persons in need.

**17.** For the purposes of these Regulations, a person in need shall include—

- (a) poor orphans and vulnerable children;
- (b) poor elderly persons;
- (c) poor persons with disability;
- (d) person in extreme poverty; and
- (e) any other person as may be recommended by the Board to the Cabinet Secretary for the time being responsible for matters relating to social

assistance, and published by a way of Notice in the Gazette.

Orphans and vulnerable children.

18. A child qualifies for social assistance if that child—

- (a) is an orphan who is not under the care of a guardian who provides the basic needs of the child;
- (b) is under the care of a person who suffers a serious long-term ailment or disability which renders the person unable to care for the child;
- (c) has been abandoned by the parent or parents and is not under the care of a guardian who provides the basic needs of the child or;
- (d) is under the care of parents or guardians who are unable to provide for the child's basic needs.

Poor elderly persons.

19. A person qualifies for social assistance as a poor elderly person if that person—

- (a) has, at least, attained the age of 65; and
- (b) has been neglected, abandoned or weak without any ascertainable means of support, or
- (c) lives or begs on the street for a living.

Persons with disabilities.

20. A person with disability shall be eligible for social assistance under these Regulations—

- (a) if the person's disability renders him or her incapable of catering for the basic needs and without any ascertainable means of support; and
- (b) is registered with the National Council for Persons with Disabilities.

Persons in extreme poverty.

21. (1) A person in extreme poverty shall be eligible for social assistance under these Regulations, if that person suffers from severe deprivation of basic human needs.

(2) For the purposes of ascertaining the elements provided for

under paragraph (1), the Board shall develop administrative guidelines for ranking the intended beneficiaries and the ranking score shall be used to identify the actual beneficiaries.

Social assistance programmes.

22. (1) The Board shall, in consultation with the Cabinet Secretary responsible for matters relating to social assistance, provide programmes that are intended to—

- (a) assist in the development of individual, family and community capacity to become self-sufficient;
- (b) increase the ability of persons in need to assume greater responsibility for themselves;
- (c) lessen dependence by the people on public financial assistance;
- (d) provide support services to allow persons who may otherwise be in need to avoid dependence on public financial assistance; and
- (e) lessen, remove or prevent the causes and effects of poverty.

(2) The programmes under paragraph (1) shall be funded through the administrative expenses provided for under regulation 36.

Attachment of a beneficiary to a residential institution.

23. Where a beneficiary wishes to be attached to a residential institution, any social assistance benefit for such a person may be channeled to that institution, subject to approval by the Board.

Application for social assistance.

24. (1) A person in need identified under regulation 17 shall apply to the Administrator for social assistance, in the form prescribed in the Schedule of these Regulations.

(2) Where an application is made under paragraph (1), the Administrator may conduct an investigation to verify that the person is eligible and the Administrator may request additional information.

(3) If the applicant—

- (a) qualifies for social assistance as provided for under these Regulations, the Board shall render the

relevant social assistance;

(b) does not qualify for social assistance in terms of these Regulations, the Board shall in writing, inform the applicant—

(i) that the applicant does not qualify for social assistance in terms of these Regulations;

(ii) of the reasons why, the applicant does not qualify; and

(iii) of the applicant's right of appeal as specified under regulation 25 of these Regulations.

(4) The Administrator shall convey the decision of the Board to the applicant within one month from the time the Board makes the decision.

Appeals.

**25.** (1) A person who is aggrieved by a decision of the Board under these Regulations, may within thirty days from the date of the Board's decision, appeal to the Board and in any appeal the Board may uphold, annul or vary the decision as it may consider necessary.

(2) The decision of the Board under (1) above shall be communicated to the applicant within thirty days from the date of the decision.

Abuse of social assistance.

**26.** (1) If in the opinion of the Board a beneficiary abuses their social assistance the Board may—

(a) suspend payment of social assistance; or

(b) appoint a person to receive social assistance on behalf of the beneficiary and to apply it, subject to the set out conditions and any other conditions that the Board may determine, for the benefit of the beneficiary.

(2) For the purposes of this regulation, "abuse of social assistance" means the use of the social assistance in a way that negates the intended objects and purpose including the use of social assistance to finance terrorist acts and other criminal activities.

Termination of social assistance.

**27.** (1) The Board may terminate payment of social assistance to

or on behalf of a person—

- (a) who is absent from Kenya, for a continuous period of six months or longer;
- (b) who is no longer eligible for social assistance;
- (c) who ceases to be a Kenyan resident;
- (d) who voluntarily opts out;
- (e) who knowingly provides false information or in case of misrepresentation, deceit and fraud; or
- (f) where a change has occurred in that person's circumstances.

(2) The Board may reinstate the provision of social assistance suspended under paragraph (1) where the Board is satisfied that the reasons advanced by the applicant justify the reinstatement.

Suspension or  
cancellation of  
social assistance.

**28.** The Board may suspend or cancel social assistance if it establishes the following—

- (a) where the beneficiary failed to disclose any material information;
- (b) where the payment is in excess of amounts permitted by the Board and guidelines made pursuant to these Regulation; and
- (c) where the payment was approved and granted in error.

Refund to the  
Fund.

**29.** (1) If the Board pays money erroneously to a person who is not entitled under these Regulations, the amount of money so paid is an amount due to the Fund and shall be refundable to the Fund by the person or, if the person is deceased, by the estate of the person.

(2) The Board shall recover the amounts to which a person was not entitled, as provided for under paragraph (1), in accordance with these Regulation or any other law.

(3) The Board shall remit an amount owing by a person in terms of paragraph (1) if the person satisfies the Board that the person received the amount without knowing that they were not entitled to

receive the payment.

Lapsing of social assistance.

**30. Social assistance shall lapse—**

- (a) when a beneficiary dies;
- (b) when a beneficiary is admitted to a residential institution without the approval of the Board;
- (c) when a beneficiary voluntarily opts out;
- (d) when the payment of social assistance is terminated in accordance with regulation 27; or
- (e) where the Board cancels payment of social assistance in accordance with regulation 28.

Review of social assistance

**31. The Board shall review social assistance at any time where it has reason to believe that a change in the beneficiaries' circumstances may have occurred.**

Preservation of applicant's confidential information.

**32. (1) A person may not divulge any information furnished by an applicant in respect of an application except—**

- (a) to a person who requires it in order to perform a function in terms of these Regulations;
- (b) when required to do so by law or by an order of court;
- (c) for accountability purposes;
- (d) for official purposes; or
- (e) with the consent of the applicant.

(2) If the information submitted by an applicant changes, the applicant shall inform the Board of the change as soon as possible.

Fund disbursements.

**33. (1) The funds under the Fund shall be disbursed under the following conditions—**

- (a) all disbursements from the Fund shall be approved and recorded in minutes of the Board;
- (b) transfers to defray the expenses in respect of the

administration of the Fund shall be as approved by the Board for the respective financial year; or

- (c) the funds are meant for eligible persons as provided for under these Regulations.

(2) The Board shall set out other conditions and requirements for release of funds, to ensure prudent, efficient and effective disbursement and management of resources.

Giving false information.

34. (1) A person commits an offence if that person knowingly—

- (a) makes a false or misleading statement in any application or report under these Regulations or makes an application or report that by reason of non-disclosure of facts is false or misleading;
- (b) provides any person employed in the administration or enforcement of these Regulations with any statement or information that is false in any material part;
- (c) communicates or allows to be communicated to any person privileged information or allows a person to inspect or have access to a statement or other writing containing any such information.

(2) A person who contravenes paragraph (1) commits an offence and shall be liable, upon conviction to a fine not exceeding ten million shillings or imprisonment for a term not less than five years, or both.

Misappropriation of funds.

35. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in the Act and these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

#### PART V – FINANCIAL PROVISIONS

Administration costs.

36. (1) The administration expenses of the Fund shall not be more than three (3%) per centum of the approved budget of each financial year.

(2) Despite the provisions of paragraph (1), the Board, with the

concurrence of the Cabinet Secretary for the time being responsible for social assistance, may recommend increase of the administrative expenses from three per centum to a maximum of five per centum, where there are justifiable reasons, for that particular financial year.

Financial year of the Board.

**37.** The financial year of the Board shall be the period of twelve months ending on the 30<sup>th</sup> of June of every year.

Preparation and submission of work plans, etc.

**38.** The administrator of the Fund shall prepare a work plan, projects and quarterly reports in respect of a financial year and ensure that the work plan, projects and quarterly reports—

- (a) contain information on the financial and non-financial performance of the Fund;
- (b) are submitted to the Board for approval; and
- (c) are in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

Opening bank accounts.

**39.** (1) The Board shall approve the opening and maintenance of bank accounts for the Fund with such a bank as may be recommended by the Administrator.

(2) Upon approval by the Board under paragraph (1), the Administrator shall seek the approval of the National Treasury in accordance with section 28 of the Act.

(3) The accounts and investments shall be held for and on behalf of the Fund in the name of the Social Assistance Fund Board.

(4) Moneys owed to the Board by the social assistance beneficiaries shall be paid into bank accounts opened under paragraph (1).

Books of account

**40.** (1) The Board shall keep proper books of accounts and shall prepare annual statements of accounts in accordance with the Act, and the Public Audit Act, 2015.

No. 34 of 2015.

(2) The accounts of the Board, including donor funds, shall be managed in accordance with the Act.

Investment of funds.

**41.** The administrator may, with the approval of the Board, invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Act.

Retention of receipts.

42. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Annual reports.

43. (1) The administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Act and as may be prescribed from time to time by the Accounting Standards Board.

(2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under paragraph (1).

(3) The annual financial and non-financial statements under paragraph (1) shall be approved by the Board and submitted to the Auditor General for audit within three months after the end of the financial year in accordance with the Public Audit Act, and a copy thereof submitted to the Cabinet Secretary and Controller of Budget.

Audit.

44. The books of accounts of the Fund shall be prepared, audited and reported in accordance with Articles 226 and 229 of the Constitution, the Act, and the Public Audit Act, 2015.

## PART VI – MISCELLANEOUS PROVISIONS

Application of Government Financial Regulations and procedures.

45. Subject to the provisions of the Act, existing government financial regulations and procedures shall apply in the administration of the Fund.

Saving and Transition provisions.

46. Upon commencement of these Regulations—

- (a) any beneficiary of the social assistance shall be required to undergo a re-certification process by the Board, within the first six months from the time of commencement of these Regulations;
- (b) any beneficiary of the social assistance who fails to satisfy the Board of his or her eligibility to continue benefiting from the social assistance programme shall cease to be a beneficiary under these Regulations;
- (c) any bank account opened in accordance with section 28 of the Act for purposes of social

assistance, that account shall be deemed to have been opened under these Regulations;

- (d) any bank balances held in accounts referred to under paragraph (c) shall be considered balances of the bank accounts established under these Regulations;
- (e) any guidelines issued by the ministry responsible for matters relating to social assistance shall be deemed to have been issued under these Regulations until they are revoked; and
- (f) any contract subsisting or an act done relating to social assistance prior to commencement of these Regulations by the ministry responsible for matters relating to social assistance shall be deemed to have been entered into or done under these Regulations.

Winding-up of the Fund.

47. (1) In the event of winding up of the Fund—

- (a) the Board shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to social assistance;
- (b) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the National Government in the National Exchequer Account with the approval of the National Assembly; and
- (c) the Cabinet Secretary shall submit a final statement of accounts of the Fund to the National Assembly.

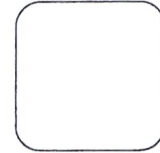
(2) The Board shall prepare the final winding up report not later than six months from the date of the decision to wind up the Fund and submit the financial and non-financial reports to the Auditor General for audit with a copy to the National Treasury.

(3) The Auditor-General shall, after audit, submit the final report to the National Assembly within three months of the receipt of the report under paragraph (2), with a copy to the National Treasury.

SCHEDULE  
(Regulation 24(1))

SOCIAL ASSISTANCE FUND  
APPLICATION FOR SOCIAL ASSISTANCE

To,  
The Administrator,  
Social Assistance Fund.



Attach passport size photograph

1. Applicant's Details

- a) Full Name: .....
- b) Sex: Male  Female
- c) Age (years): .....
- d) Marital Status: Single  Married  Divorced  Widow
- e) Identity Card Number: .....(attach copy)
- f) County.....
- g) Sub-County.....
- h) Location.....
- i) Sub-Location.....
- j) Village.....
- k) Postal Address .....
- l) Physical Address .....
- m) Telephone Contacts .....

2. Social Assistance Programme applied for

- a) Orphans and vulnerable children
- b) Poor elderly persons
- c) Persons with disability
- d) Persons in extreme poverty
- e) Any other category (specify).....

3. Social Assistance currently being received from—

<i>Social Assistance Programme</i>	<i>Amount</i>
a. ....	.....
b. ....	.....
c. ....	.....

I hereby declare that the information provided in this application is true to the best of my knowledge.

Signature .....  
Date .....

---

**FOR OFFICIAL USE ONLY**

**4. Information verified by Assistant Chief or Chief:**

I hereby confirm that the information provided in this application is true to the best of my knowledge.

Remarks.....  
.....  
Name .....  
Designation.....  
Signature .....  
Date .....

**5. Secretariat—**

*a. Recommendation by County Officer responsible for Social assistance:*

(i) Recommended:  (ii) Not recommended:

Remarks .....  
.....  
Name .....  
Designation .....  
Personal Number.....  
Signature .....  
Date .....

*b. Recommendation by the Head of the Fund Secretariat:*

(i) Recommended:  (ii) Not recommended:

Remarks .....  
.....  
Name .....  
Designation .....  
Personal Number.....  
Signature .....  
Date .....

*c. The Fund Administrator or the Designated Officer*

Approved:  Not Approved:

Remarks .....

Name .....

Designation .....

Personal Number.....

Board Resolution / Minute Number.....

Signature .....

Date .....

Made on the....., 2020.

**UKUR YATANI,**  
*Cabinet Secretary for the National*  
*Treasury & Planning*

**BACKGROUND AND EXPLANATORY MEMORANDUM FOR THE  
PUBLIC FINANCE MANAGEMENT (SOCIAL ASSISTANCE FUND)  
REGULATIONS, 2020**

.....

**I. The Purpose of Public Finance Management (Social Assistance Fund) Regulations, 2020.**

- i. These Regulations propose to establish the Social Assistance Fund under Section 24 of the Public Finance Management Act, to provide for financing of social assistance for poor and vulnerable persons, which include: poor orphans and vulnerable children; poor elderly persons; poor persons with disability; persons in extreme poverty, among others.
- ii. Social Assistance Fund's mandate will be to provide regular and predictable transfers for social assistance programmes and initiatives in the country. This will enhance pro-poor strategies by redistributing national wealth, stimulating economic activities and contributing to improved livelihoods.
- iii. The Fund's intervention in supporting the poor and vulnerable persons is expected to achieve the following outcomes:
  - a. enhanced predictability of Safety Nets and effective delivery systems through a funds flow framework that is more predictable and efficient.
  - b. due to predictability in funds flow, the beneficiaries will be effectively linked to other government affirmative action funds. In such cases, this Fund will act as guarantee to secure loans thus building resilience and sustainability.
  - c. ring-fencing social assistance funds through the Fund structure will improve confidence of development partners to increase financial support for social assistance given the funds will not be comingled.
- iv. To achieve this purpose, the Regulations in particular:
  - a. establish and specify the sources, expenditure, capital, object and purpose of the Fund;

- b. provide for an administrative structure of the Fund, which include an administrator and a secretariat. Specifically, the Regulations mandates the State Department responsible for matters relating to social assistance to provide secretariat services, and the Accounting Officer responsible for matters relating to social assistance to be the Administrator of the Fund;
- c. establish the Social Assistance Oversight Fund Board to oversee the Fund and advise the Cabinet Secretary on the proper and effective performance of the Fund;
- d. provide for the withdrawals from the Fund;
- e. provide for the eligibility criteria by specifying the persons in need under the identified categories of social assistance programmes, including poor orphans and vulnerable children, poor elderly persons, poor persons with disability and persons in extreme poverty;
- f. controls for abuse of social assistance by providing for termination, suspension or cancellation and create offences and penalties, where necessary;
- g. provide for the administration costs to be capped at 3% of the approved budget of the Fund, financial year of the Board, preparation and submission of work plans, annual procurement plans and cash flow plans and opening and operating of the Fund's bank accounts;
- h. provide for investments of the Fund;
- i. provides for retention of receipts and earnings of the Fund;
- j. provide for the savings and transition of beneficiaries subject to re-certification process within six months upon commencement of the Fund, transition of bank accounts opened in accordance with Section 28 of the Public Finance Management Act, 2012, transition of bank balances to the Fund, saving of existing operational guidelines, manuals and contracts on social assistance; and
- k. provide for the winding up of the Fund.

## **II. The Legislative Context:**

- v. The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012. Towards this end, this Fund is proposed to be established under the section.
- vi. In addition, these Regulations are intended to operationalize Articles 21 and 43, of the Constitution. Specifically, Article 21 establishes the progressive realization of social and economic rights and obligates the

State to “observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights”. While, Article 43 guarantees all Kenyans their economic, social, and cultural rights. It asserts the “right for every person...to social security and binds the State to provide appropriate social security to persons who are unable to support themselves and their dependents”.

- vii. To establish and seamlessly operationalize the Social Assistance Fund under Section 24 of the Public Finance Management Act, through the draft Regulations, the **Social Assistance Act (No. 24 of 2013)**, requires to be repealed. This is because all the activities under the Act have been transferred to be implemented under the Regulations. Moreover, it will be cheaper to operationalize the Regulations than an Act of Parliament, which requires establishment of an authority to perform the same function
- viii. The National Treasury also complied with the provisions of the Statutory Instruments Act while preparing these Regulations.

### III. Policy Background

- ix. The policy foundation for establishing the social assistance Fund as the Government’s principal Fund for financing social assistance for the poor and vulnerable persons is the Vision 2030 and the Constitution. Further, there is a critical link between the Fund and promotion of a dynamic, cohesive and stable society through increased equity and security against shocks and life cycle events.
- x. Currently, the Ministry of Labour and Social Protection implements various categorical Cash Transfer programmes namely: Orphans and Vulnerable Children; Older Persons; and Persons with Severe Disabilities. While, the Ministry of Devolution and ASALs implements the Hunger Safety Net Programme through the National Drought Management Authority. Other social assistance programmes such as school feeding programmes, bursary schemes and several subsidy programmes are implemented through various Ministries, Departments and Agencies. 2014.
- xi. The Government, through the Kenya National Social Protection Policy is committed to implement a consolidation strategy in order to promote efficiency in social assistance delivery. For example, the National Safety Net Programme was established to provide a common operating

framework for the Government's four cash transfer programmes mentioned under paragraph (x) above.

- xii. Accordingly, there is need to improve coordination in the delivery of social assistance programmes in the country. This is because the social assistance programmes continue to use different implementation arrangements, which have led to duplication of efforts and activities, double dipping and inefficient utilization of public resources.

#### **IV. Public Consultations**

- xiii. Extensive consultations were done while preparing the Public Finance Management (Social Assistance Fund) Regulations, 2020 with key stakeholders and their input taken into account before finalization of these Regulations. The nationwide public consultations on the draft Regulations were organized for all the 47 counties, which were clustered into eight regions. Some of the key stakeholders consulted included representatives from the Faith based Organization, Community base Organizations, Civil Society, Government Officials (both at national and county level).
- xiv. It is important to appreciate that different stakeholders had different views especially on the mode of implementation of social assistance programmes, but largely agreed on the need to operationalize the Fund under the Public Finance Management Act.

#### **V. Guidance**

- xv. The National Treasury, the Social Assistance Fund Oversight Board and the Administrator of the Fund will sensitize stakeholders including Parliament, accounting officers of National and County governments and the general public, on the process of accessing the Social Assistance Fund, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both Houses of Parliament.

#### **VI. Performance Monitoring and Evaluation of the Social Assistance Fund**

- xvi. The National Treasury shall monitor the application of the Social Assistance Fund resources. This will be done through quarterly reports submitted by the Administrator of the Fund. In addition, the Fund

Secretariat shall be responsible for implementing the Fund and will also carry out regular monitoring and evaluation of the specific programmes, projects and initiatives funded through the Fund as guided by the Board.

**VII. National Treasury Contact Person.**

- xvii. The contact person at the National Treasury is the Ag. Cabinet Secretary, Mr. Ukur Yatani, EGH or the Principal Secretary, Julius Muia, PhD, CBS.

**UKUR YATANI, EGH**  
**Ag. CABINET SECRETARY TO THE NATIONAL TREASURY AND**  
**PLANNING**

Date.....

**MINUTES OF THE 41<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 22<sup>ND</sup> OCTOBER, 2020 AT 2.50PM IN THE CONFERENCE ROOM, WHITESANDS HOTEL**

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**PRESENT**

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
3. The Hon. James K'Oyoo, M.P
4. The Hon. Ronald Kiprotich Tonui, MP
5. The Hon. Tom Mboya Odege, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Safia Sheikh Adan, MP
8. The Hon. Omboko Milemba, MP
9. The Hon. Titus Mukhwana Khamala, M.P
10. The Hon. Caleb Amisi, M.P.
11. The Hon. Charles Kanyi Njagua, MP
12. The Hon. David Ole Sankok, MP
13. The Hon. Wilson Sossion, MP
14. The Hon. Gideon Keter, MP

**APOLOGY**

1. The Hon. Moses Malulu Injendi, M.P
2. The Hon. Janet Nangabo, MP
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Fabian Kyule Muli, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel I
4. Ms. Fiona Musili - Research Officer
5. Ms. Sheila Chebotibin - Sargent-At-Arms
6. Mr. Job Owaga - Audio Officer

**National Drought Management Authority**

1. Mr. Sunya Orre - DTS
2. Mr. Abiya Ochola - C/PIO

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sitings
  - iv. Matters Arising

3. **Meeting with the CEO, National Drought Management Authority**
4. **Consideration and adoption of the report on Social Assistance (Repeal) Bill, 2020**
5. Any Other Business
6. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/232/2020: - PRELIMINARIES**

The meeting was called to order at 2.50pm and thereafter a prayer was said. This was followed with introductions.

**MIN.NO. DC/LSW/233/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

**MIN.NO. DC/LSW/234/2020: MEETING WITH THE CEO, NATIONAL DROUGHT MANAGEMENT AUTHORITY**

The Committee raised concerns regarding the absence of the Chief Executive Officer and Principal Secretary. The Committee therefore pursuant to provisions of CoK 125 declined to consider the submissions from the representatives of the CEO. The Committee further resolved that the witnesses be dismissed until such time when the CEO will appear in person.

**MIN.NO. DC/LSW/235/2020: CONSIDERATION AND ADOPTION OF THE REPORT ON SOCIAL ASSISTANCE (REPEAL) BILL, 2020**

The Committee deliberate on the content of the report and made the following observations and way forward:-

**Committee Observations**

- 1) Article 43 of the Constitution enshrines the economic and social rights of all persons including the right to social security. It mandates the state to provide appropriate social security to persons who are unable to support themselves and their dependents. This duty of the State is further reiterated in Article 57 with regard to providing assistance to older members of the society.
- 2) The Social Assistance Act as it is largely remains a paper document and has not been implemented fully. The Ministry of Labour and Social Welfare, as the implementing authority, indicated various reasons for the lack of full implementation.
- 3) The administration of funds geared towards social assistance through budget appropriations has been found to be unsuitable for provisions of cash transfer programs as the budget process faces inordinate delays, inadequacy of value, inadequacy of coverage, limited scope and the narrowness of focus.
- 4) The establishment of national government Fund would mitigate against challenges and establishment of a National Fund for Social Assistance with proper governance structures under section 24(4) of the Public Finance Management Act, 2012 is therefore proposed. There was agreement with the justification given for the need to establish the Social Assistance Fund outside the limitations and structure of budget appropriations.

There was disagreement by stakeholders and the Ministry as to whether the said Fund should be established under S. 24(4) of the PFMA, 2012 or Social Assistance Act.

- 5) As the law stands, section 34 of the Social Assistance Act establishes a National Social Assistance Fund whose sources of funds do not include financing from Parliament and for this reason, the Fund has never been operationalized since enactment of the Act.
- 6) Justification for repeal of the Social Assistance Act No 24 of 2013 is underpinned in the following broad areas-
  - (a) the need to comply with the current existing Government policy that all national public funds be established under Section 24 (4) of the Public Finance Management Act, 2012; and
  - (b) the fact that Social Assistance Act, 2013 is not harmonized with existing National Policy on social protection and contains inherent flaws in the Social Assistance Act, 2013 where it has assigned the roles of regulation, policy formulation and standards to an authority, yet these roles are ordinarily assigned to the sector Ministry.
- 7) The establishment of a Social Assistance Fund under Section 24 (4) of the Public Finance Management Act, 2012 as per government policy on establishment of Funds may not be possible since the Social Assistance Act, 2013 has established a Fund on the same subject matter.
- 8) It was observed that that upon deletion of the provisions establishing the Fund from the Social Assistance Act, no substantive provisions relating to any other subject matter under the Act were left hence the recommendation by the Inter-Agency Taskforce to repeal the Social Assistance Act in order to pave way for the establishment of the new Fund under the Public Finance Management Act, 2012.
- 9) The key concerns raised in objection to the establishment of the Public Finance Management (Social Assistance Fund) Regulations have indicated that the proposed Regulations are a replacement of the Social Assistance Act. However, the Ministry indicated that it was working towards putting in place a more comprehensive law on social protection, including social assistance. The Committee noted that there is need to expedite the introduction of the proposed comprehensive legislation in Parliament and also address the issues that have prevented the Ministry from operationalizing the Act.
- 10) The National Treasury and Planning does not have the necessary infrastructure and non-financial resources required to address and deal with issues of Social Protection other than of funding the function and duties of Social Assistance.
- 11) If the Bill is enacted into law, there is need for the Parliament to address various legislative proposals and Bills which reference the provisions of the Social Assistance Act and in some cases have assigned some additional mandate to the National Social

Assistance Authority established under section 34 of the Social Assistance Act, 2013 including-

- a. the Preservation of Human Dignity and Enforcement of Economic and Social Right Bill, 2018;
- b. the Care and Protection of Older Members of Society Bill, 2018; and
- c. the Care and Protection of Child Parents Bill, 2019.

**Way Forward**

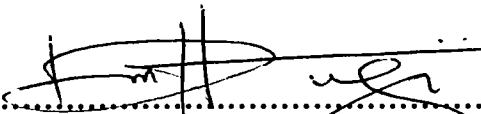
The State Department for Social Protection should submit to the Committee a copy of the draft National Social Protection Bill developed by the Ministry for consideration by the Committee <sup>submit</sup> gives its recommendations.

**MIN.NO. DC/LSW/236/2020: ANY OTHER BUSINESS**

No Any Other Business Arose

**MIN.NO. DC/LSW/237/2020: ADJOURNMENT**

There being no other business, the meeting was adjourned 4.30pm

SIGNED: .....  .....

The Hon. Peter Mwathi, M.P  
(Chairperson)

DATE: ..... 2<sup>ND</sup> DECEMBER, 2020 .....

**MINUTES OF THE VIRTUAL MEETING OF THE 29<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY 11<sup>TH</sup> SEPTEMBER, 2020 AT 10.00AM.**

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**PRESENT**

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
3. The Hon. Ronald Kiprotich Tonui, MP
4. The Hon. Janet Nangabo, MP
5. The Hon. James K'Oyoo, M.P
6. The Hon. Tom Mboya Odege, MP
7. The Hon. Caleb Amisi, M.P. - Chairing
8. The Hon. Abdi Mude Ibrahim, MP
9. The Hon. David Ole Sankok, MP
10. The Hon. Gideon Keter, MP

**APOLOGY**

1. The Hon. Moses Malulu Injendi, M.
2. The Hon. Rose Museo Mumo, MP
3. The Hon. Janet Marania Teyiaa, MP
4. The Hon. Charles Kanyi Njagua, MP
5. The Hon. Fabian Kyule Muli, MP
6. The Hon. Omboko Milemba, MP
7. The Hon. Safia Sheikh Adan, MP
8. The Hon. Titus Mukhwana Khamala, M.P.
9. The Hon. Wilson Sossion, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel
4. Mr. Eugene Luteshi - Audio Officer
5. Mr. Ivan Ochieng - ICT Officer

**Inter-Agency taskforce on Social Assistance Fund**

1. Hon. Nelson Gaichuhie - CAS, National Treasury
2. Hon. Patrick Ole Ntutu - CAS, Labour and Social Protection
3. Ms. Edna Atisa
4. Mr. Bernard Amimo
5. Mr. Geoffrey Malombe
6. Mr. Kennedy Pambo
7. Mr. John Gachigi
8. Ms. Cecilia Mbaka
9. Mr. Stefine Bitengo
10. Mr. Nicholas Mac'Botongore

## **AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sittings
  - iv. Matters Arising
3. **Meeting with the Inter-Agency Taskforce on establishment of a Social Assistance Fund regarding the Social Assistance (Repeal) Bil, 2020**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DC/LSW/156/2020: - PRELIMINARIES**

The meeting was called to order at 10.12am and thereafter a prayer was said. The Ag. Chairperson then welcomed all the participants to the virtual meeting. This was followed by introductions.

### **MIN.NO. DC/LSW/157/2020: - ADOPTION OF THE AGENDA**

The agenda of the meeting were adopted having been proposed and seconded by the Hon. Janet Nangabo, MP and the Hon. David Ole Sankok, MP respectively.

### **MIN.NO. DC/LSW/158/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

### **MIN.NO. DC/LSW/159/2020: SUBMISSIONS BY STAKEHOLDERS**

The Inter-Agency Taskforce on establishment of the Social Assistance Fund under the Public Finance Management Act, 2012 briefed the Committee as follows: -

1. The taskforce was required to identify any consequential amendments to any other law to pave way for the establishment of this Fund under the Public Finance Management Act, 2012.
2. Justification for repeal of the Social Assistance Act No. 24 of 2013 was underpinned in two broad areas namely:-
  - a. The need to comply with the current existing Government policy that all national public funds be established under Section 24 (4) of the Public Finance Management Act, 2012;
  - b. The fact that Social Assistance Act, 2013 was not harmonized with existing National Policy on social protection and inherent flaws in the Social Assistance Act, 2013.
3. The Act impeded its effective operationalization as elaborated below:-
  - i. Policy and Authority to establish National Public Funds.
  - ii. The Social Assistance Act of 2013 did not capture the letter and spirit of the Policy on Social Protection.
  - iii. The Authority as established under the Social Assistance Act of 2013 was assigned policy formulation, regulation, implementations, advisory, standards settings, oversight and monitoring and evaluation mandates (Section 3 and 4), which goes against best practice in

- governance for the sector and thus posing a challenge to the Ministry in establishing the Authority.
- iv. Cost of establishing an Authority provided for under the Social Assistance Act, 2013. It's expensive to establish an authority as contemplated in the Act because it will require new and or additional staff, office space, equipment and consequently additional resources for operations and maintenance.
  - v. Dual Functions of the Authority under Social Assistance Act, 2013: the Authority was given both the functions of a regulator and implementer under the Social Assistance Act, 2013, which presented apparent conflict of interest.
  - vi. Duplication of functions between the Ministry and the Authority: The broad mandates proffered to the Authority under the Act which includes both implementation, advisory, standards settings, oversight and monitoring and evaluation were bound to result in conflict and duplication of efforts impacting on the efficiency and effectiveness of resource utilization for the social protection sector.
  - vii. Repeal of the Social assistance Act of 2013 will most certainly pave way for accommodating the emerging reforms in the social protection sector and will allow development of a more comprehensive and coherent law.
  - viii. Operationalization of the Fund under the Social Assistance Act: in order to establish the Social Assistance Fund under the PFM Act, there was need to propose consequential amendments to remove any provisions relating to the operationalization of the Fund under the Social Assistance Act as this would have been a violation of the PFM Act.
4. The Social Assistance Act, 2013 was not informed by policy: There are many advantages for establishment of the Public Finance Management (Social Assistance Fund) Regulations
5. Response on Stakeholder Objections:-
- a) Key concerns raised in objection to the establishment of the Public Finance Management (Social Assistance Fund) Regulations incorrectly assumed that the Regulations were a replacement of the social assistance Act. This was not true as the Ministry was working towards putting in place a more comprehensive law on social protection.
  - b) The repeal of the Act was part of the first steps of aligning Government policy to legislation, the other step being the efforts made by the Ministry on revising the National Social Protection Policy to effectively cater for emerging concerns in the social protection sector, such as the unprecedented pandemics and disasters facing society.
  - c) It was not true, that the repeal of the Social Assistance (Repeal) Bill would empower the National Treasury to govern the social protection sector simply through regulations, which can be changed on a whim and do not confer social protection rights to citizens. It would scrap the Social Assistance Act and replace it with the Social Assistance Fund Regulations, representing an unacceptable loss of claimable rights to Kenya's citizens in the area of social protection. The policy mandates the Cabinet Secretary responsible for the Fund to be the Cabinet Secretary for Labour and Social Protection whereas the Administrator of the Fund is the Principal Secretary / Accounting Officer for social protection.

**Committee Observations**

1. There is a Government directive that all National Government Funds be established under PFM Act so as to create sustainability.
2. There was a comprehensive operational manual that guides the operations of the Fund.
3. A proper system should be put in place to enable the beneficiaries access the Fund without much hinderance.
4. For the system to be accountable, a beneficiary register for each constituency should be developed and made available to the public.
5. Social Assistance Act was being replaced by a regulation yet as per the law, a regulation can't replace an Act of Parliament.
6. Though there were no clear timelines for comprehensive sectoral laws, there was need to develop a bill that will address all issues related to social protection.

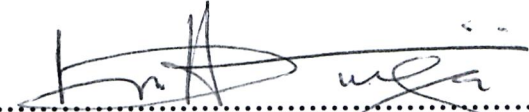
**MIN.NO. DC/LSW/160/2020: ANY OTHER BUSINESS**

**Provision of the Work Injury Benefits and Group Personal Cover for Civil Servants and employees of the National Youth Service.**

The Chief Administrative Secretary was implored upon to follow up and fast track the payment of pending claims for the Personal Group Accident Cover for the Civil Servant as early resolved.

**MIN.NO. DC/LSW/161/2020: ADJOURNMENT**

There being no other business, the meeting was adjourned 11.55am

SIGNED:  .....

**The Hon. Peter Mwathi, M.P**  
**(Chairperson)**

DATE: 2<sup>ND</sup> DECEMBER, 2020 .....

**MINUTES OF THE VIRTUAL MEETING OF THE 26<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 13<sup>TH</sup> AUGUST, 2020 AT 2.40PM.**

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**PRESENT**

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. The Hon. Ronald Kiprotich Tonui, MP
3. The Hon. Tom Mboya Odege, MP
4. The Hon. Caleb Amisi, M.P.
5. The Hon. Charles Kanyi Njagua, MP
6. The Hon. David Ole Sankok, MP
7. The Hon. Gideon Keter, MP
8. The Hon Janet Nangabo, MP

**APOLOGY**

1. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
2. The Hon. Moses Malulu Injendi, M.P
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. James K'Oyoo, M.P
6. The Hon. Omboko Milemba, MP
7. The Hon. Abdi Mude Ibrahim, MP
8. The Hon. Fabian Kyule Muli, MP
9. The Hon. Safia Sheikh Adan, MP
10. The Hon. Titus Mukhwana Khamala, M.P.
11. The Hon. Wilson Sossion, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel
4. Ms. Fiona Musili - Research Officer
5. Mr. Joab Owaga - Audio Officer

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sittings
  - iv. Matters Arising
3. **Consideration of The Social Assistance (Repeal) Bill, 2020**
4. Any Other Business

5. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/139/2020: - PRELIMINARIES**

The meeting was called to order at 2.40pm and thereafter a prayer was said. The Chairperson then welcomed all the Hon. Member to the virtual meeting and informed them that the main agenda of the meeting was to consider the Social Assistance (Repeal) Bill, 2020.

**MIN.NO. DC/LSW/140/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

**MIN.NO. DC/LSW/141/2020: BRIEF ON THE SOCIAL ASSISTANCE (REPEAL) BILL, 2020)**

The Committee was briefed as follows: -

1. The Bill proposes to repeal the Social Assistance Act, 2013.
2. Social Assistance is defined under the Social Assistance Act as *“assistance provided in accordance with the Act to persons in need and other persons and including financial assistance and social services.”*
3. In Kenya, social protection and social safety is primarily entrenched in three ways:
  - a) Through the National Social Security Fund (NSSF) which provides social security protection to formal and informal workers in form of payments upon retirement;
  - b) Through social health insurance implemented by the National Health Insurance Fund (NHIF); and
  - c) Through cash transfer programs where beneficiaries attest to improved household food security, retention of children in schools, access to basic health care, enhanced social support networks, self-esteem and dignity;
4. Article 43 of the Constitution enshrines the economic and social rights of all persons including the right to social security.
5. Article 43(3) mandates the state to provide appropriate social security to persons who are unable to support themselves and their dependents. This duty of the State is further reiterated in Article 57 with regard to providing assistance to older members of the society.
6. The Social Assistance Act No. 24 of 2013 was assented into law on 14<sup>th</sup> January, 2013 with the effective date of commencement being 25<sup>th</sup> January, 2013. The object of the Act is to-
  - a) give effect to Article 43(3) of the Constitution;
  - b) establish the National Social Assistance Authority (NSAA); and
  - c) provide for the rendering of social assistance to persons in need.
7. The categories of persons eligible for assistance under section 17 are-
  - a) orphans and vulnerable children,

- b) poor elderly persons
- c) persons with disabilities
- d) unemployed persons,
- e) persons disabled by acute chronic illness,
- f) widows and widowers; and
- g) any other persons as may from time to time be determined by the Minister,

8. Other relevant provisions-

- i. The Act establishes and provides for the functions of the National Social Assistance Authority (NSAA) and for the composition of a Board of Management of the Authority.
- ii. The Act also provides for the establishment of a fund(National Social Assistance Fund (NSAF)) and the sources of the funds. The Board of Management is responsible for administration of the NSAF.
- iii. The Fund does not receive finances from Parliament hence is not operational.

9. Cabinet Secretary for Labour, Social Protection is mandated to operationalize the Social Assistance Act through the Ministry and was to take up the task of constituting the Board of Management of the National Social Assistance Authority as provided in the Act.

10. The Ministry indicated various reasons for the lack of full implementation including-

- a) challenges in implementing the Act and operationalizing the Board of Management as it has both oversight and implementation authority ( therefore, that anomaly had resulted in the delay in putting in place relevant structures to implement the Act;
- b) the Ministry was in the interim carrying out the functions of the National Social Assistance Authority through various Departments as well as the Social Protection Secretariat
- c) at the time of passing the legislation, there was no consensus between Parliament and the Ministry as the implementing body as regards the contents of the Act;
- d) the Ministry, in consultation with relevant stakeholders, developed the National Social Protection Policy, which was approved during the ninth Cabinet meeting held on 17th May, 2012. Thereafter a Sessional Paper on the National Social Protection Policy and the National Social Protection Bill be prepared and tabled before the National Assembly in November 2012 but abother Bill was presented by Lt Hon Laboso (now the Act).
- e) National Social Protection Bill developed by the Ministry provided for the establishment of a proper framework for effective coordination and oversight for all social protection programmes including social assistance, social security and health insurance and that after the enactment of the Social Assistance Act, it was realized that the same was not aligned to the broad policy recommendations encapsulated in the National Social Protection Policy and that it also negated the spirit of good governance, which recognizes that an institution cannot monitor or oversee its own actions since its accountability would not be ensured; and did not clearly outline the role of the Social Assistance Authority i.e. whether it should be involved in the direct provision of social assistance or that it would only be the regulator of social assistance programmes.

11. The Ministry and other stakeholders including NGEAC, the Ministry and other stakeholders met the committee in 2018 and 2019 to chart a way forward. It was agreed that a multi-stakeholder technical team be formed to prepare necessary amendments to operationalize the Act. However, the Ministry began working on the PFM (Social Assistance Fund) regulations and now seeks to repeal the Social Assistance Act *in total*. The Act has no provision for resource allocation from Parliament.

12. Stakeholders submissions – NGEAC and Africa platform for social protection and social protection actors forum oppose the repeal and propose amendment of the current Act.

### Committee Observations and Way Forward

The Committee observed the following from the brief: -

1. There is no proper justification for the repeal bill since it goes against the spirit of the Constitution.
2. Social Assistance Authority has never been operationalized and therefore there is need for relevant structure to be put in place so as to operationalize the Authority.

### Way Forward

The Committee to schedule a meeting with stakeholders, including the National Treasury, State Department for Social Protection, NGEAC and private sector to deliberate on the Bill.

### MIN.NO. DC/LSW/142/2020: ANY OTHER BUSINESS

No Any Other Business Arose

### MIN.NO. DC/LSW/143/2020: ADJOURNMENT

There being no other business, the meeting was adjourned 3.55pm

SIGNED: .....

The Hon. Peter Mwathi, M.P

(Chairperson)

DATE: ..... 3rd Sept 2020 .....

**MINUTES OF THE VIRTUAL MEETING OF THE 27<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 27<sup>TH</sup> AUGUST, 2020 AT 2.30PM.**

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**PRESENT**

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
3. The Hon. Ronald Kiprotich Tonui, MP
4. The Hon. Abdi Mude Ibrahim, MP
5. The Hon. Charles Kanyi Njagua, MP
6. The Hon. Fabian Kyule Muli, MP
7. The Hon. David Ole Sankok, MP
8. The Hon. Gideon Keter, MP

**APOLOGY**

1. The Hon. Moses Malulu Injendi, M.
2. The Hon. Janet Nangabo, MP
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. James K'Oyoo, M.P
6. The Hon. Omboko Milemba, MP
7. The Hon. Tom Mboya Odege, MP
8. The Hon. Caleb Amisi, M.P.
9. The Hon. Safia Sheikh Adan, MP
10. The Hon. Titus Mukhwana Khamala, M.P.
11. The Hon. Wilson Sossion, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani - Legal Counsel
4. Mr. Joab Owaga - Audio Officer
5. Mr. Ivan Ochieng - ICT Officer

**African Platform on Social Protection**

1. Mr. Samuel Kabue
2. Ms. Hellen Mudora
3. Mr. Erastus Maina

**National Gender and Equality Commission**

1. Dr. Joyce Mutinda
2. Dr. Chomba Munyi
3. Ms. Betty Sungura
4. Mr. Paul Kuria
5. Mr. Kevin Mpaka

## **AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sitings
  - iv. Matters Arising
3. **Meeting with the following stakeholders to consider the Social Assistance (Repeal) Bill (National Assembly Bill No. 16 of 2020): -**
  - i. **African Platform on Social Protection**
  - ii. **National Gender and Equality Commission**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DC/LSW/144/2020: - PRELIMINARIES**

The meeting was called to order at 2.30pm and thereafter a prayer was said. The Chairperson then welcomed all the participants to the virtual meeting. This was followed by introductions.

### **MIN.NO. DC/LSW/145/2020: - ADOPTION OF THE AGENDA**

The agenda of the meeting were adopted having been proposed and seconded by the Hon. Ronald Kiprotich Tonui, MP and the Hon. David Ole Sankok, MP respectively.

### **MIN.NO. DC/LSW/146/2020: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

### **MIN.NO. DC/LSW/147/2020: SUBMISSIONS BY STAKEHOLDERS**

#### **I. AFRICAN PLATFORM ON SOCIAL PROTECTION ON THE SOCIAL ASSISTANCE (REPEAL) BILL, 2020)**

The stakeholders in the Social Protection Sector, led by the Africa Platform for Social Protection (APSP), Social Protection Actors Forum (SPAF) and Help Age International submitted as follows:

1. That the platform opposes the repeal of the Social Assistance Act 2013 and instead recommend amendment of the same.
2. The reasons advanced for opposing:
  - i. The repeal is unconstitutional
  - ii. Social Assistance is a tool for enhancing protected fundamental right under Article 43 of the Constitution, and as such, under Article 21 needs to be given effect and implemented through legislation enacted for purposes of protecting fundamental rights.
  - iii. The PFM Act was enacted for purposes of enhancing efficiency in public finance management, not protecting human rights.

- iv. Social Assistance Act 2013 sought to be repealed was enacted in words of the act, to give effect and implement Article 43 rights. The PFMA is therefore not the constitutional tool for safeguarding social assistance rights.
  - v. The repeal is also unconstitutional on the premise that social assistance is a national function. Social assistance is a fundamental human rights issue; it is the function of all government organs including both levels of government.
  - vi. Section 24 of PFMA regulations which is a tool for national government, is an unconstitutional tool for effecting social assistance.
3. The Social protection policy provides for three social protection pillars (Health Insurance (NHIF), NSSF and Social Assistance. Social Assistance should be treated legally the same as health insurance and social security. Its fund should be established by right guaranteeing legislation.
  4. That no cogent reasons have been given as to why Section 24 of the PFMA fund is a more effective tool than the legislation proposed to be repealed.
  5. Social Assistance is more than payment of money to the needy and vulnerable. It is an empowerment and human rights programme which must be protected by substantive law.
  6. The draft PFMA regulations for social assistance fund creates a system lacking in transparency, with internal inconsistencies and confusing governance structures.

## **II. NATIONAL GENDER AND EQUALITY COMMISSION**

The National Gender and Equality Commission presented in three parts as highlighted below: -

### **1. PRESENTATION BY NGENC CHAIRPERSON**

The Chairperson of the Commission gave the following submission: -

That the Commission is opposed to the Social Assistance (Repeal) Bill, 2020 for the following reasons:

- a. The Social Assistance Act, 2013 that is being repealed by the proposed Bill has never been implemented and therefore there is no evidence of its inadequacies, flaws or weaknesses.
- b. The Social Assistance Act, 2013 is being repealed without enacting a substitutive substantive Act. This will lead to a legal lacuna and failure to provide a comprehensive legal framework to govern the social assistance program and by extension the National Social Protection Policy, 2014.
- c. The proposed Social Assistance (Repeal) Bill, 2020 raises a legal technical and procedural question of, whether it is legally appropriate to repeal a substantive Act through regulations (the Public Finance Management Act (Social Assistance Fund), 2020 of another substantive Act, namely the Public Finance Management Act No. 18 of 2012;
- d. That the act of the repealing the Social Assistance Act, 2013 via the Public Finance Management Act (Social Assistance Fund) Regulations would have the substantive effect on governance.

## 2. PRESENTATION BY COMMISSION SECRETARY

The Commission Secretary gave a submission on experiences of the commission with the matter of finding a comprehensive legal frame work to govern the social assistance programs in Kenya.

- 1) That social protection and social safety in Kenya is entrenched in primarily three ways:
  - a) Cash transfer programs that ought to be governed by the Social Assistance Act No 24 of 2013,
  - b) National Social Security Fund (NSSF) governed by the National Social Security Fund Act
  - c) Social Health Insurance implemented through the National Health Insurance Fund (NHIF) and governed by the National Health Insurance Act.
- 2) The Ministry responsible for Labor and Social Protection has not operationalized the Social Assistance Act of 2013. The most crucial provision in the Act is the establishment of the **National Social Assistance Authority (NSAA)** and the **National Social Assistance Fund** and the sources of the funds.
- 3) The Commission issued an advisory to the Cabinet Secretary (CS) raising the concern on non- implementation of the Act and requested the Cabinet Secretary to give effect to the provisions of the Act by constituting the Management of the National Social Assistance Authority. The Commission received a response to which it found unsatisfactory and filed petition No 226 of 2015 in the Constitutional Court, Nairobi which was dismissed in December 7<sup>th</sup> 2016.
- 4) In 2017, the Ministry of Labour and Social Protection initiated the process of reviewing the Social Assistance Act 2013 by drafting **the National Social Assistance Bill 2018** which established a National Social Assistance Trust Fund. The Commission submitted its proposal to the Committee for consideration.
- 5) In July 2019, Ministry of Labor and Social Protection commenced another process of repealing the Social Assistance Act 2013 through the **Public Finance Management Act (Social Assistance Fund) Regulations 2019**. The Commission submitted its memoranda and among other things submitted that the Social Assistance Act of 2013 was still in effect and a substantive law and as such it can't be repealed using regulations.

## 3. THE TECHNICAL DETAILS SUPPORTING COMMISSION'S POSITION TO REJECT THE SOCIAL ASSISTANCE REPEAL BILL 2020.

- i. **Clause 1-4:** The commission does not agree with content and provisions of these clauses because of the reasons given by the Chairperson of the Commission.

- ii. **Memorandum of objects and reasons:** The Commission noted that the principal object of the Bill is to repeal the Social Assistance Act to enable the enactment and operationalization of the Public Finance Management (Social Assistance Fund) Regulations made under the Public Finance Management Act No 18 of 2012. On this, the Commissions submissions are as follows:
- a. The reasons cited presents legal technical and procedural question on whether a substantive Act (social assistance Act of 2013) can be repealed through regulations of another substantive Act (Public Finance Management Act of 2012).
  - b. That the Social Assistance Act 2013 is being repealed without replacing it with another substantive Act. Repeals without replacement is generally done when a law is no longer effective, or it is shown that a law is having far more negative consequences than were originally envisioned.
  - c. That there is still adequate opportunity for Parliament to amend the Social Assistance Act 2013 to address the issues that prevented the Ministry from operationalizing it as they presented in Court in 2015.
  - d. That the net effect of establishing a Social Assistance Fund through Regulations of the Public Finance Management Act includes splitting and transferring some of the aspects of Social Assistance from the Department of Social Protection to the National Treasury and Planning. The proposed Public Finance Management (Social Assistance Fund) Regulations provide for the Secretariat be established in the State Department of Social Protection to report to an Administrator who is an appointee of Treasury. This raises governance issues as the two functions (secretarial and administration) shall be domiciled in two separate ministries.
  - e. The Regulations do not also create structures at the County Level, yet the beneficiaries reside in the counties which are also implementing social assistance programs.
  - f. That it is not mandatory for all funds to be established under the PFM Act. The National Authority Assistance Fund was established vide the Social Assistance Act 2013. The Fund has governance structures which have never been constituted.

**The Commission therefore proposes that the Social Assistance Act 2003 be operationalized and the process of amending it or Repealing it with a substitutive law be put in place to strengthen it. The Commission further implores Parliament to reject the Social Assistance (Repeal), Bill (National Assembly Bill No. 15 of 2020).**

#### **Committee Observations and Way Forward**

From the stakeholder's submissions, the Committee observed the following: -

- a) There was need to improve on the Social Assistant Act, 2013 by developing proper frame work to harmonize all Social Assistance Funds.
- b) Establishing a Social Assistance Fund through Regulations of the Public Finance Management Act may raise governance issues as the two functions of Secretariat and administration shall be domiciled in two separate ministries.
- c) There is disparity between the Social Assistance Act and the Social Protection Policy.
- d) Concerns were also raised on the fate of components of the current Act which are not Financial in nature and the possibility that such components may be left out all together.

- e) The Ministry should explore the possibility of establishing the Fund through amendments to the current Act as opposed to total repeal

**Way Forward**

The Committee is scheduled to meet with the National Treasury, State Department for Social Protection and other relevant stakeholders to deliberate on the Bill and thereafter submit its report to the House.

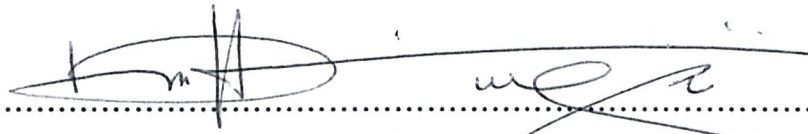
**MIN.NO. DC/LSW/148/2020: ANY OTHER BUSINESS**

No Any Other Business Arose

**MIN.NO. DC/LSW/149/2020: ADJOURNMENT**

There being no other business, the meeting was adjourned 4.15pm

SIGNED: .....



The Hon. Peter Mwathi, M.P

(Chairperson)

DATE: .....

3rd Sept. 2020