

PARLIAMENT
OF KENYA
LIBRARY



REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT - FIRST SESSION

REPORT

OF THE
DEPARTMENTAL COMMITTEE ON LABOUR
AND SOCIAL WELFARE

ON
THE NATIONAL SOCIAL SECURITY FUND BILL, 2013



NOVEMBER, 2013

Approved

12/11/13

Paper Laid

By Dan Hon. Dan

Nanyamba
on Tuesday

12/11/2013

12/11/2013



THE NATIONAL ASSEMBLY

MEMBERS ATTENDANCE LIST

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

Date: 31/10/13. Venue: New Member Lounge. Agenda: Adoption of Report.

	Name	Signature
1.	<u>CHAIRPERSON</u>	
2.	VICE-CHAIR Hon. Tiyah	Minyal
3.	Hon. Abiodun Motta	
4.	Hon. Kinmi Njeguwa	
5.	Hon. JOHN KOBADO	
6.	Hon. JAMES O. KOYUO	
7.	Hon. JOHN R. SERWT	
8.	Hon. JOHN NDIRANGU	
9.	Hon. GEORGE MUKHA	
0.	Hon. Elijah Lagat	
1.	Hon. PERES TOBUKO	

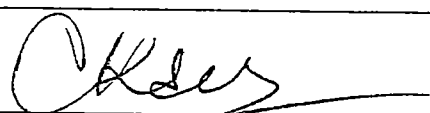
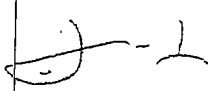
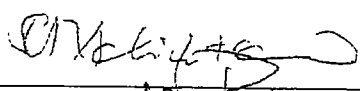
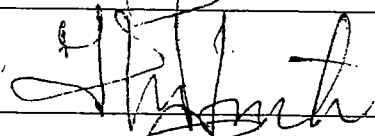
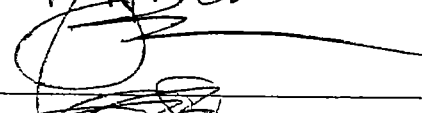

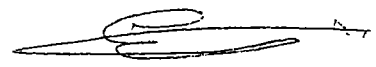
12.	HON. CORNELIUS SELLIN	
13.	HON. MW ANYOHA	
14.	HON. MUSTAFA IDD	
15.	HON. NANGAMATI	
16.	HON. JAMES MLOUKA	
17.	HON. SAMUEL LUTHERA	
18.	HON. ELIJAH M. MOINDI	
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		

TABLE OF CONTENTS

	PAGE No.
1.0 PREFACE.....	2
2.0 THE NATIONAL SOCIAL SECURITY FUND BILL, 2013.....	6
2.1 BACKGROUND.....	6
2.2 REVIEW PROCESS OF THE BILL.....	6
3.0 COMMITTEE OBSERVATIONS.....	7
4.0 PROPOSED AMENDMENTS TO THE NSSF BILL 2013.....	8
5.0 ANNEXES.....	13
5.1 MINUTES.....	14
5.2 NEWSPAPER ADVERTISEMENT – INVITATION OF MEMORANDA.....	15
5.3 SUBMITTED MEMORANDA.....	16

1.0 PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Labour and Social Welfare was constituted pursuant to the provisions of Standing Order No. 216 of the Standing Orders and has executed its mandate in accordance with the provisions of the said Standing Order which mandates the Committee to:-

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

Committee Membership

1. The Hon. David Were, M.P. – **Chairperson**
2. The Hon. Tiyah Galgalo, M.P.– **Vice Chairperson**
3. The Hon. Janet Teiya, M.P.
4. The Hon. George Muchai, M.P.
5. The Hon. Peris Tobiko, M.P.

6. The Hon. John Ndirangu Kariuki, M.P.
7. The Hon. Winnie Karimi Njuguna, M.P.
8. The Hon. Janet Nangabo, M.P.
9. The Hon. John Serut, M.P.
10. The Hon. Samuel Gichigi, M.P.
11. The Hon. Elijah Lagat, M.P.
12. The Hon. Cornelly Serem, M.P.
13. The Hon. Abdi Noor Ali, M.P.
14. The Hon. Dan Wanyama, M.P.
15. The Hon. Regina Nyeris, M.P.
16. The Hon. Wesley Korir, M.P.
17. The Hon. Kinoti Gatobu, M.P.
18. The Hon. Elijah Moindi Mosomi, M.P.
19. The Hon. James Onyango K'oyoo, M.P.
20. The Hon. Omondi John Ogutu, M.P.
21. The Hon. Aisha Jumwa Katana, M.P.
22. The Hon. Patrick Wangamati, M.P.
23. The Hon. Rose Museu Mumo, M.P.
24. The Hon. Silvance Onyango Osele, M.P.
25. The Hon. Mustafa Idd, M.P.
26. The Hon. Nyasuna, Gladys Wanga, M.P.
27. The Hon. John Owuor Onyango Kobado, M.P.
28. The Hon. Mwanyoha Hassan Mohammed, M.P.
29. The Hon. Jones Mlolwa Mwangogo, M.P.

Mr. Speaker, Sir,

The Committee deals with the following subjects matters as per the Second Schedule of the Standing:-

- Labour, trade union relations
- manpower or human resource planning,
- gender, culture and social welfare,

- youth, National Youth Service,
- children's welfare, national heritage,
- betting, lotteries, Sports.

Mr. Speaker,

The Committee has oversight over the Ministry of Labour, Social Security & Services and the Ministry of Sports, Culture and the Arts. Further, its mandate covers the National Social Security Fund.

Mr. Speaker,

Pursuant to Standing Order 127 (1), the National Social Security Fund Bill, 2013 was committed to the Departmental Committee on Labour and Social Welfare, after First Reading on 29th September 2013. The Committee deliberated on the Bill together with the stakeholders and their views have been factored in the Committee's Report.

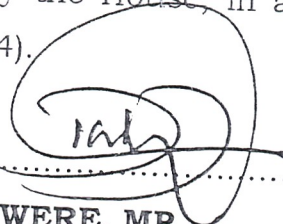
Mr. Speaker, Sir

I would like to thank the Offices of the Speaker and the Clerk of the National Assembly for facilitating this exercise as well as all those who presented their views to the Committee.

Mr. Speaker,

It is now my humble duty to present the Committee's Report on the Consideration of the National Social Security Fund Bill, 2013 for debate and adoption by the House, in accordance with the provisions of the Standing Order 127(4).

SIGNED



HON. DAVID WERE, MP

CHAIRPERSON - DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE

DATE.....

07-11-2013

2.0 THE NATIONAL SOCIAL SECURITY FUND BILL, 2013

2.1 BACKGROUND

Since its establishment, the National Social Security Fund (NSSF) has operated as a mandatory provident fund providing benefits in the form of lump sum payments. The provident fund as currently structured is characterised by limited membership coverage and is inadequate both in form and level of benefits arising from the monetary capping of contributions. Therefore, the present structure is insufficient in serving the social security needs of the country. To address this, a National Social Security Pension Bill has been developed with the aim of transforming the Fund to a social insurance pension scheme.

In particular, the transformation seeks to increase coverage of the NSSF, improve adequacy of benefits provided by the NSSF, provide benefits in the form of pensions, retain a link between benefits and contributions with the benefits largely being determined on a defined contribution basis, and ensure sustainability and affordability of social security. The bill if passed would see the transformation of the National Social Security Fund to a Pension Scheme.

2.2 DELIBERATION ON THE NSSF, 2013 BILL

Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. Further, Standing Order No. 127(3) provides that the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House.

The Bill having been referred to the Committee after the First Reading, the Committee held consultative forums with stakeholders as well as inviting memoranda from the public in the local dailies on 4th October,

2013. In making its recommendations, the Committee examined the Bill and proposed amendments by consensus based on the available information. Further it considered different sources of submissions made on the provisions of the Clauses to be amended.

The proposed Fund will be known as the National Social Security Fund to be managed by a Board and the Fund will receive payments from contributors. The objects of the Fund are to provide basic social security for members and their dependants, increase membership coverage, improve adequacy benefits and ensure a value adding system to its member's contributions.

3.0 COMMITTEE OBSERVATIONS

- i. Members proposed change of the corporate name of the National Social Security Fund (NSSF) to break away from the past to ensure public confidence in the entity.
- ii. The need to include definition of Actuary in the NSSF Bill and not make reference to the definition ascribed to an Actuary in the Retirement Benefits Act, 1997.
- iii. On the matter of regulation the Committee was of the opinion that another statutory authority could not oversee or subject the National Social Security Fund to its rules. Members noted that NSSF is a National Mandatory Scheme and should be left to regulate its own affairs. The Retirement Benefits Authority should therefore regulate schemes established by Trust Deed and Rules and not those established by law such as NSSF.
- iv. On membership of the Board, the Committee agreed that the most representative employers and workers organisations will each nominate two persons for appointment to the Board. Members agreed that there is need to stagger the Board Members terms in line with other legislation.

- v. In term of academic qualification, the Managing Trustee should hold a degree in a relevant field of study as may be specified by the Board from a recognized university in Kenya.
- vi. Members took cognizance of the fact that the Managing Trustee will be expected to work with the Board, the Ministry and the Government. Therefore, the Board should carry out competitive recruitment of the Managing Trustee but the appointment should be done by Cabinet Secretary. The Board of Trustees will therefore forward three (3) names to the Cabinet Secretary to select one (1) for appointment.
- vii. Members noted that the Fund Investment is bound by Section 71 of the Bill which provides that:-“the requirements of this Act are in addition to requirements imposed by the Retirement Benefits Act”.
- viii. Members further noted that Section 59 of the Retirement Benefits Act gives the Cabinet Secretary for Finance discretionary powers to exempt persons from complying with the provisions of the said Act as and when necessary.
- ix. The Fines Fine for Employers who fail to register their Employees should be enhanced.

4.0 PROPOSED AMENDMENTS TO THE NSSF BILL 2013

The Committee proposes the following amendments.

Part 11 – ESTABLISHMENT & OBJECTS OF THE NATIONAL SOCIAL SECURITY FUND

CLAUSE 4 (f) (11)

That Clause 4 be amended by inserting a **Sunset Clause** to cater for liabilities of the old Fund to be settled within five (5) years of coming into force of the New Fund and the Old Fund closed. The Transitional

Provisions provided under the Second Schedule should be considered when drafting the proposed Sunset Clause.

PART 111- NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES

CLAUSE 6

THAT, Clause 6 (d (i) & (ii) be amended to include the following proviso:-

- (i) *two persons, one of either gender nominated by the most representative Employers Organization with knowledge and experience in matters relating to Employers to represent employers in Kenya;*
- (ii) *two persons, one of either gender nominated by the most representative Workers Organization with knowledge and experience in matters relating to Employees to represent employees in Kenya;*

CLAUSE 8 - Staggering of the Term of Board Members

- (i) THAT, Clause 8(2) be amended to provide that the Board shall be appointed for a period of three (3) years and there shall be a difference of two (2) months between the appointments and the Cabinet Secretary shall make such appointments within a period of six (6) months.
- (ii) THAT, Clause 8 (3)(b) (i) be amended to provide for the Chairperson to seek approval of the Cabinet Secretary when he is away and unable to conduct meetings.

CLAUSE 15 - Appointment of the Managing Trustee

- (i) THAT, Clause 15(1) be amended to provide that:-
The Cabinet Secretary shall, on the recommendation of the Board of Trustees, appoint a Managing Trustee from amongst three (3) names, who shall hold office on such terms and conditions of service as may be specified in the instrument of his appointment.

- (ii) THAT, Clause 15 (3) be amended by deleting delete the words “and secretary” appearing after “member” to read “The Managing Trustee shall be an ex-officio member to the Board”.

The proposed amendment is aimed at delinking the Managing Trustee from the Role of Secretary to the Board.

- (iii) THAT, Clause 15 (4) be amended to provide that the Managing Trustee shall be selected from amongst three (3) names recommended by the Board through a competitive process.

- (iv) . Clause 15 (5) – Term of Managing Trustee

THAT, Clause 15(5) be amended by deleting the word “six years” and substituting with words “three year”.

The Committee proposed a review of the Managing Trustee’s term from six (6) years to three (3) years and subject to renewal for one further term of three (3) years. This will ensure optimal performance of the Managing Trustee.

- (v) THAT, Clause 15(7(a) be amended by deleting the word “Masters”

The Committee agreed that the Managing Trustee should hold a degree in a relevant field of study as may be specified by the Board from a university recognised in Kenya.

- (vi) THAT, Clause 15(7)(b) be amended by deleting the words “pension funds, accounting or auditing, insurance, investment, law banking, economics, labour or social security” and inserting in place thereof the following:-

“in a field as may be specified by the board and must be registered with a recognised professional body”.

- (vii) THAT, Clause 15(10) be amended by deleting the word "Board" and substituting with the words "Cabinet Secretary" and inserting the following after the word "office"

"on recommendation of the Board"

PART IV - FUNDS, REGISTRATION, MEMBERSHIP AND CONTRIBUTIONS

CLAUSE 26 - Regulations to provide for Voluntary Registration

THAT, Clause 26 be deleted

CLAUSE 27

THAT, Clause 27(3) be amended by inserting the word "and" after the word employee appearing in the 3rd line.

PART V- BENEFITS

CLAUSE 40 - Funeral Grant

THAT Clause 40(1) be amended by deleting the word "ten" and substituting with the word forty".

CLAUSE 47 - Regulations regarding benefits under this Act

THAT, Clause 47 be deleted.

CLAUSE 48

THAT, Clause 48(2) be amended by deleting the word "fifty" and substituting with the word "three hundred".

PART VI - FINANCE, ADMINISTRATION AND MANAGEMENT OF THE FUND

SECOND SCHEDULE -Transitional Provisions

THAT, the Second Schedule be amended by inserting a new subsection (8)
8. A reference scheme (as defined in the fourth schedule) shall have 365 days from the commencement date of the Trust Deed and Rules to comply with the provisions of the Fourth Schedule.

THIRD SCHEDULE

THAT, the Third Schedule be amended by deleting the **“words Tier 1”** appearing on the heading of the Third Schedule

FOURTH SCHEDULE

THAT, the Fourth Schedule be amended as follows:-

- (i) in Part 1(c) by deleting sub-sections (3) and (4) and substituting with (2) and (3).
- (ii) in Part 1(f) by inserting the words **“by the Authority”** after the words **“Prescribed requirements”**.

5.0 ANNEXES

5.1 MINUTES

MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 31ST OCTOBER, 2013 IN THE NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

The Hon. Tiyah Galgalo, M.P. – Vice – Chairperson

The Hon. John Serut, M.P.

The Hon. Patrick Wangamati, M.P.

The Hon. Elijah Moindi Mosomi, M.P.

The Hon. Mustafa Idd, M.P.

The Hon. James Onyango K'Oyoo, M.P.

The Hon. Mwanyoha Hassan, M.P.

The Hon. Abdi Noor Ali, M.P.

The Hon. Cornelly Serem, M.P.

The Hon. Winnie Karimi Njuguna, M.P.

The Hon. Peris Tobiko, M.P.

The Hon. Samuel Gichigi, M.P.

The Hon. John Ndirangu Kariuki, M.P.

The Hon. Jones Mlolwa Mwangogo, M.P.

The Hon. George Muchai, M.P.

The Hon. Elijah Lagat, M.P.

The Hon. John Owuor Onyango Kobado, M.P.

ABSENT WITH APOLOGY

The Hon. David Were, M.P. – Chairperson

The Hon. Suleiman Murunga Kasuti, M.P.

The Hon. Wesley Korir, M.P.

The Hon. Nyasuna Gladys Wanga, M.P.

The Hon. Regina Nyeris, M.P.

The Hon. Aisha Jumwa Karisa, M.P.

The Hon. Omondi John Ogutu, M.P.

The Hon. Kinoti Gatobu, M.P.

The Hon. Janet Nangabo, M.P.

The Hon. Janet Teiya, M.P.

The Hon. Dan Wanyama, M.P.

The Hon. Rose Museu Mumo, M.P.

The Hon. Silvance Onyango Osele, M.P.

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Ahmad Kadhi - First Clerk Assistant

MIN.NO. 107/2013: PRELIMINARIES

The Meeting was called to order; proceedings began with a word of prayer.

MIN.NO. 108/2013: CONFIRMATION OF MINUTES

The Minutes of the 28th sitting were proposed by the Hon. Ali Noor Ali, M.P and seconded by the Hon. John Serut M.P.

The Minutes of the 29th sitting were proposed by the Hon. John Ndirangu Kariuki, M.P and seconded by the Hon. Elijah Lagat, M.P.

MIN.NO. 109/2013: ADOPTION OF THE NSSF BILL, 2013 REPORT

Members deliberated the report and noted as follows:

- The Definition of the term "Social security" should be retained in its present form as defined in clause 2 of the Bill.
- That clause 6 d (i) and (ii) be amended to read

- (i) two persons, one of either gender nominated by the most representative Employers Organization with knowledge and experience in matters relating to Employers to represent employers in Kenya;
 - (ii) two persons, one of either gender nominated by the most representative Workers Organization with knowledge and experience in matters relating to Employees to represent employees in Kenya;
- Membership to the Board of Trustees should reflect regional balance, youth, disabled and marginalised persons.
 - There was a proposal to change the name of the new institution to break away from the National Social Security Fund into a new body to ensure public confidence.
 - The Managing Trustee should hold a degree in a relevant field of study as may be specified by the Board from a university recognised in Kenya as may be specified by the Board.
 - Clause 19(6) – Fine for Employers who fail to register their Employees should be enhanced.

The Members present noted that subject to the above, the Committee shall table its report to the House at the earliest opportunity.

MIN.NO. 110/2013: ADJOURNMENT

The sitting was adjourned at thirty minutes past one o'clock to Tuesday 5th November 2013 at 9.30 A.M.

Signed.....
(Chairperson)

Date.....

5.2 NEWSPAPER ADVERT - INVITATION OF MEMORANDA



REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

In the Matter of consideration of the National Social Security Fund Bill, 2013;

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." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

SUBMISSION OF MEMORANDA

The National Social Security Fund Bill, 2013, has undergone First Reading as stipulated in the Standing Orders of the House and stands committed to the Departmental Committee on Labour and Social Welfare for consideration and thereafter to make a report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the National Social Security Fund Bill, 2013, 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 the clerk@parliament.go.ke; to be received **on or before 10th October, 2013 at 5.00 pm.**

MICHAEL R. SIALAI
FOR: CLERK OF THE NATIONAL ASSEMBLY

5.3 SUBMITTED MEMORANDA

226

THE KENYA TEA GROWERS' ASSOCIATION

P.O. Box 320,
KERICHO.

Tel:- 052 20039

Fax:- 052 32172

E-mail:- info@ktga.or.ke

Dated: 09-10-2013

The Clerk of the National Assembly,
P. O. Box 41842-00100,
Nairobi.



Dear Sir,

RE: SUBMISSION OF MEMORANDA ON NATIONAL SOCIAL SECURITY FUND BILL, 2013

Kenya Tea Growers Association was established in 1931 by large-scale tea producers to promote the common interests of the plantation sub-sector members in the cultivation and manufacture of tea and to promote good industrial relations and sound wage policies for the workers. The Association has its Headquarters in Kericho town and operates branches in Nandi, Sotik and Limuru.

The following are our concerns in NSSF Bill 2013.

1. Section 6-

(a,b,c,d)

The cabinet secretary appoints all the Board of trustees, this should not be the case for a fund handling such a big amount of money in view of transparency. Stakeholder participation must be ensured through nomination of representatives by legitimate organizations.

(d i, ii)

The ambiguity about which Employer and Employee representative organization needs to be made very clear in order to avoid splitting already established institutions for selfish interests. Failure to make these subsection clear could create unnecessary friction among various organizations.

2. Section 20 (b)

Employers are required to contribute 6% of the employee's pensionable earnings to the fund. It's our submission that moving from the current contribution of Ksh.200 to 6% is a big change that will drastically escalate the cost of labor in the country. It will negatively impact on the agricultural sector which is already confronted by myriads of issues like weather changes, high cost of energy,

KAOTH
pls deed
FA
10/10

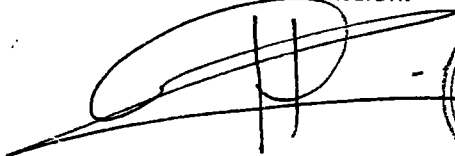
① Mrs. Abungi
TAA
W/O

very high cost of labour dwindling international market, market saturation and more. **Honorable members** in their wisdom can cause this escalation to be done gradually, may be by **2%** for the next two years, get reviewed and then increased to may be **4%**. Furthermore, this 6% increase is going to lead to freezing of employment with likelihood of redundancies in the tea industry particularly given the depressed market prices.

Gratuity:

This mandatory requirement to pay 6% does not take into account that sectors like Tea industry are already paying gratuity and funeral expenses as per COLLECTIVE BARGAINING AGREEMENT. The act needs to be **VERY** clear that it is either one or the other and NOT BOTH.

This is our Submission.



MWERERIA Mugambi Henry
The Executive Officer



Monday, October 07, 2013

**MEMORANDUM BY THE FEDERATION OF KENYA EMPLOYERS (FKE) TO
PARLIAMENTARY DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL
WELFARE ON THE NATIONAL SOCIAL SECURITY FUND BILL, 2013.**

The Federation of Kenya Employers (FKE) is the umbrella body of the employers organizations in Kenya established in 1959 under the Trade Unions Act Cap 233 to represent the collective interest of the employers in Kenya. The Federation's membership is drawn from employers in the private and public sectors – including State Corporations, the County Governments and sector specific employers' associations; the Kenya Association of Building and Civil Engineering Contractors, the Distributive and Allied Trades Association, the Sisal Growers and Employers' Association, the Engineering and Allied Industries Employers Association, the Agricultural Employers Association. The Coffee Growers and Employers Association, the Kenya Tea Growers Association, the Kenya Association of Hotel Keepers and Caterers, Kenya Bankers Association, the Kenya Association of Air operators, the Kenya Security Industry Association, the Association of Kenya Insurers, the Protective Security Industry, the Kenya Flower Council, the Printing Group, the Churches Group, the Insurance group and Sugar Employers Group among others.

FKE promotes sound industrial relations and observance of fair labour practices in Kenya. FKE plays a key role in advocacy for a conducive business climate to enhance competitiveness and employment creation, supports sound management practices and development of sustainable institutional capacity and competence.

The following are the Federation's concerns on the National Social Security Fund Bill, 2013, submitted in response to the notice published by the Kenya National Assembly in the local dailies on 4th October, 2013.

		<p>Organization (ILO) standards to which Kenya is a signatory. The institutional nomination ensures broad representation by the contributors.</p> <ul style="list-style-type: none"> • The fund Board must have representatives of the principal contributors. • The current bill gives the Government through the Cabinet Secretary power to unilaterally decide on appointments and total control of the Fund. This is not acceptable. • The skills/experience specified for the persons representing employers and workers are too limiting as other relevant skills such as Knowledge and experience in Labour Relations which is a core role, law, Engineering / Accounting or actuarial 	<p>in Kenya".</p> <p>(ii) "Two persons nominated by the most representative Federation of Trade Unions by virtue of their relevant knowledge and experience to represent employees in Kenya.</p> <p>Add 6 (e) to read " the two members representing employers and two others members representing employees shall be appointed after consultation with the most representative Federation of Employers organization dealing with labour matters and the most representative</p>
--	--	--	---

	<p>vacant, the vacancy shall be filled in the same manner specified for the office under section 6 and the person thereby appointed shall serve for the remainder of the term.</p>		<p>full terms".</p>
<p>5</p>	<p>Mandatory Contributions to the fund.</p> <p>Section 20</p>	<ul style="list-style-type: none"> • Employers and employees are required to contribute to the Fund at 6% each but there is no clarification on gratuity payment. There are many employers already making gratuity payment from negotiated Collective Bargaining Agreements (CBAs) • An employee should be entitled to either gratuity negotiated under CBA or N.S.S.F but not both benefits. • It is already recognized in Employment Act, 2007 Section 35 (6) that the 	<p>Add Section 20 (4) to read " where an employer is already paying gratuity, the payment shall be paid net of N.S.S.F Contributions".</p>

required under paragraph (a) shall clearly set out such details of the contracted out scheme as the Authority shall require from time to time in order to ascertain the contracted out scheme meets the reference scheme test.

should be in charge of the opting out of NSSF schemes that offer equivalent or superior benefits.

Contributions are structured in Tier 1 and Tier 2, with contracting out option available only for Tier 2.

The provisions impose vague and undocumented requirements to be met by the scheme prior to approval for contracting out.

The conditions are also overly broad and unfair the 4th Schedule, it is not certain who shall issue the "prescribed requirements" This provision seeks to take away the powers of the RBA to determine the procedures and requirements to contract

The Reference Scheme Test under the 4th Schedule should be very narrow, clear and concise as to what the requirement for approval are.

The Bill should clearly provide that the prescribed requirements will be set by RBA.


		Section 35 (6) that employer is obligated to pay gratuity/service pay where he is not making contributions to N.S.S.F	
8	<p>Section 37(1) Survivor's Pension</p> <p>A survivors' pension shall be paid to the dependants if the member dies before pensionable age and was contributing to the pension fund at the time of his death and not less than thirty six monthly contributions had been made by the member immediately preceding the date of death.</p>	The qualifying period for this benefit is too long 36 months it should be reduced to a minimum of 12 months contribution.	Replace the words "thirty six months" to read "twelve months".
9	<p>Fourth Schedule Reference Scheme Test</p>	<p>There is a need to ensure "contracting-out" within the independent competence of the RBA. A Transition clause should be included.</p> <p>Remove reference to Cabinet Secretary to ensure</p>	<p>The reference scheme test should be amended to provide for a transition period. Provide clarification that the prescribed requirements will be set out by RBA</p>

Authority, clarity on contracting out the 11 Tier contributions, the offsetting of the gratuity payment from the N.S.S.F contributions and other proposals.

- (3) That the increase on contributions to the scheme be phased out and gradually adjusted as provided in schedule III over a period of time more than the 4 years proposed.

We trust that these proposals are implemented the Government will be able to achieve its objectives of providing basic social security, increase membership coverage and improve adequacy of benefits paid out of the scheme by the fund with support from employers. The Federation of Kenya Employers would appreciate an opportunity to present these views before the Committee of the House.

Signed:-


Jacqueline Mugo (Mrs.)

EXECUTIVE DIRECTOR

For and on behalf of FKE

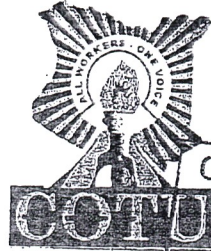
Central Organisation of Trade Unions (Kenya)

All correspondence should be addressed to the Secretary-General

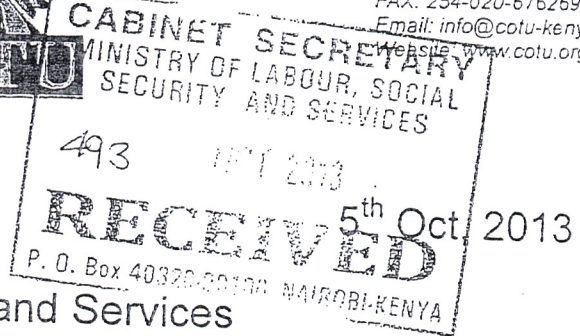
Chairman - General
Rajab W. Mwondi, MBS

Secretary - General
Francis Atwoli, MBS

Treasurer - General
Cornelius Ogutu Nyang'un



SOLIDARITY BUILDING
DIGO ROAD
P.O. BOX 13000 CODE 00200
NAIROBI - KENYA
TELEPHONE: 6761375
& 6761377
FAX: 254-020-6762695
Email: info@cotu-kenya.org
Website: www.cotu.org



Our Ref:.....

Hon. Kazungu Kambi
Cabinet Secretary
Ministry of Labour, Social Security and Services
P.O. Box 40326-00100
NAIROBI

Dear Hon. Kazungu,

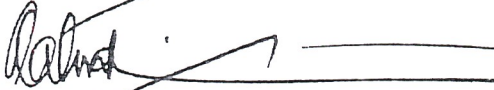
**RE: PROPOSED AMENDMENTS TO THE NATIONAL SOCIAL
SECURITY FUND BILL, PART III N.S.S.F BOARD OF TRUSTEES
SECTION 6 DI, D2 2013**

D.1 EMPLOYERS' REPRESENTATIVE

*'Two persons, one of whom shall be of either gender with **knowledge and experience in matter relating to employers** shall be appointed after nomination by the most representative employer's organization in Kenya'.*

D.2 EMPLOYEES REPRESENTATIVE:

*'Two persons, one of whom shall be of either gender with **knowledge and experience in matter relating to workers** shall be appointed after nomination by the most representative workers' organization in Kenya'.*


Francis Atwoli, EBS, MBS
SECRETARY GENERAL

Deputy Secretary -General:
1st. Vice Chairman :
2nd Vice Chairman :

George M. Muchai, MBS
Rev: Joel K. Chebii, OGW
Francis Murage

1st Assistant Secretary -General:
2nd Assistant Secretary -General:
Deputy Treasurer General:

Benson Okwaro
Carolyn C. Rutto
Rebecca Nyathogora

National Social Security Fund Bill 2013 (NSSF Bill 2013)

This position paper is prepared by Kenya Private Sector Alliance (KEPSA) on behalf of:

- Federation of Kenya Employers (FKE)
- Association of Retirement Benefits Schemes (ARBS)
- Association of Kenya Insurers (AKI)
- Association of Pensions Administrators of Kenya (APAK)
- Local Authorities Pensions Trust (LAPTRUST)
- Kenya Association of Manufacturers (KAM)
- Kenya Bankers' Association (KBA)
- (jointly referred to as the Principals)

The Principals affirm their full support for the reform of National Social Security Fund with the aim of creating a retirement benefits scheme capable of delivering value to members and for transformation into a pension fund. We support the restructuring and transformation of NSSF and believe that the spirit of the Bill is good. The main challenge would relate to implementation because the Bill, in its present form, will not achieve and realize its objectives.

The Principals have reviewed the NSSF Bill 2013 and have, with assistance from KEPSA prepared this position paper setting out

- (a) Areas for improvement of the Bill
- (b) Areas for enhancement of the overall proposal to strengthen governance And value delivery

Identification of issue(s)	Provision in NSSF Bill 2013	Analysis of problem with the provision	Proposed remedy/amendment
Fourth Schedule Reference Scheme Test		There is a need to ensure "contracting-out" within the independent competence of the Retirement Benefits Authority.	<p>Partial contracting out is in order. The reference scheme test should be amended to provide for a transition period</p> <p>Provide clarification that the prescribed requirements will be set out by RBA</p> <p>Correct error on section 1(c) to make reference to compliance with sub-section (2), (3) and (4).</p> <p>Under Section 5 remove reference to "cabinet secretary" to ensure regulations on "contracting-out"</p>

	<p>“Reference Scheme Test” means the test of scheme quality which schemes have to meet in order to contract out of the Pension as described in the Fourth Schedule hereto;</p>	<p>“Reference Scheme Test” insert the word Fund after Pension.</p>	<p>to be set by the Authority. Proposed definition of reference scheme test: “Reference Scheme Test” means the test of scheme quality which schemes have to meet in order to contract out of the Pension Fund as described in the Fourth Schedule hereto.”</p>
Third Schedule			<p>The title of the table should be amended to refer to tier I and tier II contributions</p>
Definitions	<p>Section 2: Definitions “Contract of service” is defined as “an agreement, whether entered into orally or in writing, and whether express or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship or indentured learnership”.</p>	<p>While the inclusion of apprenticeships etc is to some extent modified by exclusions in the definition of employee which excludes a person who “(i) is undergoing full time instruction in a school, or any such place of education or training as may be prescribed for the purposes of this definition, or who is an apprentice; and (ii) is not in receipt of wages which provide him wholly or substantially with a livelihood” it is not clear if it goes far enough. This provision could serve to discourage internships</p>	<p>Proposed definition of Contract of service: “Contract of service” means an agreement, whether entered into orally or in writing, and whether express or implied, to employ or to serve as an employee for a period of time, excluding a contract of apprenticeship or indentured learnership which has a term of less than 12 months”.</p>
	<p>“Employee” includes a person who is “ordinarily resident in Kenya and is employed outside Kenya (or partly in and partly outside Kenya) under a contract of service entered into with an employer in who resides in or has a place of business in Kenya”.</p>	<p>Most employees of Kenya companies who go to work in subsidiaries/associates outside Kenya are on secondment and remain employees of the Kenya company. However they are obliged by the laws of the host country to contribute to that country’s State Scheme.</p>	<p>The Bill should be enclosed to provide that: (a) Reciprocal Arrangements (section 64) reflect harmonisation between the NSSF and the State Scheme of the “host country” . (b) For transitional arrangements to cover situations where Reciprocal Arrangements are not yet in place to avoid liability for contributing to both Kenya and host country schemes.</p>

<p>"Interest" is defined as "in relation to each Member, the investment income credited to the accounts of individual members at such rates the Board may, in consultation with the Actuary or such other qualified person, determine, in their reasonable discretion from time to time declare, at least annually, having regard to the income on the Fund's assets".</p> <p>Invalidity benefits is defined as "the invalidity benefit payable under section 38 and section 44"</p> <p>"Reference Scheme Test" means the test of scheme quality which schemes have to meet in order to contract out of the Pension as described in the Fourth Schedule hereto;</p> <p>"Survivor's pension" means the benefit granted under section 37 and section 43;</p>	<p>The wording needs re-drafting the word "and" after "determine"</p> <p>"Invalidity Benefit" should include a definition of Invalidity Pension to be consistent with Section 38</p> <p>"Reference Scheme Test" insert the word Fund after Pension.</p> <p>"Survivor's pension" should include a definition of Survivors Benefit to be consistent with Section 43</p>	<p>Proposed definition of Interest:</p> <p>"interest means in relation to each Member, the investment income credited to the accounts of individual members at such rates the Board may, in consultation with the Actuary or such other qualified person, determine and, in their reasonable discretion from time to time declare, at least annually, having regard to the income on the Fund's assets".</p> <p>Proposed definitions:</p> <p>Invalidity Benefit means the invalidity benefit payable under section 44</p> <p>Invalidity Pension means the invalidity pension payable under section 38</p> <p>Proposed definition of reference scheme test:</p> <p>"Reference Scheme Test" means the test of scheme quality which schemes have to meet in order to contract out of the Pension Fund as described in the Fourth Schedule hereto;"</p> <p>Survivor's Benefit means the survivor's benefit payable under section 43</p> <p>Survivor's Pension means the survivor's pension payable under section 37</p> <p>Definition of "National Average Earnings" should be</p>
---	--	--

		<p>On the definition of "Tier 1 Pension Fund Credit", it is important to remove ambiguity on the source of funding of this benefit.</p>	<p>amended to remove the wording 'per employee' New proposed definition reads: "National Average Earnings means for each financial year, the average wage earnings as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year"</p> <p>Definition of "Tier 1 Pension Fund Credit" to include wording "less deductions up to a maximum of 2 per cent of Tier 1" and to include "funeral grant" benefit. New proposed definition reads: "Tier 1 Pension Fund Credit" means in relation to each pension Fund member, the portion of the Pension Fund credit at any particular date equal to the aggregate of the Tier 1 Contributions by and in respect of the Member less deduction up to a maximum of 2 per cent for covering the estimated annual cost of the minimum benefits on death, disability and funeral grant with interest thereon"</p> <p>Definition for invalidity benefits to be provide that the benefit will be introduced subject to a five year transition period. New proposed definition reads: "Invalidity benefit" means the invalidity benefit subject to a five-year transition period and payable under section 38 and section 44</p> <p>Definition of "Wages" includes <i>fixed basic wage or salary plus non-discretionary housing and other fixed allowances but excludes any fluctuating emoluments</i></p>
--	--	---	--

<p>Transitional arrangements (include clause)</p>			<p>Proposed that specific transitional arrangements should be provided on:</p> <ul style="list-style-type: none"> - amendments to existing occupational schemes rules to allow for protected rights (benefits) - exempt schemes to maintain their status - a transition period for a minimum of 365 days from commencement of NSSF Act, 2013 gazettement for Schemes that apply under Fourth Schedule. - Transitional provisions needed to cover the period until reciprocal agreements are effective (Section 64)
<p>Powers of the Cabinet Secretary</p>	<p>Sections 47, Section 26(d), Section 34(2), Fourth Schedule</p>		<p>Remove discretionary powers to the Cabinet Secretary to</p> <ul style="list-style-type: none"> - create new benefits under Section 47 and instead, make creation of new benefits subject to the RBA and approval by parliament. New benefits but must be within the 2 per cent of Tier I contributions - regulation for opting out under the Fourth Schedule Section 5(5) should be made by the RBA only and not the Cabinet Secretary - Section 26(d) on making regulations for voluntary registration should be under the RBA and not the Cabinet Secretary - Recommendations on additional benefits under Section 34(2), should be made to the RBA and subject to ratification by Parliament - The power to make regulations for purposes of carrying out objects and purposes of the Act under Section 68(1) should vest in the RBA
<p>Memorandum of Objects</p>	<p>"The enactment of this Bill shall not occasion additional expenditure of the exchequer"</p>	<p>The proposed Act provides for all investment and other income of the Fund to be exempt from all tax and for benefits</p>	<p>"The enactment of this Bill shall occasion additional expenditure of the exchequer which shall be drawn from the Consolidated Fund"</p>

<p>Establishment of the Fund and supervision by RBA</p>	<p>Section 3. (1) "There is established a fund to be known as the National Social Security Fund which shall be vested in, operated and managed by the Board."</p> <p>Section 71 "The requirements of this act are in addition to the requirements imposed by the Retirement Benefits Act."</p>	<p>payable to be tax-exempt.</p> <p>The veracity of this provision is open to question.</p> <p>Section 3(4) of NSSF Bill 2012 contained clear statement that "The Fund is subject to the provisions of the Retirement Benefits Act [Cap. 197] as amended from time to time and shall be operated and managed by the Board in accordance with the Trustee Act [Cap. 167]." It is worrying that this fairly clear provision for supervision by RBA has been removed from Clause 3 of the NSSF Bill 2013.</p>	<p>Amended Section 3 (1): "There is established a fund to be known as the National Social Security Fund which shall be vested in, operated and managed by the Board and subject to the Provisions of the Retirement Benefits Act and Regulations as amended from time to time and shall be subject to supervision by the Authority"</p>
<p>Appointment & Qualification of Trustees</p>	<p>(i) Section 6(d)</p>	<p>The bill has removed the institutional representation and the tripartite nature of the NSSF board.</p> <p>The fact that the Board of Trustees will be appointed by the Cabinet Secretary raises governance issues since board members should ideally (and to comply with RBA Regulations) draw representation from entities representing contributors.</p> <p>There is concern over the lack of clarity on the nomination process and the blanket powers given to the minister to pick and choose. The Bill should specifically provide for two nominees by the most representative Federation of Employers to represent the private sector. This will ensure institutional</p>	<p>Section 6(d) needs to include the following:</p> <ul style="list-style-type: none"> • The RBA shall certify and vet nominees to the board. • nominees shall comply with the provisions on integrity under Chapter 6 of the Constitution of Kenya • change designation of Managing Trustee to Chief Executive Officer. The CEO will have no voting rights and shall not be a trustee. • Sub-clause 6 (d) (ii) should be amended to read "two persons nominated by the most representative Federation of Employers by virtue of their knowledge and experience to represent employers in Kenya."

		<p>representation.</p> <p>The maximum number of Trustees is 9. 6(d) provides for 2 (PSSs) + 2(ER reps) + 2(EE reps) + 3=9 so the Managing Trustee cannot be a BoT member. It is preferable that the MT should only be in attendance in his designation as CEO. While the skills/experience of the 7 members referred to in (d)(i),(ii),(iii) are outlined it is preferable that minimum educational/professional qualifications and experience should be legislated as for the minimum qualification of the Managing Trustee under Section 15(7). The criteria for appointment are open hence giving the Cabinet Secretary powers to unilaterally decide on appointments and qualifications. This is not desirable.</p> <p>Compliance with provisions of Chapter 6 of the Constitution also should be a requirement and vetting by RBA or approval by the National Assembly is necessary. The appointment criteria fall short on accountability and transparency expectations.</p>	
Disqualification from appointment	Section 7: A person shall not be appointed a Trustee if the person	Previous versions included "fails to satisfy any of the professional and or academic qualifications as may be required under the Retirement Benefits Act".	Include provision: "fails to satisfy any of the professional and or academic qualifications as may be required by the Authority or prescribed under the Retirement Benefits Act".
Powers of Board relating to	Section 10(2)(g): Without prejudice to the generality of	This is not sufficiently specific – the word "may" implies an option rather than a	It is recommended that the word "may" should be replaced with "shall", the words "and the Retirement

investment	subsection 1, the Board may - (g) invest any funds of the Fund not immediately required for its purposes in the manner allowed by this Act;	requirement	Benefits Act" should be added after "by this Act" and that "purposes" be more clearly defined to read: Section 10(2)(g): <i>Without prejudice to the generality of subsection 1, the Board shall - (g) subject to the Provisions of the Act (RBA Act) invest any funds of the Fund not immediately required for the purpose of meeting benefits payments, operating expenses and other similar outgoings in the manner allowed by this Act and the Retirement Benefits Act;</i>
Remuneration of Board of Trustees	Section 13. reads: "(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 Board may determine (2) Remuneration and allowances payable under subsection (1) shall be subject to the approval of the Cabinet Secretary"	There is need for clear and accountable process of establishing board remuneration	Section 13 (2) (2) <i>Remuneration and allowances payable under subsection (1) shall be subject to the approval of the Cabinet Secretary and disclosure at the Annual General Meeting and annual financial statements".</i>
Managing Trustee	Section 15(3) reads: <i>The Managing Trustee shall be an ex-officio member and Secretary to the Board.</i> Section 15(5) reads: <i>"The Managing Trustee shall, unless prematurely terminated, serve for a term of six years and shall</i>	If the holder of this office is to be a trustee this provision is inconsistent with RBA Regulations. As indicated under Appointment of Trustees above, the Managing Trustee should not be a member of the BoT. This raises the question of job title – it is preferable to revert to the designation	Redraft Section 15 accordingly changing designation of Managing Trustee to Chief Executive Officer. The CEO should be appointed by the Board and while s/he sits in Board meetings, has no voting rights

	not be eligible for re-appointment".	Chief Executive Officer.	
The Old Provident Fund and other Funds	<p>Section 18(2) reads: <i>The Board shall retain and continue to operate the old Provident Fund previously operated under the now repealed National Social Security Fund exclusively for purposes specified under the Second Schedule</i></p>	<p>Important to understand the implications of retaining and continuing to operate the old Provident Fund operated under the repealed NSSF Act (Second Schedule) e.g. returns to members given the history on investment decisions; high ratio of operational costs etc.</p> <p>The main purpose here was to protect the assets of the New NSSF against claimants against the Old NSSF. It is not clear if the wording achieves this without raising complications relating to use of assets, allocation of investment income and operating costs etc.</p>	<p>Transitional arrangements need to be ascertained and in particular, on liabilities. The Second Schedule Section (2) (a) does not transfer liabilities of the Old Provident Fund to the new Fund. It is necessary, though, to create specific timelines for transition and ring-fencing of liabilities.</p> <p>There is need to include provision for separate custody, investment, statement of accounts and financial audit which should be separate for the three funds.</p>
Mandatory Membership including employees of the National & County Governments.	<p>Section 18(4) reads: <i>All persons who are subject to the provisions of the Employment Act and are eighteen years old or above and have not attained the pensionable age shall be members of the Pension Fund.</i></p> <p>Section 70(1) reads: <i>This Act applies to the Government—</i> <i>(a) as an employer and, consequent thereupon, for purposes of co-ordination and accommodation of public servants joining the Fund as members thereof and for dealing with any matter arising therefrom;</i></p>	<p>Section 18(4) makes it mandatory for all those in employment, other than self employment, to become members of the scheme.</p> <p>Section 70(1) inconsistent with Section 60 of the Public Service Superannuation Scheme Act, 2012 which removes the application of the NSSF Act from the employees of the Public Service or the employees of the Government</p>	<p>There is need for redrafting to ensure consistency with other related legislation.</p> <p>Transitional arrangements necessary to cover employees of the Public Service or the employees of the Government</p>

Mandatory Contributions to the fund.	Section 20	<ul style="list-style-type: none"> Employers and employees are required to contribute to the Fund at 6% each but there is no clarification on gratuity payment. There are many employers already making gratuity payment from negotiated Collective Bargaining Agreements (CBAs) An employee should be entitled to either gratuity negotiated under CBA or N.S.S.F but not both benefits. <p>It is already recognized in Employment Act, 2007 Section 35 (6) that the employer is obligated to pay gratuity/service pay where he is not making contributions to N.S.S.F</p> <p>The Bill has effectively scrapped the exempt status of certain persons who were hitherto classified as exempt persons.</p>	Add Section 20 (4) to read " where an employer is already paying gratuity, the payment shall be paid net of N.S.S.F Contributions".
Exempt Persons	Section 29 of the Bill provides for only 2 classes of exempt persons. <ul style="list-style-type: none"> Persons exempt under Int'l conventions Non residents not employed for more than 3 years. Previously exempt persons no-longer exempt		- exempt schemes to maintain their status in addition to those proposed under Section 29
Retirement Pension	The statement in Section 36(2) that "a member may elect" implies that the provision of a pension is optional. It is recommended to delete "may elect" and substituting with		Amend 36(2) and 36 (4) to replace word "may" with "shall"

	<p>"shall be entitled to receive".</p> <p>36(4) states that "a pension which becomes payable in terms of sub-section (2) may be purchased". The use of the word "may" suggests an option. It is recommended that the word "may" be replaced with "shall"</p> <p>Section 36 (6): Creates a requirement that a pension purchased from a Registered Insurer, " shall be subject to a minimum ten year guarantee period"</p>	<p>36(6)(b) et seq specifies a minimum ten year guarantee period shall apply to the pension. This is excessive and costly and there is need to shorten this 10 year guarantee period. A 5 years' guarantee would suffice.</p>	<p>Amend Section 36(6) to provide for a minimum guarantee period of 5 years</p>
<p>Survivor's and Invalidity benefits</p>	<p>Sections 37(2) & 38(3): Augmentation of Survivor's and Invalidity benefits</p>	<p>To conform to the "money purchase" principle of defined contribution retirement benefits provision, it is necessary to ensure that funding of benefits falls within the 2 per cent Tier 1 contribution. There is already provision for commutation of Trivial Pensions in 36(7)(c) and it is logical for the same provision to apply to Survivor and Invalidity Pensions</p>	<p>Include wording that the funding of augmentation benefits subject to the cap of 2 per cent under tier 1.</p>
<p>Medical Boards</p>	<p>Section 38(5) reads: <i>The Board shall appoint medical boards for the purposes of examining persons who have claims to benefits under this section and may-</i> (a) require any person who has</p>	<p>This is an unnecessary piece of bureaucracy which may be cumbersome and costly. It should be left to the trustees to accept or reject medical certificates from registered medical practitioners.</p>	<p>Amend Section 38(5), (6) to provide that the Fund should meet the cost of a second medical, where required, from its administration expenses</p>

	<p>a claim to any benefit under this section to submit to an examination by a medical board.</p> <p>(b) prescribe the procedure for medical boards, guidelines to be followed and reports to be prepared..</p>	
<p>Monies of the Fund and investment thereof.</p>	<p>The Act does not categorically make the NSSF subject to RBA. Previous sections in earlier drafts that made such reference were amended (e.g. section 21). This appears to be a drafting oversight? How will this be enforced? We are aware that the scheme currently is not complying with the investment provisions of the Retirement Benefits Authority. This is not sufficiently specific in relation to the appointment of professional fund managers and custodians. It is also not clear if this applies to the old NSSF as well as the new Fund.</p>	<p>Section 49(2) reads: <i>"The Fund shall invest any of its funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act"</i>.</p>
<p>Administration Costs</p>	<p>This clause caps administration expenses at 2 % of the total Fund assets for year 1 reducing to 1.5% in the sixth year following the commencement date. Even allowing for the fact that NSSF has higher overheads than occupational schemes, relating to its countrywide coverage etc, 2% of Fund Value is too high for costs of administration and the targeted reduction to 1.5% after 6 years is not sufficiently ambitious, particularly bearing in mind that asset values should</p>	<p>Section 50: (1) <i>There shall be paid out of the Fund expenses not exceeding 2 % of the total Fund assets for the administration of the Fund;</i></p> <p>(2) <i>The percentage provided in subsection(1) shall apply in the first year from the commencement date and the Board shall thereafter take necessary measures to ensure</i></p>
		<p>This section should be amended to replace "any" with "all"</p> <p><i>"The Fund shall, subject to the provisions of the RBA Act invest all of its funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act"</i>.</p>
	<p>It is suggested that administration costs be capped at 1.5% by year 3 and 1% by year 6</p>	

Accounts and Audit.	that the percentage reduces and is capped at 1.5% in the sixth year following the commencement date.	grow strongly with contributions at the levels envisaged, hopefully good investment income and increased coverage.	
Section 51(4)		<p>The time period within which Audited reports should be published is not very clear.</p> <p>What is the time frame for the Auditor General or Private Audit firm to complete the work?</p> <p>The period for audits to be completed should comply with RBA Regulations. It is appreciated that it may well not be possible to complete the audit exercise within 6 months.</p>	<p>The Bill should be clear that the Audited accounts should be published in the media within six months of the end of each financial year. This should include a report from the actuary, disclosure on board remuneration and investment report.</p>



APAK
Association of Pension Administrators of Kenya

**ASSOCIATION OF PENSION ADMINISTRATORS OF
KENYA
(APAK)**

MEMORANDUM ON THE NSSF BILL 2013

**SUBMITTED TO:-
THE CHAIRPERSON, PARLIAMENTARY COMMITTEE ON
LABOUR**

THRU'

THE CLERK OF THE NATIONAL ASSEMBLY

OCTOBER 10, 2013

We, the undermentioned members of the Association of Pension Administrators of Kenya (**APAK**) hereby submit this memorandum to the Clerk of the National Assembly, on the National Social Security Pension Trust Bill, 2012 for consideration by the Parliamentary Committee on Labour & Social Welfare.

1. **CENTRAL BANK OF KENYA PENSION SCHEME**
2. **KENYA PIPELINE PENSION SCHEMES**
3. **KENYA PIPELINE PENSION SCHEMES**
4. **KPLC STAFF RETIREMENT BENEFITS SCHEME**
5. **KPA PENSION SCHEME**
6. **KPA PENSION SCHEME**
7. **KRA PENSION SCHEME**
8. **KRA PENSION SCHEME**
9. **TELEPOSTA PENSION SCHEME**
10. **MASENO UNIVERSITY RBS**
11. **NSIS STAFF SUPERANNUATION SCHEME**
12. **NSIS STAFF SUPERANNUATION SCHEME**
13. **LOCAL AUTHORITIES PENSIONS TRUST**

EXECUTIVE SUMMARY

The Association of Pension Administrators of Kenya (APAK) is the premier association representing pension administrators in Kenya. It is mandated to promote and advocate for the welfare and promote better standards within the pensions administration sector. National Social Security Fund ("the Nssf") is a statutory provident fund established under the NSSF Act Cap 258 which was enacted on the 23rd November 1965. It was established and intended to be merely a 1st Pillar scheme offering **basic social security to complement other occupational based social welfare programmes.**

Whereas we as individual and collective members of APAK **support** the noble initiative of converting the NSSF into a Pension scheme, and welcome the good provisions contained in the Bill, **we remain apprehensive that certain ill drafted provisions in the Bill are certain to erode any anticipated gains and ultimately hurt the industry.**

It is imperative that any Bill approved by the legislature as a matter of principle and national interest, incorporate a complete overhaul to the existing NSSF framework to strengthen its structures, improve efficiency and capacity as well as allow complete opting out for all persons who are members of a scheme registered and under the oversight of the Retirement Benefits Authority under the Retirement Benefits Act No. 3 of 1997. **NSSF should co-exist alongside and not at the cost of all other 1,216 occupational retirement schemes**

Sadly, the Bill in its current form does not address these concerns and it only serves to increase the wage bill, overtax the employers/workers compounding the effects of the VAT Act 2013 and may likely lead to a political backlash from the electorate.

It is therefore imperative that the legislature subjects the Bill to scrutiny so as to address these concerns as it is evident that the Bill has numerous issues that need to be addressed key amongst them include:-

- a) **Inconsistencies with various other laws** as well as the constitution; (e.g the Public Service Superannuation Scheme Act No. 8 of 2012, The RBA Act No. 3 of 1997, the County Governments Act No. 17 of 2012 amongst others)
- b) Mandatory enrolment into NSSF of **ALL** persons (including the Government) in Kenya **without regard to employees already enrolled in registered retirement benefits schemes;**
- c) Unaffordable and duplicated contribution rates (at 12%) which shall be **an additional wage burden and a huge strain on already over taxed employers/workers** especially those already contributing to occupational retirement schemes;
- d) Unclear, vague and overly broad contracting out procedures;
- e) Weaknesses in the Board structure and inadequate minimum qualifications of members of the Board.

These concerns should be viewed as against the industry statistics. According to the Retirement Benefits Authority's 2012 Annual Report, the value of the retirement benefits sector was estimated at Kshs. 522.6 billion as at June 2012. Out of this **only Kshs.110.9 billion is held by National Social Security Fund (NSSF) while the remainder of Kshs. 412 Billion is in the possession of occupational schemes and held by registered fund managers.** If the Bill is enacted with its current flaws, it shall automatically lead to a collapse of all other schemes and be likened to the proverbial killing of the goose that lays the golden egg!

Attached, please find a tabular representation of the associations' concerns as well a copy of the legal opinion from our advocates in support of our memoranda.

1.0 CASE FOR REFORM

The Association is alive to the urgent need to clean up the legacy mismanagement and corporate governance weaknesses within the NSSF as an institution and therefore welcomes most of the proposed reforms.

However, APAK notes that the Bill as drafted does not address some of the systemic challenges facing the fund and it is therefore necessary that the Bill be amended accordingly to address these issues.

It is therefore important that the NSSF Board first addresses the key administrative and governance issues within the organization prior to implementing any radical changes. Further, the restructured scheme ought to embrace a competitive market driven economy and not adopt monopolistic tendencies contrary to the law.

2.0 WEAKNESSES OF THE PROPOSED BILL

The Association is concerned that Bill has several weaknesses which if passed without being amended, risk creating greater confusion in the retirement benefits sector.

Of great importance to APAK is **the Bill's conflict or inconsistency with certain provisions of the Constitution of Kenya 2010 as well as various other Acts of Parliament such as the Retirement Benefits Act No.3 of 1997, the Public Service Superannuation Act No.8 of 2012 and the Competitions Act, Cap 12.**

Further, the Bill derogates from the fundamental concept of Devolution which is the hallmark of the 2010 Constitution. It is imperative that the proposed Bill undergoes a major overhaul and is aligned to the Constitution, the Retirement Benefits Authority and other host of relevant statutes as well as receives proper stakeholder input from the Public, RBA, AKI, APAK, Kenya Law Reform Commission, CIC, Public Service Commission and others before presentation to the National Assembly.

a) **Mandatory Enrolment into the New Pension Scheme**

The Bill as drafted, advocates for a **mandatory registration of ALL employees in NSSF**. This shall lead to a violation of the constitutionally enshrined freedom of choice as well as contravene pre-existing labour agreements protected under **Art. 41 of the constitution as well as in the Labour Relations Act No. 14 of 2007**. Consequently, if unattended, this shall expose the government to numerous complaints, labour disputes/strikes and possible litigation as was witnessed during the attempts to legislate on new NHIF rates.

The Bill under **S. 2 adopts a wide definition of the terms employee/employer**. Consequently, this compels **every person in any** form of employment (including the government and its permanent & pensionable staff) to join the scheme. Shall this proposed plan be affected, then, all employers, including the government shall be forced to **make double contributions** in respect of their pension savings and consequently lead to an inflated wage bill and additional expenditure by the exchequer.

Further, as the government has been listed as an employer, it shall face an increased wage burden on unbudgeted expenditure as it shall be forced to contribute **TWICE**. (i.e., to its Public Service Superannuation scheme as well as to NSSF). An increased wage bill shall result in less development expenditure and thereby reneging on the Government's development projects.

In order to remedy this problem, it is proposed that the Bill at S. 18 be amended to provide that all persons who are employed within the country shall join a retirement benefits scheme registered and approved by the Retirement Benefits Authority. This shall either be the NSSF or any other occupational retirement scheme and shall help achieve the intended goal enshrined under Art. 43 of the Constitution without unduly creating a constitutional, fiscal and political crisis.

This approach will also be in line with the models adopted by other East African States within the **East African Common Market Protocol** who have liberalized their pension sector with the 1st Pillar Schemes offering just but a safety net for the vulnerable in the society. Tanzania has adopted a similar approach where the NSSF Tanzania is under the supervision and regulation of the Tanzania Regulatory Law and operates as just but one of the many occupational

retirement benefit schemes and competes with other statutory and non-statutory funds.

Whereas a contracting out provision if relevant, the Association is concerned that this provision imposes **vague and undocumented requirements** to be met by the scheme/employers prior to approval for contracting out. The conditions are also **overly broad** and under the 4th Schedule, it not certain who shall issue the "*prescribed requirements*" and that "*the scheme should comply with any prescribed requirements*"

b) Unreasonable 'Contracting out procedures'

S. 21 (2) (a) of the Bill attempts to provide for an option for employers contributing to a registered scheme to contract out of Tier II NSSF contributions. Whereas an option to opt out is welcome and necessary, the procedure as laid down in the reference scheme test is cumbersome, vague and too broad.

The Bill does not take into account employers who are already sponsors of an occupational retirement scheme. The Bill is silent as to whether they shall now hold all contributions in the interim period prior to RBA/KRA/Cabinet Secretary's approval or otherwise. Further, the total 90 day period awaiting approval to contract is too punitive to employers especially in DB schemes as it denies them investment income during this period.

S. 21(2)(b) & 4th Schedule 1(f), (5) the Bill provides that the opt-out may be exercised subject to a written request setting out details of the contracted out scheme "*as the Authority shall from time to time require from time to time*"... and that "*the scheme should comply with any prescribed requirements*". The Cabinet Secretary shall, in consultation with the Authority, make regulations for the proper management of contracting-out, including the manner of making applications to the Authority by Reference Schemes and for contracting-out by employers and the communication of approval or otherwise to such scheme or employer.

Moreover, this provision seeks to usurp the statutory powers of the RBA to determine the procedures and requirements to contract out and vest them with

the Cabinet Secretary, Social Services. It therefore complicates the entire process by having multiplicity of requirements, procedures and authorities.

This would amount to a violation of **Art. 47 of the 2010 Constitution** as it contravenes the right to **"Every person to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair"**

It is proposed by the Association that Schemes (preferably through their scheme administrators) and not employers should make the application to R.B.A for the approval to ensure efficiency, reduce bottlenecks and safeguard accrued benefits of members since most employers have never engaged directly with the RBA but all administrators have a working relationship with the RBA. Further, the Reference Scheme Test under the 4th Schedule should be very narrow, clear and concise as to what the requirements for approval are.

The association recommends that the RBA Act No. 3 of 1997 be amended to provide that all applications ought to be heard and determined by the RBA as the independent oversight authority. This will avoid bias, self interests by NSSF and procedural unfairness.

Indeed, **the Centre for Governance and Development (CGD) in its digest strongly recommends that employers with registered occupational retirement benefit schemes should be permitted to fully opt out of the Trust (NSSF)** (*see attached digest*)

c) Increased Contribution Rates

The draft Bill at S.20 seeks to increase the contribution rates from the current Kshs.400 to 12% of the Member's salary (*at 6% payable by the employer and 6% by the employee.*) Whereas this may eventually translate to enhanced benefits, (assuming transparent appointment of investment managers of scheme funds) the association is concerned that with the current high administrative costs, the increase may not be justifiable.

Further, a high rate such as the proposed **12% is too costly and unaffordable** and will eventually edge out all other occupational retirement schemes. In addition to increasing cost of labour in the country which will seriously discourage any meaningful investment in the country!

The Government of Kenya, through Treasury Circular No.18/2010 dated 24th November 2010 (copy annexed) directed all public service retirement benefits schemes that employer's contributions shall not exceed two (2) times the employee's contribution rates or 20% whichever is lower.

Further, the circular provides that Pensionable Emoluments (*salary used to calculate pension*) must be defined as basic salary (*excluding all allowances*). The Bill uses gross salary as opposed to a basic salary meaning that the 6% will eventually be higher than had it been pegged on the basic pay alone. The Bill ought to be amended and harmonized with the policy circular to avoid inconsistencies.

The Association is greatly worried that employers (*such as county governments*) who currently remit 15% of their employees' pensionable emoluments if forced to join the new NSSF and contribute a further 6% shall not only have an unbearable financial burden of contributing at the rate of 21% but shall be contravening the express government's direction if they do! **This may not be sustainable and something has to give. Either the NSSF has to reduce to a basic contribution or the Occupational (Employer Schemes) just wind-up.**

The import of such arbitrary increase in contribution rates is that:-

- i. It will lead to violation of the government directive vide Treasury Circular No.18/2010
- ii. Employers will not be motivated to provide additional contributions to their occupational retirement benefit schemes due to the high costs and mandatory nature of the proposed NSSF;
- iii. Imminent collapse of occupational retirement benefits schemes due to the high costs of contributions.

d) Risk of Creating a Monopoly/Collapse of all Other 1,216 Schemes

As indicated above, approximately registered 1,217 retirement benefits schemes currently exist in the country.

According to the Retirement Benefits Authority's 2012 Annual Report, the value of the retirement benefits sector was estimated at Kshs. 522.6 billion as at June

2012. Out of this only Kshs.110.9 billion is held by National Social Security Fund (NSSF) while the remainder of Kshs. 412 Billion is in the possession of occupational schemes and held by registered fund managers. If the Bill is enacted with its current flaws, it shall automatically lead to a collapse of all other schemes and be likened to the proverbial killing of the goose that lays the golden egg!

The future of such voluntary schemes would be in doubt as the burden of double contributions would be too high for employers and employees. Most other schemes would therefore collapse and or be wound up leading to massive job losses and risk a collapse of the financial sector as pension funds have been an important source of funds to the national economy.

The proposed Bill would therefore create a monopoly and lead to unfair market practices against the provisions of the Competitions Act, Cap 12 of the Laws of Kenya. Eventually, this would jeopardize the right to Social Security as guaranteed by the Constitution.

It is therefore imperative that in order to foster productive competition in the social security market place, the Bill ought to be amended to avoid creating a monopoly in the market

e) Conflict with Public Service Superannuation Scheme Act No.8 of 2012

Section 60 of the Public Service Superannuation Scheme Act No.8 of 2012 which amends S.45 of the NSSF Act Cap 258 by inserting S.43 (1A) **expressly prohibits the application of the NSSF Act on persons in the employment of the "Public Service"**. However, the NSSF Bill by revoking the Act but retaining the scheme to which it enlists the employees in the public service as members, attempts to exercise an illegality and contravene the law by disregarding the intention of the legislature in the express provisions of S.45 (1A) of the NSSF Act which clearly in no uncertain terms ousts the jurisdiction of the NSSF Act and Fund from applying on officers in the employment of the Public Service Commission.

f) Good Governance and the Application of The Retirement Benefits Authority (RBA)

The Retirement Benefits Authority (RBA) was established by the RBA Act No.3 of 1997 and is mandated to:

- Regulate and supervise the establishment and management of retirement benefits schemes.
- Protect the interest of members and sponsors of retirement benefits schemes.
- Promote the development of the retirement benefits industry.

The RBA is therefore the oversight authority established by Government to oversee the operations of all retirement benefits schemes in the country in order to ensure proper and effective corporate governance.

However, the Bill at S. 71 provides that "*the requirements of the Act are in addition to the requirement of the RBA Act*". This is an attempt to oust the application of the Retirement Benefits Act as well as establish the NSSF as a body not subject to the scrutiny of the Industry regulator. This is an illegality as funds held in the scheme are member's funds and by not being subject to oversight and supervision of the RBA the Bill opens a portal for mismanagement of scheme funds contrary to the fiduciary responsibility on Trustees.

The association welcomes the media reports on proposals by the Task Force, State Corporations recommending that the NSSF be immediately brought within the ambit of the RBA . **The bill should be amended to provide that the new scheme shall be fully compliant with the provisions of RBA Act.**

Further, to ensure that the scheme funds are prudently invested and managed, the Bill should be amended to provide for competitive recruitment of its top management and Trustees as well as set a threshold required for persons to be appointed Trustees as they are public officers. The requirements of Chapter on Leadership and Integrity ought to apply to such persons.

g) Deregistration of Exempt Persons

The Bill in its proposed 1st Schedule (Exempt Persons) seeks to illegally alter the 2nd Schedule (Exempt Persons) of the NSSF Act Cap 258 and under S.2 of the Second Schedule, compel persons who were exempt from membership by law to register with the new scheme. This de-registration of exempt persons is illegal since the NSSF Act Cap 258 in 1965 was cognizant of already existing pension schemes under the diverse legal frameworks.

These *inter alia* include:

- a) Persons in a scheme subject to the Pensions Act
- b) Persons in the Service of any University or College superannuation scheme
- c) Exempted persons under any international convention
- d) Non- Civilian members of the armed forces, Kenya Police Force, Prison Services, National Youth Service

The attempt by the management of NSSF to arbitrarily take away the exempt status of these groups and compel such persons to register as members is inconsistent with **Articles 47(1) of the Constitution**. It is important to note that majority of these groups were either exempted by a preceding Act of Parliament or have superior occupational retirement benefit schemes. Compelling them to join the fund jeopardizes their membership and vested benefits enjoyed in the superior scheme and ultimately violates **Article 43(1) (e) of the Constitution** which provides that every person has the right to social security.


Pursuant to the foregoing, it is our humble submission that NSSF at the earliest possible time considers the concerns of the Association of Pension Administrators of Kenya on behalf of the key players and stakeholders in the industry noting to promote the spirit of the Constitution of Kenya 2010. It is therefore our humble submission that the proposed Bill be amended accordingly taking into consideration the concerns raised herein.

CONCLUSION

To this end, APAK humbly submits as follows:-

1. The Bill ought to embrace the existence of the RBA Act No 3 of 1997 hence any mandatory pension scheme should be entrenched in and regulated by the RBA Act and not the Bill as proposed;
2. Additionally, the proposed contribution rates of 12% under the Bill would in effect result in the provision of inferior benefits to members of occupational retirement benefits schemes and this would result in a violation of Art 43 of the Constitution.
3. Whilst APAK supports the envisaged NSSF, it should however, in the interest of other existing retirement benefits schemes **NOT** be allowed to exercise monopolistic tendencies. NSSF should therefore exist in competition alongside other retirement benefit schemes; consequently, the Bill should be amended to allow an automatic exemption of all persons who are already registered in a registered retirement benefits scheme approved by the RBA.
4. There is need to engage ALL the stakeholders in the pensions industry/sector so as to allow them air their views on the Bill and have their contributions incorporated in the Bill. This is in line with good Corporate Governance and industry best practice.
5. It is further opined that consequent to the Bill, the RBA Act No.3 of 1997 ought to be amended to provide that all employers must enlist their employees in a retirement benefit scheme of their choice or the NSSF. This is in line with international best practice industry standards. Consequently, the Retirement Benefits Authority (RBA) should be mandated to **FULLY** oversee the activities of NSSF in accordance with the provisions of the RBA Act;

ASSOCIATION OF PENSIONS ADMINISTRATORS OF KENYA (APAK)


H. K. KILI, OGW
CHAIRMAN, APAK

No.	Issues	Provision in NSSF BILL, 2013	Problem	Remedy
1	<p>"Contracting -out by employer"</p> <ul style="list-style-type: none"> ✓ 60+ Days waiting period. ✓ Broad Requirements ✓ Unclear regulator ✓ Employers and not Schemes to apply. ✓ KRA Approval for Income Tax Exemption ✓ Cabinet secretary (Social Security) making regulations for contracting out! 	<p>S. 21(2) (a) The Bill provides that "<i>the employer shall make written request of its intention to opt out to the Authority at least 60 days before opting to contract-out</i>"...</p>	<p>✓ The Bill does not take into account employers who are already sponsors of an occupational retirement scheme. The Bill is silent as to whether they shall now hold all contributions in the interim period prior to RBA approval or otherwise.</p> <p>✓ The total 90 day period awaiting approval to contract is too punitive to employers especially in DB schemes as it denies them investment income during this period.</p>	<p>✓ The provision should be amended to allow employers who are already sponsors to continue making remittances pending approval to contract out.</p> <p>✓ The waiting period should be reduced to a maximum of 30 days so as to safeguard the members' benefits by minimizing the loss of investment income period.</p>
		<p>S. 21(2)(b) & 4th Schedule 1(f), (5) The Bill provides that the opt-out may be exercised subject to a written request setting out details of the contracted out scheme "as the Authority shall from time to time require from time to time" ... and that "the scheme should</p>	<p>✓ This provision imposes vague and undocumented requirements to be met by the scheme prior to approval for contracting out.</p> <p>✓ The conditions are also overly broad and under the 4th Schedule, it not certain who shall issue the "<i>prescribed requirements</i>"</p> <p>✓ This provision seeks to take</p>	<p>✓ Schemes and not employers should make the application to R.B.A for the approval to ensure efficiency, reduce bottlenecks and safeguard accrued benefits of members.</p> <p>✓ The Reference Scheme Test under the 4th Schedule should be very narrow, clear and concise as to what the</p>

	<p>comply with any prescribed requirements"</p> <p>✓ "The Cabinet Secretary shall, in consultation with the Authority, make regulations for the proper management of contracting-out, including the manner of making applications to the Authority by Reference Schemes and for contracting-out by employers and the communication of approval or otherwise to such scheme or employer."</p>	<p>away the powers of the RBA to determine the procedures and requirements to contract out and vest them with the Cabinet Secretary, Social Services. It therefore complicates the entire process by having multiplicity of requirements, procedures and authorities.</p>	<p>requirements for approval are.</p> <p>✓ This test should be anchored under the RBA Act and NOT the NSSF Bill to ensure partiality and Part 5 of the 4th Schedule should be deleted and instead these powers granted to the RBA under Cap 197.</p>
2	<p>Tax Exemption.</p> <p>S.66(1) The Fund shall not be liable to pay income tax on its income and no tax by whatever name called shall be payable in respect of any property vested in the Fund.</p>	<p>✓ The proposal seeks to grant NSSF undue advantage by making them exempt from paying ant land associated tax such as rates, land rent e.t.c. All other occupational retirement schemes investing in property do not have similar benefits.</p>	<p>✓ The provision should be deleted or made to apply across the board to all other schemes.</p>

<p>3</p> <p>Mandatory Membership including employees of the National & County Governments.</p> <ul style="list-style-type: none"> ✓ Inconsistency with other laws 	<p>S. 18(4), 70(1) + S. 2</p> <p>The Bill provides that <i>All persons who are subject to the provisions of the Employment Act and are eighteen-years old or above and have not attained the pensionable age shall be members of the Pension Fund.</i></p> <p>And Also includes the Government as an employer</p>	<p>The provision should be amended to comply with other existing legislations.</p>
<p>4</p> <p>Contribution Rates</p> <ul style="list-style-type: none"> ✓ Based on Pensionable earnings (Gross? / Basic + Any Allowances?) 	<p>S. 20 provides that an employer and employee shall contribute 6% of the employee's pensionable earnings each...</p>	<p>✓The Bill ought to be amended to clarify whether pensionable earnings includes allowances or not.</p> <ul style="list-style-type: none"> ✓A high rate such as the proposed 12% is too costly and unaffordable and will eventually edge out 2nd and 3rd pillar schemes.
<p>5</p> <p>Exempt Persons</p> <ul style="list-style-type: none"> ✓ Previously exempt persons no-longer exempt. 	<p>S. 29 of the Bill provides for 2 classes of exempt persons.</p> <ul style="list-style-type: none"> ➤ Persons exempt under Int'l conventions 	<p>✓There's need to retain the exempt status of certain classes of persons in recognition of already existing arrangements.</p> <p>The Bill has effectively scrapped the exempt status of certain persons who were hitherto classified as exempt persons.</p>

		<p>➤ Non residents not employed for more than 3 years.</p>		
6	Application of the RBA Act Cap 197	<p>S. 71 of the Bill provides that "the requirements of the Act are in addition to the requirement of the RBA Act"</p>	<p>✓ The marginal note to the provision indicates that the intention of the Bill is to subject it to the scrutiny and mandatory requirements of the RBA Act. However, the wording of S. 71 indicates that there is an intention to avert that where the two provisions conflict and make them supplemental provisions.</p>	
7	<p>Powers to Amend Act</p> <p>✓ Cabinet Secretary empowered to "review and Adapt the Act"</p>	<p>S. 26 (d) of the Bill seeks to grant the Cabinet Secretary powers "to review and adapt certain provisions of the Act"</p>	<p>✓ A member of the executive (Cabinet Secretary) cannot be granted powers bestowed to the Legislature to make laws or to amend substantial provisions of the Act or to make regulations that are inconsistent with the Act.</p>	<p>S. 26 (d) of the Act should be deleted</p>
8	Appointment & Qualification of Trustees	<p>S. 6 of the Bill proposes that the Cabinet Secretary shall appoint 6 persons to the Board under S. 6(d).</p>	<p>✓ However, their minimum qualifications and experience has not been legislated unlike the minimum qualification of the Managing Trustee under S. 15(7). The criteria of their appointment is open ended thereby giving the Cabinet</p>	<p>✓ The qualification and experience as members of the Board be also subject to S. 15(7) of the Bill</p>

			Secretary powers to unilaterally decide on their appointments and qualifications.	
--	--	--	---	--

PREFACE

Mr. Speaker Sir,

1. The Departmental Committee on Labour and Social Welfare is one of the Departmental Committees established under Standing Order No. 198 whose functions are *inter alia* to:
 - a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
 - b) study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;
 - c) study and review all legislation referred to it;
 - d) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
 - e) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
 - f) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation
2. The Committee is mandated to consider the following issues: on Labour; Trade Union Relations; Manpower or Human Resource Planning; Gender; Culture and Social Welfare; Youth, Children's Welfare; National Heritage and Sports.
3. In executing its mandate, the Committee oversees the following Ministries and Commission:
 - i. Ministry of Labour
 - ii. Ministry of State for Youth Affairs and Sports
 - iii. Ministry of State for Special Programmes
 - iv. Ministry of Gender and Children Development
 - v. Ministry of State for National Heritage and Culture; and
 - vi. National Gender and Equality Commission
4. The Committee Membership comprises of the following: -
 - i. The Hon. Sophia Abdi Noor, M.P. – Chairperson
 - ii. The Hon. Lenny Kivuti, M.P. – Vice-Chairperson
 - iii. The Hon. Najib Balala, M.P.
 - iv. The Hon. Charles Keter, M.P.
 - v. The Hon. Elijah Lagat, M.P.
 - vi. The Hon. Joseph Magwanga, M.P.
 - vii. The Hon. Alfred Odhiambo, M.P.
 - viii. The Hon. Pollyns Ochieng, M.P.

- ix. The Hon. Jackson K. Kiptanui, M.P.
- x. The Hon. Charles Nyamai, M.P.
- xi. The Hon. Clement Waibara, M.P.

Mr. Speaker Sir,

- 5 On the 3rd October 2012, in your communication, you informed the House that in a letter Ref. OP/CBA.3/75A dated 28th September 2012 from the Permanent Secretary, Secretary to the Cabinet and Acting Head of Public Service, the National Assembly had been advised that H. E. the President had in consultations with the Rt. Hon. Prime Minister nominated the following candidate to be considered for appointment as a Member to the National Gender and Equality Commission by the National Assembly pursuant to the provisions of Article 250 of the Constitution.

Mrs. Gumato Ukur Yatani - Member

Subsequently, you directed that the name and the accompanying Curriculum Vitae (CV) of the nominee together with the Report of the Selection Panel including the score sheet, be forwarded to the Departmental Committee on Labour and Social Welfare for consideration prior to approval by the House. Further, you directed that the Committee deliberates on the nominee and Tables its report on or before Tuesday, 16th October, 2012.

Following your communication, the Committee held a sitting on 9th October 2012 at 8.30 a.m. where the nominee was vetted in accordance with the Public Appointments (Parliamentary Approval) Act No. 33 of 2011. During the exercise, the nominee made submissions on why she should be appointed to serve as a Member to National Gender and Equality Commission.

Mr. Speaker Sir,

- 6 The Committee deliberated on the Report of the Selection Panel, submissions made by the nominee including her curriculum vitae and her oral submission during the interview at the sitting held 9th October, 2012 and hereby recommends that pursuant to the provisions of Article 250 (2) (b) of the Constitution, the House does approve the appointment of Mrs. Gumato Ukur Yatani as a Member to the National Gender and Equality Commission.

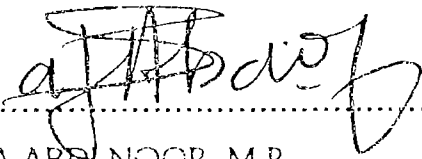
The recommendations of the Committee in this report were unanimous.

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

Mr. Speaker Sir,

3 It is my pleasant duty and privilege, on behalf of the Departmental Committee on Labour and Social Welfare, to present and commend this report on the nomination of a Member to the National Gender and Equality Commission, Mrs. Gumato Ukur Yatani, to the House for adoption pursuant to the Communication from the Chair made on 3rd October, 2012 and in accordance with the provisions of Article 250 (2) (b) of the Constitution.

SIGNED.....



HON. SOPHIA ABDI NOOR, M.P
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

DATE:

10/10/2012

BACKGROUND

ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL GENDER AND EQUALITY COMMISSION

- 9 The National Gender and Equality Commission is a successor in title to the Kenya National Human Rights and Equality Commission established by Article 59 of the Constitution, pursuant to clauses (4) and (5) of that Article.
- 10 Section 8 of the National Gender and Equality Commission Act provides that:-
The functions of the Commission shall be to—
- (a) promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;*
 - (b) monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;*
 - (c) act as the principal organ of the state in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities and children;*
 - (d) co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the Government on all aspects thereof;*
 - (e) monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution;*
 - (f) investigate on its own initiative or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned;*
 - (g) work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws;*
 - (h) co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination;*
 - (i) conduct and co-ordinate research activities on matters relating to equality and freedom from discrimination as contemplated under Article 27 of the Constitution;*
 - (j) receive and evaluate annual reports on progress made by public institutions and other sectors on compliance with constitutional and statutory requirements on the implementation of the principles of equality and freedom from discrimination;*

- (k) *work with the National Commission on Human Rights, the Commission on Administrative of Justice and other relate institutions to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration in the protection and promotion of rights related to the principle of equality and freedom from discrimination;*
- (l) *prepare and submit annual reports to parliament on the status of the implementation of its obligations under this Act;*
- (m) *conduct audits on the status of special interest groups including minorities, marginalized groups, persons with disability, women, youth and children;*
- (n) *establish, consistent with data protection legislation, databases on issues relating to equality and freedom from discrimination for different affected interest groups and produce periodic reports for national, regional and international reporting on progress in the realization of equality and freedom from discrimination for these interest groups:*
 - (o) *perform such other function as the Commission may consider necessary for the promotion of the principle of equality and freedom from discrimination; and*
 - (p) *perform such other functions as may be prescribed by the Constitution and any other written law.*

11 Section 9 of the Act provides *inter alia* that the Commission shall consist of a Chairperson and four other members appointed in accordance with the Constitution and the provisions of the Act.

APPOINTMENT PROCESS TO THE POSITION OF MEMBER TO THE NATIONAL GENDER AND EQUALITY COMMISSION

12 The vacancy for the position of member to the National Gender and Equality Commission arising from the expiry of the term of one of the members of the Commission was declared in the local dailies, on 18th July 2012 by the National Gender and Equality Commission Selection Panel pursuant to Section 11 (4) of the National Gender and Equality Commission Act.

13 The panel adopted shortlisting criteria that took into account the following:

- i. Minimum requirement as provided in law and the advertisement;
- ii. Quality/relevance and level of experience;
- iii. Regional and gender balance; and
- iv. Persons with disability

14 The National Gender and Equality Commission Selection Panel shortlisted the candidates to be invited for interviews on 2nd August 2012. Seven applicants were shortlisted for the position of member. Names of all applicants, their qualifications and shortlisted candidates were published in the Daily Nation and Standard Newspapers edition of 3rd August, 2012 and the Gazette.

- 15 Interviews of candidates for the position of member were conducted on 7th August, 2012 and the seven names below were forwarded to H. E. the President to nominate a member in consultations with the Rt. Hon. Prime Minister.

	Name of Candidate	Total Score	Average Score	Ranking
1.	Ms. Odhiambo Rose Aoko Ogwang	666	83.2	1
2.	Prof. Lilian Wanjiku Njagi, EBS	622	77.7	2
3.	Ms. Emmy Jerono Kipsoi, PhD	621	77.6	3
4.	Dr. Grace Bosibori Nyamongo, PhD	456	65.1	4
5.	Ms. Mukulu Ngilu	517	64.6	5
6.	Mrs. Gumato Ukur Yatani	515	64.3	6
7.	Mr. Anthony Mugane Nyotu	421	52.6	7

- 16 A letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Head of Public Service dated 28th September, 2012, to the Clerk of the National Assembly indicated that His Excellency the President had, in consultations with the Rt. Hon. Prime Minister, nominated the below named candidate to be considered for appointment as a Member to the National Gender and Equality Commission:

i Mrs. Gumato Ukur Yatani

- 17 On 3rd October, 2012, the Honourable Speaker in a communication to the House referred the name of the nominee to the Departmental Committee on Labour and Social Welfare for vetting and directed the Committee to submit its recommendations on the nominee to the House on or before Tuesday, 16th October, 2012.

CONSIDERATION OF THE NOMINEE BY THE COMMITTEE

- 18 The nominee was nominated to serve as a Member to the National Gender and Equality Commission pursuant to Article 250 of the Constitution and Section 9 of the National Gender and Equality Commission Act of 2011 thereto by H. E. the President in consultations with the Rt. Hon. Prime Minister through a letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Acting Head of the Public Service dated 28th September, 2012, to the Clerk of the National Assembly.
- 19 During its meeting held on 9th October, 2012 the Committee examined the Candidate against the criteria set out in the Public Appointments (Parliamentary

Approved) Act No. 33 of 2011. That criterion requires nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests among other things.

- 20 The qualifications for appointment to the office are set out in the National Gender and Equality Commission Act, 2011 section 10 (2) which provides that;
- i. A person shall be qualified for appointment as a member of the Commission if the person; holds a degree from a university recognized in Kenya;
 - ii. Has knowledge and at least ten years' experience in matters relating to any of the following fields, law, public administration, economics, gender and social development, human rights, management or social sciences;
 - iii. Has had a distinguished career in their respective fields; and
 - iv. Meets the requirement of Chapter Six of the Constitution.

Nomination of Mrs. Gumato Ukur Yatani, as a Member to the National Gender and Equality Commission

- 21 The Committee having considered the curriculum vitae of Mrs. Gumato Ukur Yatani, and having heard her submissions during the meeting, made the following observations on her nomination to the National Gender and Equality Commission:-
- i. She is a Kenyan Citizen who was born in North Horr on 15th August, 1969. She is from North Horr, Marsabit County in Northern Kenya. She is married with two children and she speaks English, Kiswahili and Gabbra.
 - ii. She is pursuing her PhD at Vienna University of Economics and Social Sciences holds a Masters Degrees in Business Administration- Human Resource Management from the University of Nairobi and a Bachelor of Education (Arts) degree from Moi University.
 - iii. She is currently an Under Secretary, at the State Corporations Advisory Committee, Office of the President. She has also worked as a Head of Organization Development and Human Resource Manager at Red Cross Society Kenya; Senior Field Service and Training Coordinator-Western Union at Kenya Post Office Savings Bank; Deputy Principal at Moi Girls High School, Marsabit and Various Secondary Schools.
 - iv. She has written several Academic Seminar papers and Publications among them, 'Challenging Diversity Management: On the meaning of cultural context: the Case of Kenya; Contextualizing Diversity Management: The Case of Kenya; Survey of the relationship between the perceived empowerment and job satisfaction of employees of commercial banks in Nairobi; discussions and reflections on the Faculty workshop topic: What Jack Sparrow can teach Business School by Prof. Martin Parker; and unpublished paper on Sustainable Reporting: Useful data for research on Human Resource Management.

- v. She received a PhD Research Grant of about Kshs. 500,000 from the National Council for Science and Technology.
- vi. She is a member of various gender and diversity forums.
- vii. She served as a Director and Vice Chair of Ewaso Ngiro North Development Authority and a Board Chairperson of the Integrated Pastoralists Development (IPAD). She is the Vice Chairperson of Kanacho Nomadic Educational Foundation (KNEF) and the Chairperson of the Sub Regional Lake Victoria Program implemented in Kenya, Rwanda, Tanzania, Uganda and Burundi.
- viii. She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers. She has never been adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.
- ix. She is not a member of any political party and does not expect any conflict of interest to arise. She however, gave moral support to her husband who vied for a Parliamentary seat and lost in the 2007 general elections on the Party of National Unity.
- x. She has been involved in charity work in her community by among others, sponsoring needy students from Northern Kenya to get education, creating awareness on HIV/AIDs and provision of water projects.
- xi. She has never been charged in a court of law for any offence

RECOMMENDATIONS OF THE COMMITTEE

- i. The Committee having considered the curriculum vitae of the nominee, and having heard her oral submission during the interview at the sitting held 9th October, 2012 observed that the nominee had the experience and qualifications required for appointment as a Member to the National Gender and Equality Commission.
- ii. The Committee approved the nominee for the position after she was proposed by Hon. Joseph Magwanga, M.P. and seconded by Hon. Charles Nyamai, M.P.
- iii. The Committee therefore unanimously recommends that: -

Pursuant to the provisions of Article 250 (b) of the Constitution, the House approves the appointment of Mrs. Gumato Ukur Yatani as a Member to the National Gender and Equality Commission

XXXXXXXXXXXXXXXXXXXXXXX

APPENDIX 1

MINUTES OF THE COMMITTEE

MINUTES OF THE 227TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON WEDNESDAY, 10TH OCTOBER, 2012 AT 11.10 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Najib Balala, M.P.
3. Hon. Charles Keter, M.P.
4. Hon. Jackson Kiptanui, M.P.
5. Hon. Joseph Magwanga, M.P.
6. Hon. Charles Nyamai, M.P.
7. Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

1. Hon. Alfred Odhiambo, M.P.
2. Hon. Elijah Lagat, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 299/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 300/2012

CONFIRMATION OF MINUTES

Minutes of the 223rd Sitting of the Committee held on 9th October, 2012 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by Hon. Charles Keter, MP and seconded by Hon. Pollyns Ochieng, MP.

MIN.NO.301/2012

CONSIDERATION AND ADOPTION OF THE REPORT ON THE NOMINEE TO THE NATIONAL GENDER AND EQUALITY COMMISSION

The Committee considered the draft report on the nomination of Mrs. Gumato Ukur Yatani for the position of a Member to the National Gender and Equality Commission and approved it without amendments, after being proposed by Hon. Joseph Magwanga, M.P and seconded by Hon. Charles Nyamai, M.P.

- i. Consideration of the Petition on the Redundancy Exercise at Kenya Airways Limited (KQ)
 - The Committee was informed of a request from KQ to have the meetings with Management and Board held on 18th October 2012. Members upheld its resolution of Tuesday, 9th October 2012, to take evidence from the CEO and management on Thursday, 11th October 2012 at 10.00 a.m as they had earlier requested. The Committee resolved to take evidence from the Board on Thursday 18th October 2012 at 10.00 a.m.

- ii. Bills before the Committee
 - The Committee resolved to hold a stakeholders meeting on the Sports Bill, 2012 on Monday, 15th October, 2012 at 2.00 p.m.
 - The Committee resolved to invite the Chandaria Foundation and other stakeholders to present the memorandum of Foundations and Trusts on the Public Benefit Organization Bill, 2012 on Monday October 15, 2012 at 3.00 p.m. The Committee further resolved to table its report on the Bill on Wednesday, 17th October 2012.
 - The Committee resolved to Table its report on the Social Assistance Bill, 2012 on the week beginning 15th October 2012.
 - The Committee was informed that the Departmental Committee on Health was also considering the Kenya National AIDS Commission Bill, 2012 and that they had too met several stakeholders. The Committee proposed to have a joint sitting to agree on the amendments.
 - The Committee resolved to consider the other pending Bills including the Industrial Training Amendment Bill, 2012 and the Human Resource Profession Management Bill, 2012 after Tabling all the above reports.

- iii. Invitation to an IPU Seminar on Violence against Women and Girls
 - The Committee was informed of an invitation to an IPU seminar for the East and Southern African Parliaments on preventing and responding to violence against women and girls: From legislation to effective enforcement. The seminar was scheduled to take place in Dar es Salaam, Tanzania between 5th and 7th December 2012.

The Committee nominated Hon. Sophia Abdi Noor, M.P., Hon. Charles Keter, M.P., Hon. Joseph Magwanga, M.P., and Hon. Pollyns Ochieng, M.P. to attend the seminar.

MIN.NO. 303/2012

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Forty minutes past Eleven O'clock.

SIGNED.....


(CHAIRPERSON)

DATE.....

11/10/2012

MINUTES OF THE 223RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR,
CONTINENTAL HOUSE, MAIN PARLIAMENT BUILDINGS ON TUESDAY, 9TH
OCTOBER, 2012 AT 8.30 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Jackson Kiptanui, M.P.
4. Hon. Joseph Magwanga, M.P.
5. Hon. Charles Nyamai, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Pollyns Ochieng, M.P.
4. Hon. Elijah Lagat, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NOMINEE TO THE MEMBERSHIP OF THE NATIONAL
GENDER AND EQUALITY COMMISSION

1. Mrs. Gumato Ukur Yatani - Nominee

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 287/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

The Chairperson briefly stated the purpose of the meeting, which she said was to consider the nomination of Mrs. Gumato Ukur Yatani as a Member to the National Gender and Equality Commission.

The name and the accompanying Curriculum Vitae of the nominee together with the Report of the Selection Panel including the score sheet were forwarded to Committee on 3rd October 2012 by the Speaker who directed the Committee to Table its recommendations on or before 16th October 2012.

Nomination of Mrs. Gumato Ukur Yatani, as a Member to the National Gender and Equality Commission

The Committee having considered the Curriculum Vitae of Mrs. Gumato Ukur Yatani, and having heard her submissions during the vetting, made the following observations on her nomination to the National Gender and Equality Commission :-

- i. That she is a Kenyan Citizen who was born in North Horr on 15th August, 1969. She is from North Horr, Marsabit County in Northern Kenya. She is married with two children and she speaks English, Kiswahili and Gabbra.
- ii. She is pursuing her PhD at Vienna University of Economics and Social Sciences holds a Masters Degrees in Business Administration- Human Resource Management from the University of Nairobi and a Bachelor of Education (Arts) degree from Moi University.
- iii. She is currently an Under Secretary, at the State Corporations Advisory Committee, Office of the President. She has also worked as a Head of Organization Development and Human Resource Manager at Red Cross Society Kenya; Senior Field Service and Training Coordinator-Western Union at Kenya Post Office Savings Bank; Deputy Principal at Moi Girls High School, Marsabit and Various Secondary Schools.
- iv. She has written several Academic Seminar papers and Publications among them, 'Challenging Diversity Management: On the meaning of cultural context: the Case of Kenya; Contextualizing Diversity Management: The Case of Kenya; Survey of the relationship between the perceived empowerment and job satisfaction of employees of commercial banks in Nairobi; discussions and reflections on the Faculty workshop topic: What Jack Sparrow can teach Business School by Prof. Martin Parker; and unpublished paper on Sustainable Reporting: Useful data for research on Human Resource Management.
- v. She received a PhD Research Grant of about Kshs. 500,000 from the National Council for Science and Technology.
- vi. She is a member of various gender and diversity forums.
- vii. She served as a Director and Vice Chair of Ewaso Ngiro North Development Authority and a Board Chairperson of the Integrated Pastoralists Development (IPAD). She is the Vice Chairperson of Kanacho Nomadic Educational Foundation (KNEF) and the Chairperson of the Sub Regional Lake Victoria Program implemented in Kenya, Rwanda, Tanzania, Uganda and Burundi.
- viii. She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers. She has never been

adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

- ix. She is not a member of any political party and does not expect any conflict of interest to arise. She however, gave moral support to her husband who vied for a Parliamentary seat and lost in the 2007 elections on the Party of National Unity.
- x. She has been involved in charity work in her community by among others, sponsoring needy students from Northern Kenya to get education, creating awareness on HIV/AIDs and provision of water projects.
- xi. She has never been charged in a court of law for any offence

Committee Clarifications

The Committee sought the following clarifications from the nominee:-

- i. The value she was going to add to the Constitutional Commission.
- ii. The ideas she had in regard to the two-thirds gender constitutional rule in all elective posts, both at the counties and the national parliament.
- iii. With regard to clearance of candidates for the position by the Ethics and Anti-Corruption Commission, there was a report, Case No. 7579 where there were allegations that a company she owned was illegally awarded a tender worth Kshs. 7.5 for the construction of Maikona Boys Secondary School, yet the project was non-existent. In addition, the construction company had been blacklisted by the Ministry of Public Works after it failed to carry out El Nino Projects in 2000. Members sought to know whether she had links with the company.
- iv. Her opinion regarding the matter that some persons were opposed to the formation of the National Gender and Equality Commission separately from the Kenya Human Rights and Equality Commission.

Response from the Nominee

The nominee responded as follows:-

- i. She had conducted lot of research on gender and diversity and she would use this knowledge towards ensuring that the Commission achieves its objectives. She would also put to use of her over 18 years experience in various public positions, including as a civil servant.
- ii. The two-thirds gender rule must be implemented. She however observed that awareness was lacking regarding the constitutional requirement and especially among the women. She added that a lot of civic education needed to be carried out for women to emerge and contest for the elective seats. If this failed to realise the two-thirds, then nomination could be considered.
- iii. She does not own any construction company and the allegations regarding a company associated with her in clarification no. iii above were false.
- iv. The separation of the National Gender and Equality Commission and the Kenya Human Rights and Equality Commission was good because each of the

commissions had their respective role and many responsibilities that needed to be carried out.

RECOMMENDATIONS OF THE COMMITTEE

- i. The Committee noted that the nominee had the experience and qualifications required for the appointment as a member to the National Gender and Equality Commission.
- ii. The Committee having considered the curriculum vitae of the nominee, and having met and vetted her, Members unanimously recommended that: -

Pursuant to the provisions of Article 250 (b) of the Constitution, the House approves the appointment of:-

Mrs. Gumato Ukur Yatani – Member, National Gender and Equality Commission

MIN.NO.289/2012: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Thirty minutes past Nine O'clock.

SIGNED.....



(CHAIRPERSON)

DATE.....

10/10/2012

APPENDIX II

REPORT OF THE SELECTION PANEL FOR THE
APPOINTMENT OF MEMBER OF THE NATIONAL
GENDER AND EQUALITY COMMISSION

REPUBLIC OF KENYA



OFFICE OF THE PRIME MINISTER
PERMANENT SECRETARY'S OFFICE

Fax No.: +254-(0)20-2210876
Telephone: +254-(0)20-3247000
When replying please quote

Prime Minister's Building
P.O. Box 74434 - 00200
NAIROBI
KENYA

OFM /PS/08/03/28

27th September 2012

Mr. Francis T. Kimemia, CBS
Permanent Secretary, Secretary to the Cabinet &
Ag. Head of the Public Service
Office of the President
Harambee House
NAIROBI

Dear *Francis*

RE: APPOINTMENT OF A MEMBER OF THE NATIONAL GENDER AND EQUALITY
COMMISSION

I refer to your letter on the above subject dated 15th August 2012 and confirm that the Rt. Hon. Prime Minister concurs with the proposed nomination of Mrs. Glemato Ukur Yatani as member of the above commission.

Yours

A handwritten signature in black ink, appearing to read 'Mohamed Isahakia', written over a vertical line.

DR. MOHAMED ISAHAKIA, CBS
PERMANENT SECRETARY

CONFIDENTIAL

SELECTION PANEL FOR THE APPOINTMENT OF MEMBER,
NATIONAL GENDER AND EQUALITY COMMISSION

REF: MSPS.10/7A/(61)

7th August, 2012

Mr. Francis T. Kimemia, CBS
Permanent Secretary, Secretary to the
Cabinet and Ag. Head of the Public Service
NAIROBI

APPOINTMENT OF ONE MEMBER OF THE NATIONAL GENDER AND
EQUALITY COMMISSION

Pursuant to Section 11(5) of the National Gender and Equality Commission Act, 2011, the Selection Panel that was convened to select a member of the Commission has interviewed and shortlisted persons who are qualified for appointment to the Commission.

This is therefore to submit the attached names, listed in order of performance, for forwarding to His Excellency the President as required in the above Act of Parliament. Attached also is a report on the Appointment of Member of the Commission.

By the time the Selection Panel completed the interviews of the candidates, it was yet to receive clearance certificates for all the shortlisted persons from the Ethics and Anti-Corruption Commission. The same will be forwarded to your office once they are received by the Panel.


Salome W. Muigai
Chairperson
Selection Panel for the Appointment of Member of the
National Gender and Equality Commission

REPORT OF THE SELECTION PANEL FOR THE APPOINTMENT OF MEMBER OF THE NATIONAL GENDER AND EQUALITY COMMISSION

Introduction

The Selection Panel for the appointment of a Member of the National Gender and Equality Commission was convened on 16th July, 2012 pursuant to Section 11(1) of the National Gender and Equality Commission Act, 2011. The Membership of the panel comprised representatives from:-

- a) Office of the President
- b) Office of the Prime Minister
- c) Ministry of Justice, National Cohesion and Constitutional Affairs
- d) Ministry of Gender, Children and Social Development
- e) Public Service Commission
- f) The Association of Professional Societies in East Africa
- g) The Kenya Private Sector Alliance
- h) The National Council for Persons with Disabilities

The Ministry of State for Public Service provided facilitation and support to the Panel. This included provision of an interview venue at Harambee House, the Secretariat and facilitating advertisements.

Number of Vacant Positions

One position of member fell vacant arising from the expiry of the term of a member of the Commission.

Advertisement of Position

Advertisement of the position of one Member of the Commission was published in the Daily Nation and Standard Newspapers editions of 18th July, 2012.

Shortlisting of Applicants for Interviews

The Panel adopted shortlisting criteria that took into account the following:

- (i) Minimum requirements as provided in law and the advertisement;
- (ii) Quality/relevance and level of experience;
- (iii) Regional and gender balance; and
- (iv) Persons with disability.

Shortlisting of candidates to be invited for interview was done on 2nd August, 2012. Seven applicants were shortlisted for the position of member. Names of all applicants, their qualifications and shortlisted candidates were published in the Daily Nation and Standard Newspapers edition of 3rd August, 2012 and the Gazette.

Interviews

Interviews of candidates for the position of Member were conducted on 7th August, 2012.


Salome W. Muigai
Chairperson
Selection Panel for the Appointment of Member of the
National Gender and Equality Commission

7th August, 2012

INTERVIEWS FOR MEMBER, NATIONAL GENDER AND EQUALITY COMMISSION

7TH AUGUST, 2012

SCORE SHEET

	NAME OF CANDIDATE	OOP	OPM	MJNC & CA	PSCK	APSEA	NCPWD	KEPSA	MGC & SD	TOTAL SCORE	AVERAGE SCORE (%)	RANKING
1.	Ms. Odhiambo Rose Aoko Ogwang	67	86	81	86	92	86	84	84	666	83.2	1
2	Prof. Lilian Wanjiku Njagi, EBS	76	80	74	86	63	85	85	73	622	77.7	2
3.	Ms. Emmy Jerono Kipsoi, PhD	65	86	80	85	65	82	84	74	621	77.6	3
4.	Dr. Grace Bosibori Nyamongo, PhD	59	-	60	76	61	75	66	59	456	65.1	4
5.	Ms. Mukulu Ngilu	55	74	70	71	61	75	56	55	517	64.6	5
6.	Mrs. Gumato Ukur Yatani	58	78	51	63	48	76	79	62	515	64.3	6
7.	Mr. Anthony Mugene Nyotu	57	43	52	67	38	59	50	55	421	52.6	7

PANEL MEMBERS

1. Ms. Salome W. Muigai
2. Mr. Kennedy W. Kihara, EBS
3. Mr. Paul Mwangi
4. Ms. Roselyne M. Aburili
5. Mr. Felix Okatch
6. Mr. Johnson M. Otenyo
7. Ms. Njeri Kang'ethe
8. Prof. Collette A. Suda, EBS

SIGNATURE

.....

.....

.....

.....

.....

.....

SELECTION PANEL FOR THE APPOINTMENT OF MEMBER,
NATIONAL GENDER AND EQUALITY COMMISSION

Ref. MSPS 10/7A/(61)

10th August, 2012

The Permanent Secretary, Secretary to the
Cabinet and Ag. Head of the Public Service,
Office of the President,
NAIROBI.

APPOINTMENT OF MEMBER OF THE NATIONAL GENDER AND EQUALITY
COMMISSION

CLEARANCE OF CANDIDATES

Reference is made to my letter Ref.MSPS/10/7A/(61) dated 7th August, 2012 in which I forwarded names of persons who were shortlisted for the position of Member of the National Gender and Equality Commission. As observed in the letter, clearance from the Ethics and Anti-Corruption Commission had not been received by the time the names of shortlisted persons were submitted to your office.

Attached, please find a copy of a letter Ref. EACC 6/42 Vol.V/(149) dated 7th August, 2012 from the Ethics and Anti Corruption Commission containing a report on each of the shortlisted persons for your further necessary action.



Salome W. Muigai
Chairperson
Selection Panel for the Appointment of Member of the
National Gender and Equality Commission



ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd./Millimani Rd. Junction) P.O. Box 61130-00200, NAIROBI, Kenya
Tel.: +254-20-2717318/310722, Cellphone: +254-729-888881/2/3
Fax: +254-20-2719757, Email: eacc@integrity.go.ke, Website: www.eacc.go.ke

When replying please quote:

Our ref. EACC 6/42 Vol. V (149)

7th August, 2012

Ms. Salome W. Muigai,
Chairperson
Selection Panel for the Appointment of Member,
National Gender and Equality Commission
Harambee House
P.O. Box 30050 - 00100
NAIROBI

Dear Madam

RE: CLEARANCE OF CANDIDATES FOR THE POSITION OF MEMBER, NATIONAL GENDER AND EQUALITY COMMISSION

Reference is made to your letter Ref No. **MSPS/10/7A/(49)** dated 7th August 2012.
A data search conducted in our reports database revealed the following:

	Name	Report	Status
1	Dr. Bosibori Nyamongo	No adverse Report.	
2	Mr. Anthony Mugane Nyotu	No adverse Report.	
3	Mrs. Gurnato Ukur Yatani	Case No: 7579. – Allegations that a company owned by the candidate was illegally awarded a tender worth Ksh 7.5	Investigations established that the applicant

		Million for the construction of Maikona Boys Secondary School. It is alleged the project was non-existent and the construction company had been blacklisted by the ministry of public works after it failed to carry out El Nino Projects in 2000.	had no link with the company.
4	Ms. Emmy Jerono Kipsoi	No adverse Report.	
5	Ms. Odhiambo Rose Aoko Ogwang	No adverse Report.	
6	Ms. Mukulu Ngilu	No adverse Report.	
7	Prof. Lilian Wanjiku Njagi	No adverse Report.	

Note that, the Commission is in the process of developing an objective criterion for vetting of persons aspiring leadership positions in line with chapter 6 of the constitution. Absence of records in our current database is not a guarantee of absolute integrity of the applicants.

Yours faithfully,



ABDI A. MOHAMUD
FOR: SECRETARY/CHIEF EXECUTIVE OFFICER

33

Hauberggasse 9-1190
Vienna- Austria

25th July 2012

The Secretary,
Selection Panel for the Appointment of
Member of the National Gender and Equality Commission
P.O BOX 30050- 00100
NAIROBI



Dear Sir/Madam,

RE: APPLICATION FOR THE MEMBER OF THE NATIONAL GENDER AND EQUALITY COMMISSION

I refer to your advert in the Kenyan daily of 24th July 2012 on the above position, for which I humbly submit my application for consideration.

I am a 43 year old Kenyan citizen of female gender from Marsabit County of Northern Kenya.

I am currently in the final stages of completing my PhD studies in Gender and Diversity Management at the University of Vienna, Austria, where my research focus is on *contextualizing Diversity Management, the case of Kenya*. In 2003 and 1994, I graduated with a Master of Business Administration (Human Resource management) and Bachelor of Education from Nairobi and Moi Universities respectively.

I have over 18 years of cumulative work experience in diverse public, private and the NGO sectors. Currently, I work as an Under Secretary in Cabinet office, with previous work experience as a Director, Organizational Development at Kenya Red Cross society among other senior positions. I wish to state that in all my working life, issues of Gender and diversity has been very close to my heart, which indeed motivated me to pursue higher studies in said field.

In my considered view, the requirements sought in the advert matches well with my professional experience and technical competence that includes among others the relevant PhD study in the same field, notwithstanding my background of being from a minority Nomadic Gabra community of Northern Kenya. As a woman from the marginalized and remote Northern Kenya who has struggled against various cultural and socio-political discrimination to attain a sound academic and fairly stable socio-economic status, it gives me overwhelming confidence to believe that I am among the most suited persons for this position who given an opportunity can provide dedicated contribution that will undoubtedly lead to the full realization of the commission's vision, mission and aspirations.

I hereby enclose my resume for your further necessary reference.

Yours Faithfully,

Gumato
Gumato Ukur Yatani



HAUBENBIGLSTRASSE 9-1190 VIENNA
TEL: RES: +43 1 3670826
MOBILE: +43 69911342477
EMAIL: gumatoukur@yahoo.com

Mrs. Gumato Ukur Yatani

Profile

A Seasoned Gender and diversity management specialist, accomplished and result driven Human Resource Management Professional with a wide experience in General Management Skills, specialized in Development and implementation of Human Resource administration and policies, Training and delivery with a focus on team development. Strong interpersonal skills with a client oriented approach and supportive management style.

Personal data

Gender: Female
Marital status: Married
Nationality: Kenyan
Date of birth: 15th August 1969
Languages: English, Kiswahili, Gabra (native)

Achievements

A. KENYA RED CROSS SOCIETY

1. Director – Organisational development

I. Developed and implemented decentralization strategy:

As the Director for Organizational development of the society, I was a team leader of a group tasked with strategy development and rationalization of the Society's 58 branch network. I developed a strategy document and effectively implemented the same resulting to clustering of the branches into 9 regions realizing a saving of over USD 300,000 for the society within the first year. The merger also led to remarkable improvement in service quality and significant reduction in wastages arising from operational inefficiencies.

II. Resource Mobilization

During the restructuring period I fundraised over USD 2 million for the society towards successful implementation of the strategy. The funds were used to fully equip and increase operational functions of four regions as well as employ a regional manager, 2 more office staff, build an office block and provide each branch with a transport (land cruiser) in the first year of strategy implementation.

While holding the position of the society's Human Resource manager, I also raised over USD 300,000 towards purchase of a staff bus. This facility immensely improved staff efficiency in addition to enhancing the overall infrastructural capacity of the organization.

III. Capacity building

As Director for Organizational Development and the person charged with capacity building of the organization, I regularly engaged like-minded institutions resulting to enhanced and well developed human capacity of the society. In furtherance of this, in 2007 I led a team of KRCS to Norway to initiate a partnership program between one of the KRCS branch, Karen Langata and Sor Trodelang of Norwegian Red Cross backed by Rosenberg football club. This partnership led to KRCS branch receiving USD 10 Million over 3 year period. The fund was used to build the capacity of the branch and its volunteers as well as construct and fully equip a youth social hall. This endeavor and initiative laid solid human capital to drive organizational goals of the society and success of various regional offices.

V. Leadership and governance.

As part of top-management team, I was tasked with nurturing and developing leadership skills of the organization at all levels. In this respect, I was actively involved in training of Governing Council, the organ responsible for policy direction and running of the branches. Over 120 Council members from various branches benefitted from this training that included, financial management, leadership skills development, fundraising and volunteer services. The training greatly enhanced the managerial capacities of the council members leading to sound financial bases and overall improvement of the branch management.

2. Human Resource manager

- i. As Human resources manager of Kenya Red Cross Society between 2004 and 2005, I helped improve the Human capital management of the organization by developing a training policy that streamlined training needs, assessment and placement of the staff. During the period staffs were trained on many aspects of policy implementation including project and financial management.
- ii. The Society, by using a well structured training manual successfully solicited funds from donors, particularly for staff development. The initiative, and using the manual as the blue print, I managed to raise over USD 1 million for staff development which greatly enhanced the overall operational efficiency and performance of the society.

B. GOVERNMENT OF KENYA

1. Under Secretary- Cabinet Affairs(Office of the President)

- i. As an Undersecretary, a senior manager and Head of Department, I effectively streamlined the financial operation of the department. I also helped design, develop and implement a major Training program on good corporate governance for Board members of state corporations. Over 160 state corporations' Chief Executives and 1600 board members benefitted from this training which included; good corporate governance principles, structure of government, human resource and financial management.

- ii. I also actively participated in development of corporate governance Manual for State corporations that is currently used to guide the operations of parastatals and conduct of the board and approved by various corporations' boards as a working tool for all state firms.
- iii. Additionally, I undertook with some senior managers a comprehensive training needs analysis of cabinet staff where various knowledge and skill gaps for different cadres of staff were identified and made necessary recommendations on areas that needed improvements. As a result of this exercise over 200 staffs were trained on 'peak performance' geared towards increasing staff productivity.

C. KENYA POST OFFICE SAVINGS BANK

1. Human Resources Officer

- I. As human resource officer and one charged with the responsibility of staff development, I helped design suitable programs that strengthened team building and staff morale resulting to increased staff productivity. One such program was a 3 day team building exercise for 70 staff members that resulted to strong team bonding and high team spirit.
- II. I also had short stint as training officer in the western union division (which had a partnership deal with Post Bank) to manage sub-agents for the money transfer. During the period, I recruited and trained over 100 sub agents for the money transfer business.

D. MOI GIRLS' HIGH SCHOOL-MARSABIT

1 Deputy Principal

As a deputy principal of a High School and in charge of discipline matters, I effectively enforced discipline among the students by creating teams, where self discipline and team-care was emphasized. Through careful selection of prefects/ teams and with closer collaboration with the Principal and other staff, I was able to improve student discipline which had positive effects on better performance.

Education

1. UNIVERSITY EDUCATION

2010- 2012. Vienna University of Economics and Social Sciences.

PHD Candidate: Gender and Diversity Management.

PHD Thesis Topic : Contextualizing Diversity management, the case of Kenya.

2003 – University of Nairobi-Kenya

Master of Business Administration - Human Resource Management

1994 – Moi University -Kenya

Bachelor of Education (Arts)

2. HIGH SCHOOL EDUCATION

1989- Advanced certificate of Education (A-Level)

3 Principles two subsidiary

1987- Kenya Certificate of Education

Division 2 (24 Points)

3. PROFESSIONAL EDUCATION

2010 – Institute of Personnel Management

Postgraduate Diploma-in-Human-resources-management-Ongoing

Work experience

2007- 20012- Office of the president- Cabinet office, Kenya

Department- State corporations Advisory Committee.

Position: Undersecretary

Duties

In charge of finance and administration.

- Preparation of budgets and ensuring strict adherence to the same.
- Analyses of Expenditure at the end of financial year

- Management and accountability of department finances
- Procurement of goods & services for the department and representing it in the ministerial procurement committee.

Performance Management

- Coordinating mid & end year performance appraisal of staff in the Dept
- Development and follow up on implementation of the department's performance targets.
- Chair meetings to discuss performance management.
- Coordinate reward management

Human Resource development-Training

- Coordinate the training function of the department
- Help in Identifying Training needs for officers in the department at the beginning of the year.
- Represents the department in Inter Ministerial training Committees
- Participated in the development of training needs analysis for Cabinet office staff .A major 'peak performance' training was mounted as a result of the needs identified.
- Designing training for state corporations' Board members based on good corporate governance. Trained 1,600 Board members and 160 chief executives of Kenya's state corporations in the last six months.

Human Resource Management

- Advising the state corporations on best corporate governance and-human resource practices.
- Worked on a good corporate governance manual for state firms.
- In Charge of welfare of the staff in the section
- Administration of staff benefits
- Advise state corporations on staff salaries and general welfare of employees.
- Member of inter-ministerial human resource committee.

2005 -Jan 2008 – KENYA RED CROSS SOCIETY

Company description: A leading humanitarian organization in Kenya.

Position: Head Of Organization Development

Duties:

Organizational Development-Capacity building

- Develop strategy for the development of the organization's structure and thus enhance the capacity of the National Society to deliver services effectively and efficiently.
- Coordinate the development of systems for the efficient management of branches including the recruitment and management of volunteers.
- Responsible for both local and international resource mobilization aimed at capacity building.
- Ensure capacity building and support for Regions and Branch staff

Resource mobilization

- Develop a strategy for resource development and mobilization for both staff and volunteer leaders.
- Represent the society in bilateral meetings in mobilizing resources.
- Organizes annual events aimed at resource mobilization for the organization.

Human Resource Development-Training

- To develop and implement leadership training programs for governance at both the national, Regional and Branch levels
- Provide advice and training when appropriate on best HR practices and leadership skills throughout the branches.

Performance management

- Continuously monitor and evaluate the performance of branches and their compliance with constitutional obligations and provide technical support in respect to such performance.
- Provides professional human resource assistance to managers in dealing with and responding to associate matters by coaching and consulting with managers regarding associate performance and disciplinary problems.

- Coordinate compiling of detailed, accurate, regular and timely narrative and financial reports for both the society and partners
- Organize and participate in the in quarterly meetings with the regional managers to review progress against strategic plan.

2004 – 2005: Position: Human Resource Manager

Duties

Human Resource Development

- Developing Human Resource policies and procedures-Developed KRCS training and secondment policy.
- Designing and facilitation of Team Development workshops
- Managing yearly staff development Budget

Recruitment and selection

- Recruitment and placement of staff at all cades in the organization that has a total workforce of 2000
- Conducting of induction for newly recruited staff

Performance managment

- Establishing performance appraisal schemes to support management competency systems
- Conduct Human Resource planning and initiating succession plans
- Administration of staff benefits and allowances

Human Resource management

- Coordinated employee relations and welfare Management
- Organized team building activities to enhance staff motivation
- Focal person for Gender and diversity management.

1999 to 2004 – KENYA POST OFFICE SAVINGS BANK

Company description: A leading savings bank in Kenya.

Position: Senior Field Service and Training Coordinator-Western Union

Duties: -

Human Resource Development

- Coordinating the yearly staff training and conventions
- Manage the yearly training Budget
- Develop training materials and disseminate the information to the staff and customers
- Conduct quality customer care courses

Human Resource management

- Conduct yearly appraisal for the staff in the division
- Recruit new sub-agents & develop operating guidelines for them.

1997 – 1998 Deputy Principal Moi Girls High School – Marsabit

1994 – 1997 Graduate Teacher 1 – Various Secondary Schools.

International travel and Trainings

- June 2004 –Addis Ababa, Ethiopia – 5 day corporate governance seminar
- Nov 2005- Oslo, Norway -Freskopset –Partnership meeting that brought together over 350 partners from more than 50 countries.
- February 2006 –Oslo, Norway- Leader of the Kenya Negotiating team between Twining Partners (Karen langata branch) of KRCS and Sor trodelang Branch of Norwegian Red cross.
- January 2006- 2 weeks Organizational Development seminar- Geneva, Switzerland
- March 2006- Kampala, Uganda – Attending a Lake Victoria partnership program conference that brought together many African countries among them Uganda, TZ, Burundi, Rwanda
- May 2006- Harare, Zimbabwe- a Study on Decentralization- a case study of Zimbabwe Red Cross. This was later applied to decentralize KRCS
- November 2006 Kampala Uganda – Attended regional capacity building forum – Organized by international federation of the Red cross
- February 2007 Cross border meeting Kigali-Rwanda for the Lake Victoria partnership program
- April 2007-Lake Victoria initiative conference-Kampala –Uganda
- June 2008 – 1 month course on ‘best practices in Public Sector Financial management’- Essami course, Accra, Ghana.

Other responsibilities

2003-2008- Director Ewaso Ngiro North Development Authority

2003-2008- Vice Chair of Ewaso Ngiro North Development Authority Board

2006-2009- Board Chair, Integrated Pastoralists Development(IPAD),local NGO in northern Kenya- Marsabit

2008-Todate- Vice chair of Kanacho Nomadic Educational Foundation(KNEF), Local charity working in Northern Kenya

2007-Chairperson of a Sub regional lake Victoria program implemented in Kenya Rwanda, Tanzania, Uganda, and Burundi

Publications:

1. Challenging Diversity Management: On the meaning of cultural context: the Case of Kenya. Conference paper presented at the 7th International critical management conference in Naples Italy on 15th July 2011.
2. Contextualizing Diversity Management: The case of Kenya. Research Proposal submitted in partial fulfillment of Doctoral Degree program Vienna University (2011)
3. Survey of the relationship between the perceived empowerment and job satisfaction of employees of commercial banks in Nairobi- Master's Thesis, University of Nairobi, Kenya (2003)
4. Discussions and reflections on the topic: Sustainable Reporting: Useful data for research on Human resource management by Prof. Mueller Camen on 13th December 2011. Unpublished Doctoral seminar paper University of Vienna.
5. Discussions and reflections on the Faculty workshop topic: What Jack Sparrow can teach Business school by Prof. Martin Parker on 11th October 2011. An unpublished Doctoral seminar paper University of Vienna.

References

Dr. Dilach Barako
Assistant director,
Central bank of Kenya.
NAIROBI
Tel +254-0722694936

Mrs. Anne Karanja
Director Operations,
Kenya Post office savings bank
NAIROBI
Contact--254-722852000

Univ.Prof.DI.Dr. Edeltraud Hanappi-Egger
Vienna University of Economics and Business
Group for gender and Diversity Management
Augasse;21/7
A-1090,Vienna
Phone: +43-1-31336-5181
Fax: +43-1-31336-759; Email: edeltraud.hanappi-egger@wu.ac.at

Consolidated Grade Record

0	9	6	5	7	4	1
---	---	---	---	---	---	---

Degree Program Identification No.

J	7	8	4	1	5	1			
---	---	---	---	---	---	---	--	--	--

YATANI

Gumato Ukur
 Haubenbigstr. 9
 1190 Wien

Date of Birth:

15.08.1969

Degree Program

Dr.-Studium d. Sozial- u. Wirtschaftswiss. Betriebswirtschaft

Following examinations have been completed:

Name of Class and Name of Examiner	Type +)	Weekly hours	ECTS *)	Date	Grade *)
Leadership, Diversity and the Workplace Prof. Dr. Mary Ann Danowitz	PI	2		22.03.2010	good
Research Methods of Social and Economic Sciences: Qualitative Paradigms Prof. Dr. Ronald Kurt	PI	2	6.00	10.06.2010	excellent
Research Seminar in Main Subject I Management Prof. Dr. Edeltraud Hanappi-Egger	PI	2	2.00	28.06.2010	participated successfully
Academic Writing Prof. Dr. Martin Herles	PI	2	1.00	06.07.2010	excellent
Philosophy of Science Univ. Prof. Dr. Gabriele Mras	PI	2	6.00	15.08.2010	good
Research Methods of Social and Economic Sciences: Quantitative Paradigms (Business Administration) Dr. Thomas Salzberger	PI	2	6.00	27.01.2011	excellent
Research Seminar in Main Subject II Management Prof. Henriett Primecz	PI	2	2.00	27.01.2011	participated successfully
Advanced Course Research Methods of Social and Economic Sciences Dr. Thomas Salzberger	PI	2	4.00	20.05.2011	excellent
Research Seminar in Main Subject III Management Prof. Henriett Primecz	PI	2	2.00	16.06.2011	participated successfully
Research Seminar in Main Subject IV Management Prof. Dr. Edeltraud Hanappi-Egger	PI	2	2.00	13.07.2011	participated successfully x)
Research Seminar Management Prof. Dr. Edeltraud Hanappi-Egger	PI	2	6.00	13.02.2012	excellent
Continued on next page -					

+) AG = Workshop, DP = Diploma Examination, EX = Excursion, FP = Subject Examination, KV = Tutorial Discussion, LVP = Class Examination, OL = Introductory Lecture, OT = Introductory Tutorial, PI = Course with continuous assessment of student performance, PR = Placement, PS = Introductory Seminar, PV = Specialist (Research) Seminar, RE = Revision Class, SE = Seminar, SO = Other Class, TP = Major Degree Examination, UE = Complimentary Tutorial, UV = Pilot Course, VO = Lecture, VP = Minor Degree Examination
 *) Grades: if passed: 'excellent' (1), 'good' (2), 'satisfactory' (3), 'sufficient' (4), 'P/F - Pass' (participated successfully), 'valued', 'different scale', 'pass'
 if failed: 'fail' (5), 'P/F - Fail' (Participated without success), 'failed'
 *) ECTS: European Credit Transfer System (according to degree program structure)
 **) Credit transfer

14.6.2012

Signed for the Vice Rector,
 Academic Programs and Student Affairs:

Dr. Herbert Loicht
 (Leiter der Prüfungsabteilung)

DVR 0012343



MOI UNIVERSITY

Upon the recommendation of Senate
and on authority of the Council
hereby confers upon

Giunato Adano

the degree of


Bachelor of Education
(in Arts)

Second Class Honours (Lower Division)

with all the rights and privileges
thereunto appertaining in witness whereof
we have hereunto affixed our signatures
and the seal of the University

on the 2nd day of December 19 94


SECRETARY TO SENATE


VICE-CHANCELLOR


REGISTRAR



MOI UNIVERSITY

OFFICE OF THE CHIEF ACADEMIC OFFICER

UNDERGRADUATE ACADEMIC TRANSCRIPT

NAME OF STUDENT: **ADANO GUMATO** REG. NO: **EB/0058/90**
 SCHOOL: **FACULTY OF EDUCATION**
 DEGREE PROGRAMME: **B.E.D. (EDUCATION) ARTS**
 ACADEMIC YEAR: **1991/1992** YEAR OF STUDY: SEMESTER **5**

COURSE CODE	DESCRIPTIVE TITLE OF COURSE	UNITS	MARKS	GRADES
ECT 313	SPECIAL METHODS IN GEOGRAPHY	3	54	C
ECT 316	SPECIAL METHODS IN RELIGION	3	68	B
ECT 360	EDUCATIONAL MEDIA PRACTICE & MICRO-TEACHING	3	53	C
ECT 388	TEACHING PRACTICE	6	58	C
DEC 314	RESEARCH METHODS AND FIELDWORK IN GEOGRAPHY	3	40	D
DEC 315	THE GEOGRAPHY OF KENYA	3	52	C
DEC 316	MEDICAL GEOGRAPHY	1	52	C
DEC 317	POLITICAL GEOGRAPHY	1	51	C
PSY 310	HUMAN GROWTH AND DEVELOPMENT	1	51	C
PSY 311	STATISTICS MEASUREMENT AND EVALUATION	1	52	B
REL 313	HISTORY OF CHRISTIANITY IN AFRICA	3	52	C
REL 314	PHILOSOPHY OF RELIGION	3	60	B
REL 317	ORIGINS & DEVELOPMENT OF CHRISTIANITY	3	51	C
REL 318	HISTORY OF ISLAMIC CIVILIZATION & CULTURE	3	56	C

TOTAL NUMBER OF COURSES TAKEN: **14** FOURTEEN
 TOTAL NUMBER OF UNITS: **45** FORTY FIVE

RESULT: PASS - PROCEED TO THIRD YEAR OF STUDY

KEY TO GRADING SYSTEM

- 70 and above A (Excellent)
- 60 - 69 B (Good)
- 50 - 59 C (Average)
- 49 and Below D (Pass)
- Below 49 E (Fail)

EXPLANATION OF COURSES

- 100 - 600 Undergraduate Courses
- 700 - 900 Post-graduate Courses

OTHER KEYS

- Pass after Success only, Try Again
- E, Fail, Below

NOTE: **Students must pass 75% of the courses**
and 75% of the units to be eligible for graduation.

FOR: 
 CHIEF ACADEMIC OFFICER

Tuesday, September 15, 2009
 DATE

Tel: (053) 43091-8
 (053) 43626
 Fax: Tel: (053) 43047
 (053) 43162
 E-Mail: exams@jmmoi.com

P.O. Box 1000
 Eldoret
 Kenya



MOI UNIVERSITY

OFFICE OF THE CHIEF ACADEMIC OFFICER

UNDERGRADUATE ACADEMIC TRANSCRIPT

NAME OF STUDENT: **ADANO GUMAYO** REG. NO: **ED/0058/90**
 SCHOOL: **FACULTY OF EDUCATION**
 DEGREE PROGRAMME: **BACHELOR OF EDUCATION (ARTS)**

ACADEMIC YEAR: **1990/1991** YEAR OF STUDY: **I**

COURSE CODE	DESCRIPTIVE TITLE OF COURSE	UNITS	SEMESTER I & II	
			MARKS	GRADES
ECT 210	GENERAL METHODS OF TEACHING	3	60	B
ECT 211	EDUCATIONAL MEDIA RESOURCES	3	56	C
EDF 210	PHILOSOPHY OF EDUCATION	3	54	C
EDF 211	HISTORY OF EDUCATION	3	53	C
GEO 200	FUNDAMENTALS OF PHYSICAL GEOGRAPHY	3	54	B
GEO 311	SPATIAL ORGANISATION	3	50	C
GEO 312	EAST AFRICAN ENVIRONMENTS	3	52	C
GEO 313	MAP INTERPRETATION AND SURVEY	3	52	C
PAC 210	CURRICULUM DEVELOPMENT	3	51	C
PHL 200	INTRODUCTION TO PHILOSOPHY	3	40	D
PSY 210	GENERAL EDUCATION PSYCHOLOGY	3	53	C
REL 200	PHENOMENOLOGY OF RELIGION	3	52	C
REL 211	COMPARATIVE RELIGION I	3	50	C
REL 212	COMPARATIVE RELIGION II	3	51	C

TOTAL NUMBER OF COURSES TAKEN [14] FOURTEEN
 TOTAL NUMBER OF UNITS [42] FORTY TWO

RESULT: PASS - PROCEED TO SECOND YEAR OF STUDY

KEY TO GRADING SYSTEM

70 and above A (Excellent)
 60 - 69 B (Good)
 50 - 59 C (Average)
 40 and Below D (Pass)
 39 and below E (Fail)

NOTE: A Semester is a period of 16 Weeks.
 1 unit is equivalent to 1 contact hour per week

EXPLANATION OF COURSES

100 - 600 Undergraduate Courses
 700 - 900 Post-graduate Courses

OTHER KEYS

* Pass after Supplementary Examination
 E Elective Course

FOR:



CHIEF ACADEMIC OFFICER

Tuesday, September 15, 2009

DATE

THE KENYA NATIONAL EXAMINATIONS COUNCIL



This is to certify that the candidate named below sat for the Examination for the Kenya Advanced Certificate of Education and qualified for the award of a

KENYA

ADVANCED CERTIFICATE OF EDUCATION

The candidate passed at the level shown (Principal or Subsidiary) in the subject(s) named and attained the Grade(s) as indicated.

ADAMO GUARATO

01004/509

MACHAKOS GIRLS' HIGH SCHOOL

Grade

GENERAL PAPER	SUBSIDIARY	
CHRISTIAN REL EDUCATION	PRINCIPAL	C
GEOGRAPHY	PRINCIPAL	D
LITERATURE IN ENGLISH	PRINCIPAL	E
KISWAHILI	SUBSIDIARY	

SUBJECTS RECORDED FLYLEAF

EXAMINATION BY THE KENYA NATIONAL EXAMINATIONS COUNCIL

Secretary

Kenya National Examinations Council

Chairman

Kenya National Examinations Council

A 194088

(See overleaf)

THE KENYA NATIONAL EXAMINATIONS COUNCIL



This is to certify that the candidate named below sat for the Examination for the Kenya Certificate of Education and qualified for the award of a

KENYA CERTIFICATE OF EDUCATION

DIVISION 13

THE CANDIDATE REACHED THE GRADE SHOWN IN THE SUBJECTS NAMED

GUSAYO ADAM

50203/197

512, P.O. BOX 90, STRAIT SECONDARY SCHOOL

	<u>Grade</u>
ENGLISH LANGUAGE	2
LITERATURE IN ENGLISH	2
CIVIC AND REL. EDUCATION	2
HEALTH	2
SCIENCE	2
CHEMISTRY	2
LEARNING THROUGH PLAY	2
MUSIC	2
ARTS	2

APPROVED BY THE BOARD OF EXAMINERS

APPROVED BY THE BOARD OF EXAMINERS

APPROVED BY THE BOARD OF EXAMINERS 12/197

Secretary
Kenya National Examinations Council

Chairman
Kenya National Examinations Council

(See enclosure)

TEACHERS SERVICE COMMISSION

Telegrams: "Mwalimu", Nairobi
Telephone: Nairobi 331144/5/6/7/8/9 and 331150
When replying please quote.

Ref. No. TSC/309362/40
and date



CO-OPERATIVE HOUSE
HAILE SELASSIE AVENUE
PRIVATE BAG
NAIROBI, KENYA

6th June, 1997

Miss Gumato Adano

Through

The Headteacher,
Nanyuki High School,
P.O. BOX 233,
NANYUKI.

[Handwritten signature]
16-6-97

DEPLOYMENT AS DEPUTY HEADTEACHER
MOI GIRLS HIGH SCHOOL, MARSABIT

I am pleased to inform you that, it has been decided that you be deployed to perform duties of Deputy Headteacher, Moi Girls High School, Marsabit with effect from 19th May, 1997.

In accordance with the Teachers Service Commission Code of Regulations for Teachers, you will be paid the appropriate Responsibility Allowance.

On behalf of the Teachers Service Commission, I congratulate and wish you success in the performance of your duties.

[Handwritten signature]
L.N. NZOMO (MRS)
FOR: SECRETARY
TEACHERS SERVICE COMMISSION

c.c.

The Provincial Director of Education,
EASTERN/RIFTVALLEY

The Chairman, B.O.G.,
Moi Girls High School, Marsabit,
P.O. BOX 123,
MARSABIT

The Headteacher,
Moi Girls High School, Marsabit,
P.O. BOX 123,
MARSABIT.

GAZETTE NOTICE NO.

**THE EWASO NG'IRO NORTH RIVER BASIN DEVELOPMENT
AUTHORITY ACT
(CAP. 448)**

APPOINTMENT OF BOARD MEMBERS

IN EXERCISE of the powers conferred by section 4 (1) (L) of the Ewaso Ng'iro North River Basin Development Authority Act, the Minister for Regional Development Authorities appoints,

**Gumato Okur (Mrs),
Gindole Katelo Beru**

to be Board Members of the Ewaso Ng'iro North River Basin Development Authority, for a period of three (3) years, with effect from 20th June, 2006. The appointment of Elema Isako Fila and Tache Bonsa is revoked*.

Dated the 3rd Day of July 2006



**M.A. MCHAMUD
MINISTER FOR REGIONAL DEVELOPMENT AUTHORITIES**

*G.N 4786/2006



Commonwealth Secretariat
London



Centre for Corporate Governan
Ken

FIVE-DAY DIRECTORS' COURSE

This is to Certify that

Gumato V. Yattani

has attended the "Five-Day Residential Training Course for Directors "
conducted by the Centre for Corporate Governance
on behalf of the Commonwealth Fund for Technical Co-operation
at Addis Ababa, Ethiopia,
13-19 June 2004

Dr. Srinivas Sampath
Adviser, Public-Private Sector Development
Governance & Institutional Development Division
Commonwealth Secretariat

Karugor Gatamah
Chief Executive Officer
Centre for Corporate Governance



Attended



Passed Examination



Date: June 18, 2004



CENTRE FOR CORPORATE GOVERNANCE
AN AFFILIATE OF THE COMMONWEALTH ASSOCIATION FOR CORPORATE GOVERNANCE
(SECRETARIAT TO THE PAN-AFRICAN CORPORATE GOVERNANCE FORUM)

WORKSHOP ON CORPORATE GOVERNANCE

This is to confirm that

Gumato Ukur Yattani

Attended and participated in the
"3-Day Corporate Governance Induction Course for Directors"
which covered:

Introduction to Corporate Governance
Principles of Corporate Governance
Legal Duties and Liabilities of Directors
Roles and Functions of the Board
Constituting the Board
Making the Board More Effective
The Board and Strategy
The Board and Human Resources
Appreciating Financial Reports
Risk Management
Knowledge Management and ICT
Corporate Citizenship, Social Responsibility and Ethics
Corporate Governance Reporting and Disclosure

Held at the AFC Training Institute, Karen, Nairobi, Kenya

From February 25-27, 2004

Karugor Gatamah
Chief Executive Officer

Dr. Joshua A. Okumbe
Dep. Chief Executive Officer,
Training and Education
Programmes Coordinator

Date: November 20, 2004



KENYA REVENUE AUTHORITY

TAX COMPLIANCE CERTIFICATE

Certificate Serial No:

KRA 16/022182/2012

THIS CERTIFICATE CONFIRMS THAT

YATTANI GUMATO UKUR

Holder of Tax Registration Personal Identification Number A002706285G

has fulfilled the obligation to file relevant tax returns and to pay taxes due as provided by law

This certificate will be valid for *six(6) months* up to 27TH January 2013

Issued by:

Name: D.O.OBURE...

Designation:



Signature: *[Handwritten Signature]*

Date of Issue: 27TH July 2012

Caveat

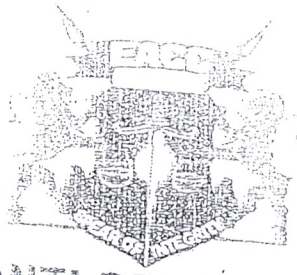
- a) This certificate is issued on the basis of information available to the Authority as at the date shown above. The Authority reserves the right to withdraw the certificate if new evidence materially alters the tax compliance status of the recipient.
- b) Confirm genuineness and validity of the certificate using the TCC checker available at: <http://www.kra.go.ke/notices/tcc-checker.html> or contact the nearest DTD office.

TCC3

Julius Obura Tugtugumwa







ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya
TEL: 254 (020) 2717318/ 310722. MOBILE: 0729 888881/2/3
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

Our ref. EACC.6/42 VOL. IV / (324)

26th July, 2012

Gumato Ukur Yatani
gumatoukur@yahoo.com

0726 377 651/0738 191 771

Dear Madam,

RE: CLEARANCE CERTIFICATE: NATIONAL GENDER AND EQUALITY COMMISSION

The Commission is in receipt of your request for a clearance certificate dated 25th July, 2012 as a condition precedent to applying for the position of Member at the above Commission.

Please note that a report will be forwarded to the National Gender and Equality Commission upon request.

Yours faithfully,

ABDI A. MOHAMUD
FOR: AG. SECRETARY/CHIEF EXECUTIVE OFFICER

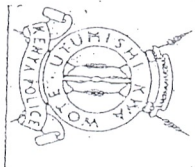
AAM/ta



KENYA

POLICE

No. C 24 A



C No. 176798

CRIMINAL INVESTIGATION DEPARTMENT
P.O. Box 30036
NAIROBI, KENYA

Ref. No. CID/SEC/6/7/2/A/YOL.XLV.173226 Date: 30/07/2012

CERTIFICATE OF GOOD CONDUCT

I hereby certify that the fingerprints attached to this Certificate are those of

GUMATO UKUR YATTANI

and that they have been searched in the criminal records office and no criminal record has been traced. The validity of the information on this Certificate is as at the date of issue.

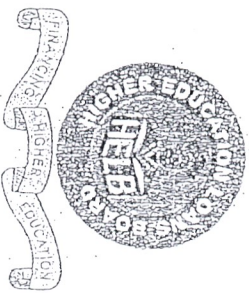
This Certificate has been issued without any alteration of erasure.

For

(Signature)
Director of Criminal Investigation

No.038533

HIGHER EDUCATION LOANS BOARD



Certificate of Clearance

UNIVERSITY STUDENT LOAN

ADANO GUMATO

This Certificate is awarded to

ID No. 9558540

University Registration No. ED/058/90

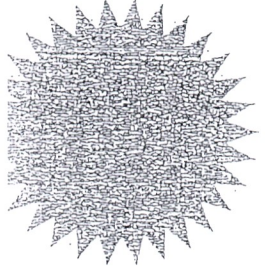
University attended MOI UNIVERSITY

For having repaid in full the Principal Loan and interest thereon.



Signature CEO/BOARD SECRETARY

Date 25 JUL 2012





Signature HEAD OF OPERATIONS

Date 25 Jul 2012



CONSUMER CREDIT REPORT
 Credit Reference Bureau Africa Limited
 All Trade Sectors Credit Report
 Report requested by Names: MS GUMATO UKUR YATTANI

PERSONAL PROFILE

00004395095

Names: MS GUMATO UKUR YATTANI

558540 PIN:A002706285G

DOB: 15/08/1969 Nationality: KENYAN

Postal Address(es)

3565, Post Code: 00100, NAIROBI
 P.O.BOX 356, MARSABIT, KENYA

Physical Address(es)

SOUTH C, SHERIFF ESTATE, HSE NO.08, NAIROBI
 House Type: Not Known

Phones

Mobile Phone 254-+436764757138
 Mobile Phone 254-+4369911342477
 Mobile Phone 254-0705-237344

Employment

OFFICE OF THE PRESIDENT
 Postal Address: 62345-00200, NAIROBI
 Postal Address:
 Position: UNDER SECRETARY

CREDIT HISTORY

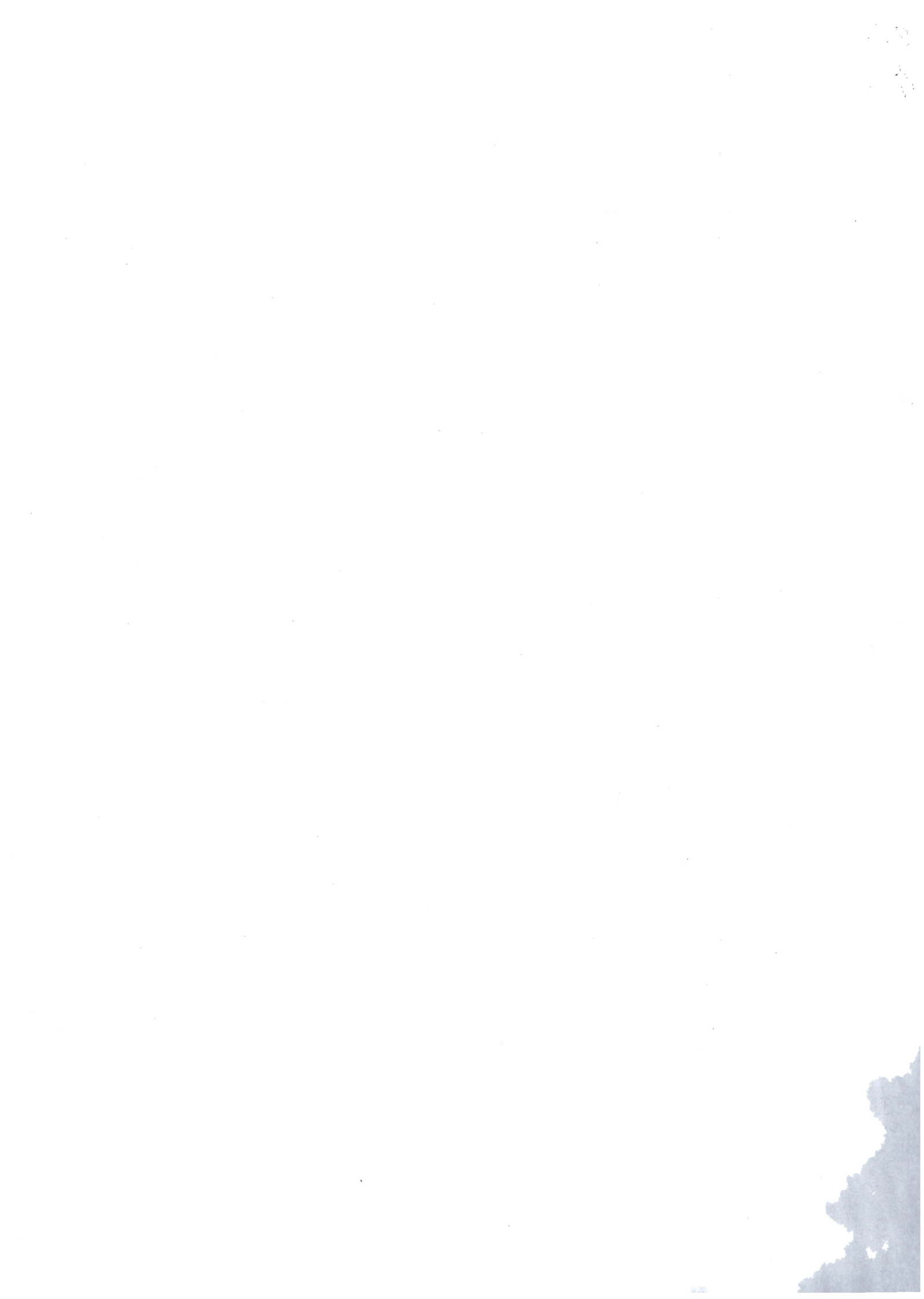
	Your Sector	Other Sectors
Total Delinquencies	0	0
Total Collection Accounts	0	0
Total Accounts	0	0
Total Bounced Cheques	0	0
Total Fraudulent Cases	0	0
Total Credit Applications	0	0
Total Legal Suits	0	0
Last Delinquency Date	-	-
Last Collection Account Date	-	-
Last Legal Suit Date	-	-
Enquiries - Last 30 Days	0	0
Enquiries - 31 - 60 Days	0	0
Enquiries - 61 - 90 Days	0	0
Enquiries > 91 Days	1	0

CREDIT REFERENCE BUREAU
 AFRICA LIMITED

Westlands Road, Off Parklands Hill,
 CRE Centre, Security House,
 P.O. BOX 40401, 00100, NAIROBI.
 Tel: +254 20 8751799/3713600/2/4
 Fax: +254 20 8751344

CONTACT ENQUIRIES

Consumer Credit Reference Bureau Africa Limited
 Trade Sector
 Bank Sector Bureau
 Date 06 Dec 2011



CONSUMER CREDIT REPORT
Credit Reference Bureau Africa Limited

All Trade Sectors Credit Report

Report requested by Name: MS GUMATO UKUR YATTANI

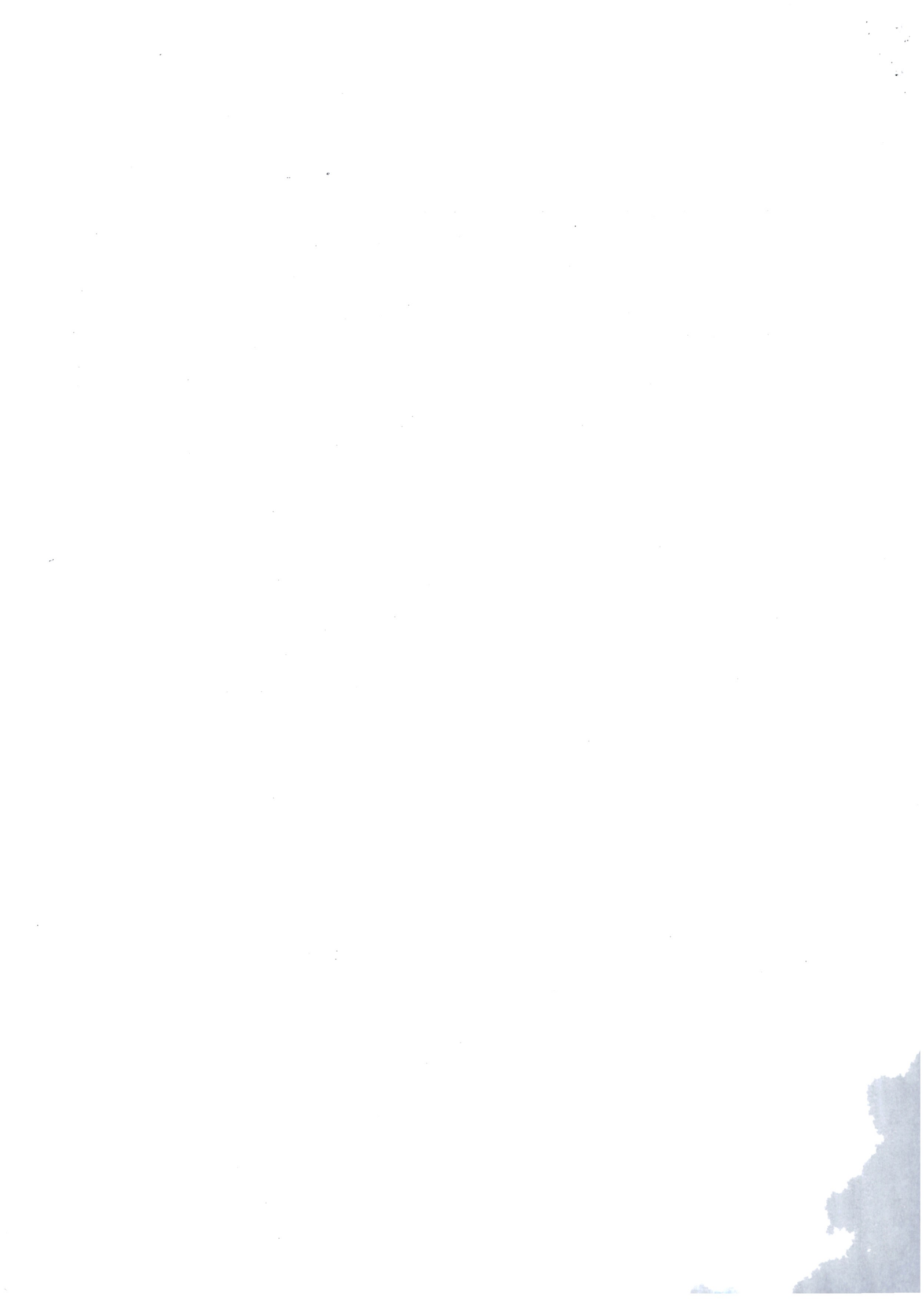
IMPORTANT NOTICE

THE INFORMATION PROVIDED BY CREDIT REFERENCE BUREAU AFRICA LIMITED DOES NOT AND IS NOT INTENDED TO REFLECT UPON THE SOLVENCY, FINANCIAL STANDING OR THE STABILITY, HONESTY OR MOTIVES OF ANY PARTY REFERRED TO AND DOES NOT IMPLY THAT ANY PARTY IS UNABLE TO MAKE PAYMENT OR THAT THEY ARE NOT PREPARED TO PAY THEIR DEBTS OR THAT THEY ARE PERSONS TO WHOM CREDIT SHOULD NOT BE GIVEN.

INFORMATION PROVIDED HEREIN IS FURNISHED, SUBJECT TO THE TERMS AND CONDITIONS OF CREDIT REFERENCE BUREAU AFRICA LIMITED SUBSCRIPTION AGREEMENT, IN STRICTEST CONFIDENCE FOR YOUR EXCLUSIVE USE AND FOR LEGITIMATE BUSINESS PURPOSES ONLY AND SHALL NOT BE REPRODUCED. NEITHER CREDIT REFERENCE BUREAU AFRICA LIMITED NOR ITS SOURCES NOR DISTRIBUTORS WARRANT SUCH INFORMATION NOR SHALL THEY BE LIABLE FOR YOUR USE OR RELIANCE UPON IT.

Credit Reference Bureau Africa Limited Box: 46406 Nairobi Kenya Tel: +254 20 3751799/ 3751360/2/4/5; +254 722205072 Fax: +254 20 3751344 Email: crm@crbafrika.com Url: www.crbafrika.com

CREDIT REFERENCE BUREAU
AFRICA LIMITED
Westwinds Road, Old Museum Hill,
Nairobi, Kenya
Tel: +254 20 3751799/3751360/2/4/5
Fax: +254 20 3751344





Kenya Revenue Authority
DOMESTIC TAXES DEPARTMENT
PERSONAL IDENTIFICATION NUMBER CERTIFICATE

NAME:

NAME:

DATE OF BIRTH:

PLACE OF BIRTH:

Sex:

.....
Signature

FOR USE OF:

