



# NHIF BOARD EXIT REPORT

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## CHAIRMAN'S MESSAGE

The privilege to serve at the helm of National Health Insurance Fund (NHIF) as Board members thrust a lifetime opportunity to my colleagues, and myself to actively contribute to the health and wellbeing of all registered beneficiaries of NHIF and in many ways, leave a positive mark in their lives. The mandate of NHIF to ensure there was affordable, accessible, sustainable, and quality health was a testament to the importance that the government of Kenya placed and continues to place on the health of its citizen and other persons resident in Kenya. The NHIF Board comprised of individuals with diverse backgrounds and expertise creating a richness that was manifested in its stewardship of a complex organization that was undergoing a duo transition.

During its active tenure lasting between February 2023 and November 2023, the board was able to resolve the impasse between the Federation of Kenyan Employers (FKE) and NHIF leading to the continued implementation on the transition from the National Hospital Insurance Fund to the National Health Insurance Fund, a process meant to accelerate the attainment of Universal Health Coverage (UHC). Equally, the Board, through a competitive public recruitment process filled vacancies of top management cadre that had for years remained vacant adversely affecting service delivery.

Between 22<sup>nd</sup> November 2023 when the SHI Act became operational until 1<sup>st</sup> October 2024 when there was a full roll out of the Social Health Authority (SHA), the Board fully cooperated and supported the Transition Committee, and all other MDAs in all aspects pertaining to the transition including the verification and transfer of all assets and liabilities previously held by NHIF to SHA. It is worth noting that during this period the role of the Board was strictly limited to winding up the Fund.

With the benefit of hindsight, I can affirm that the Board under my chairmanship fulfilled the mandate which was given to it by the Government. My team and I, who have served as the last Board of NHIF remain grateful to the appointing authority for the opportunity afforded to us to be of service to our beloved Country Kenya.

 13.11.2024

Eng. Michael S. M. Kamau, CBS, HSC, FIEK

CHAIRMAN NHIF

## EXECUTIVE SUMMARY

The National Health Insurance Fund has endeavored to ensure access to healthcare by Kenyans through providing affordable, sustainable, and quality healthcare financing. In the period of its tenure, the Board of NHIF supported the government's goal towards the achievement of UHC by initiating and implementing various strategies. One of the main strategies was to ensure the continued development and implementation of policies as well as addressing critical setbacks and challenges such as disenthraling the NHIF Act which had been stuck in court processes. The board was able to develop and logically conclude negotiation with relevant stakeholders who had initiated litigation on the amendment on the NHIF Act 2022. The management of stakeholders included engagements with the Federation of Kenya Employers (FKE) resulting in an out of court agreement that was registered in court; as well as the initiation of recurrent strategic meetings with healthcare providers' associations such as the Kenya Health Federation (KHF) among others.

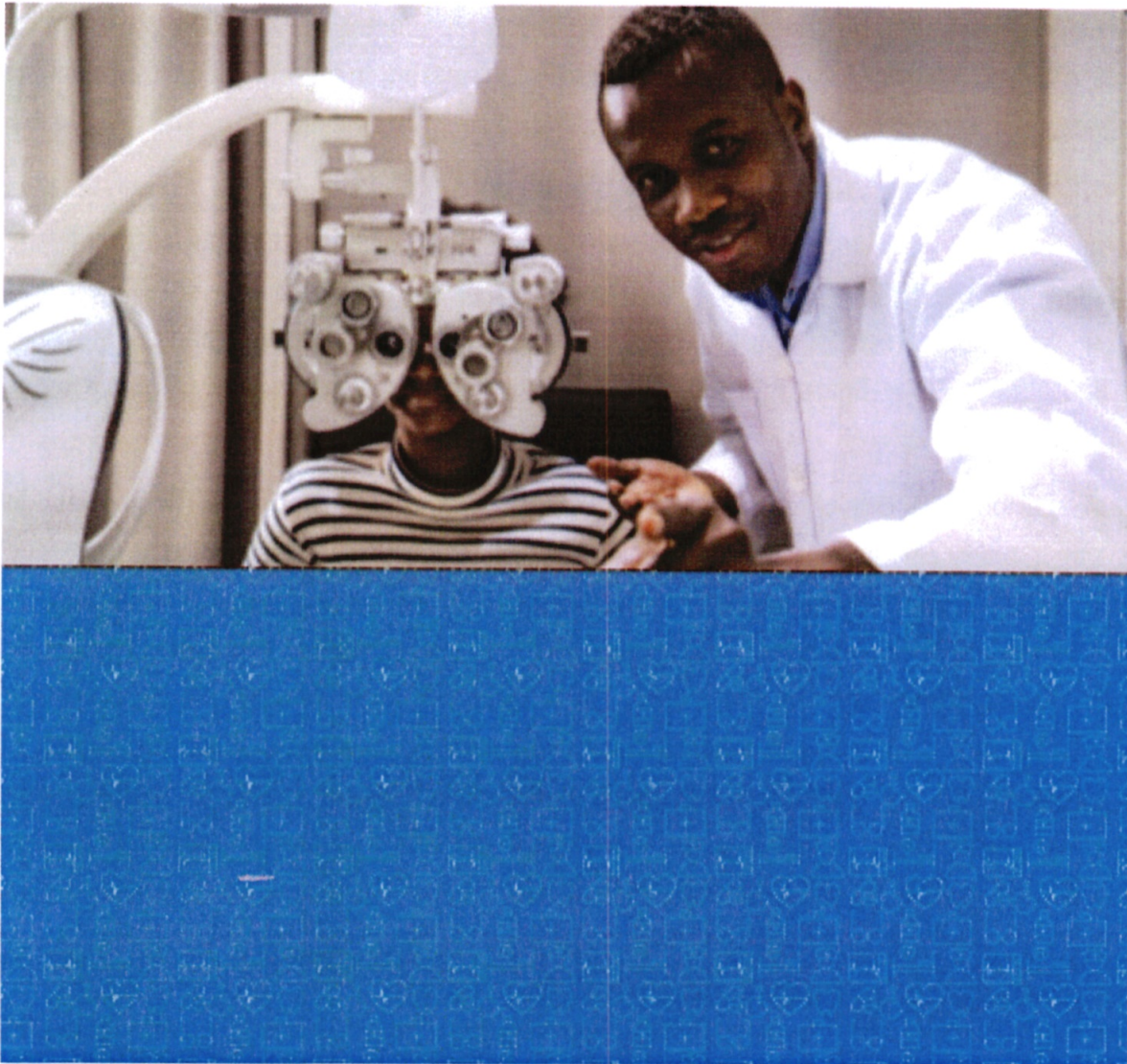
The Board of NHIF initiated and oversaw the development of legal regulations to guide the implementation of the NHIF Act 2022. The Board developed regulations on Beneficiary Identification, Contributor Registration, Contributions to the Fund, Empanelment and contracting, and Claims and Benefits. The Board ensured the regulations went through public participation as well as country wide validation.

In the tenure period, the Board ensured the efficiency of internal processes. This included supporting the ICT system and safeguarding the securing of data. In this period, the Board guaranteed there were no data breaches or leakages and that all medical records were held in confidence. Further, the organization was registered with the Office of the Data Protection Commissioner. On staff matters, the board had cordial relations with the NHIF Management and staff for the period of its tenure and ensured continuous barazas to address staff matters. It is noted that during this period there was no acrimony experienced between the Board and the NHIF Staff. To further ensure the efficiency of the work done, the board initiated a workforce audit including an analysis of staff qualifications and their distribution across all the function areas. The Board ensured that every member of staff was accounted for and that there were no payroll irregularities on the staff employed by the NHIF.

In the course of its operations, the Kenya Kwanza government in striving to accelerate the achievement of UHC initiated the change in structure for health financing. This led to the enactment of the Social Health Insurance Act of 2023, which essentially retired the NHIF Act of 2022 paving the way for the Social Health Authority to take over the NHIF mandate. A transition period was then set up and the NHIF Board has actively supported the committee tasked with

transition in various aspect including support in the recruitment of Executive Management, the verification of NHIF assets and the Handover of NHIF operations to the Social Health Authority.

As the transition period nears its conclusive date, the Board of NHIF has highlighted its achievements, challenges and lessons learnt in this report. Further the board has outlined some reflections on the SHA Board highlighting areas of significance that will greatly aid the new board in achieving Universal Health Coverage for the country.



## 1.0 INTRODUCTION

The National Health Insurance Fund has been at the forefront of providing affordable, accessible, sustainable, and quality health insurance to Kenyans. The NHIF Board has ensured that this mandate is carried with the seriousness it requires by focusing on the four pillars of Organisational Capacity, efficient Internal Processes, Customer Focus and prudent Financial Management. On organisational Capacity, the Board ensured that NHIF was well staffed with qualified personnel as well as providing conducive work conditions and service points spread across the country. Further, the Board ensured there were efficient Internal Processes by enhancing the ICT system to ensure there was no break in service provision as well as assuring the security of patient data in the NHIF data base. Similarly, the Board subscribed to International Standards through ISO certifications and was at the forefront of ensuring that the Fund operates to acceptable international standards.

The Board also ensured there was a focus on the customer by implementing strategies that made it easy for the customer to access services such as the use of biometric and online self-service portals. The Board also ensured there was continuous stakeholder engagement with the various stakeholders who included NHIF members, Community Based Organisations, Hospital Associations, Development Partners, the Government of Kenya as well as the Civil Society. This creation of efficiency saw a sustainable inflow of revenue for NHIF, which was prudently managed to ensure Hospital Claims were paid in good time and that Kenyans continued to enjoy Health Care services.

### 1.1 Background

#### 1.1.1 Government's Commitment

The Government of Kenya (GoK) is committed in the implementation of health system reforms to accelerate movement towards Universal Health Coverage (UHC) as a means of realizing the "Right to Health" as enshrined in the Constitution of Kenya 2010; the long-term development blueprint, Vision 2030; and currently through the Bottom-Up Economic Transformation Agenda (BETA).

Re-aligning the health system to deliver on UHC objectives enables Kenyans to access quality health care services (promotive, preventive, curative, rehabilitative and palliative services) based on need and not on ability to pay. This ensures that the use of health services do not expose users to financial risks and catastrophic health expenditure.

Moving towards realizing of UHC has called for adequate policy, legal and institutional frameworks to ensure Kenyans have access to affordable quality healthcare services. The main tenets on the achievement of this realignment include developing an explicit unified progressive health benefit package; expanding the population under Universal Health Insurance coverage; increasing the availability and coverage of quality essential interventions; initiating financial risk protection for

Kenyans with special needs such as the poor and the vulnerable groups; and ensuring adequacy of Health resources for delivery of health services.

In this regard, the Kenya Kwanza Government considering the Healthcare Transformation tenet of the Bottom-Up Economic Transformation Agenda initiated the move from the National Health Insurance Fund (NHIF) to the Social Health Authority (SHA) with an aim of accelerating the attainment of UHC and the assurance of good health for all Kenyans.

### **1.1.2 National Hospital Insurance Fund (NHIF)**

The history of the National Hospital Insurance Fund (NHIF) takes us back to 1966 when it was established by an act of parliament and placed as a department under the Ministry of Health. This Act was revised in 1998 to transform NHIF to a state of corporation and improve its efficiency to respond to the changing dynamics in the health sector.

In the year 2022, the NHIF Act was amended to expand its mandate and hence it became the National Health Insurance Fund. The implementation of this amendment met varied challenges including court processes that stalled the implementation. However, the NHIF Board was able to initiate negotiations with the relevant stakeholders and remove the impasse leading to the continuation on the implementation.

In the course of this transition, the government changed the approach on the attainment of UHC and initiated change through legislation with the enactment of the Social Health Insurance Act of 2023 which created the Social Health Authority. By enactment of the SHI Act 2023, the NHIF Act No. 9 of 1998 was repealed vide section 54.

## **1.2 NHIF Mandate**

Article 43 of the Kenyan Constitution states that every Kenyan has a right to quality and affordable health care, including reproductive health; it further states that no Kenyan can be denied access to emergency health services when in need. The implication of this article is that barriers to health care services of whatever kind will not hinder access, hence the government is duty bound to remove such barriers so that health rights are met. The NHIF Mandate is drawn from the NHIF Act 2023, and the Board operationalized it through regulations and policy guided by the following corporate statements:

**Vision:** *World class universal social health insurer*

**Mission:** *To contribute towards universal health coverage in the provision of affordable, accessible, sustainable, and quality health insurance through strategic resource pooling and healthcare purchasing in collaboration with stakeholders.*

**Mandate**

The mandate of NHIF has been to:

- Register and receive all contributions and other payments
- Make payments out of the Fund to declared hospitals
- Set criteria for empanelment and contracting
- Regulate contributions payable to the Fund, the benefits and other payments to be made from the Fund
- Protect interests of contributors to the Fund
- Advise the Government on the national policy regarding national health insurance

### Core Value Statements

- Find a Better Way
- We Make a Difference
- We Win Together
- Do the Right Thing

### 1.3 NHIF Board

The NHIF Board came into effect in 2022, with the appointment of the Board Chair Eng. Michael Kamau and the Cabinet Secretary Appointees Dr. Jason Kap Kirwok and Mr. Andrew Mugambi being made in December of 2022. However, the business of the Board commenced on 14<sup>th</sup> February of 2023 due to legal technicalities on the constitution of the board and the commencement of its mandate. Below is a tabulation of the board membership noting the name, organizational representation and date of appointment.

	NAME	TITLE/ REPRESENTING	DATE OF APPOINTMENT
1.	Eng. Michael Kamau	Chairperson	23 <sup>rd</sup> December 2022
2.	Dr. Jason Kap Kirwok,	Vice Chairperson, CS Appointee MOH	23 <sup>rd</sup> December 2022
3.	Mr. Andrew Mugambi,	CS Appointee MOH	23 <sup>rd</sup> December 2022
4.	Mr. Michael Kahiti	Alternate Member, CS National Treasury	24 <sup>th</sup> November 2021
5.	Mr. Harry Kachuwai Kimtai	PS Ministry of Health	16 <sup>th</sup> May 2023
6.	Dr. Zeinab Gura	Alternate Member, PS Ministry of Health	15 <sup>th</sup> June 2023
7.	Dr Andrew. W. Onyino	Kenya Medical Association	25 <sup>th</sup> March 2022
8.	Ms. Irene Moraa Ogamba	Rep. of Council of Governors	20 <sup>th</sup> January 2023
9.	Mr. Dennis Muthomi Gitari	Rep. of Council of Governors	20 <sup>th</sup> January 2023
10.	Mr. Albert Obed Njeru	Central Organization of Trade Unions	25 <sup>th</sup> March 2022
11.	Dr. Rachel M. Monyoncho	Federation of Kenya Employers	13 <sup>th</sup> July 2022
12.	Mr. Elijah Wachira	Chief Executive Officer & Secretary	9 <sup>th</sup> October 2023
13.	CS. Catherine Mungania	Corporation Secretary & Director Legal Services	9 <sup>th</sup> October 2023

Below is a summary of the Board Members' profiles;





*Eng. Michael Kamau, CBS, HSC, FIEK  
Chairperson NHIF*

Engineer Kamau has a solid academic foundation and a distinguished career in public service. He possesses a Master of Science in Engineering from the University of Newcastle Upon Tyne in the UK, and a Bachelor of Science in Civil Engineering from the University of Nairobi. This educational background equipped him with a deep understanding of engineering principles and infrastructure management.

Professionally, he has made significant contributions to the Engineering profession, construction industry and the Kenya's transport and infrastructure sector among other fields. Engineer Kamau rose through the ranks in the Public Service from the position of assistant engineer and served as chief Engineer roads, Roads Secretary, before his appointment as the acting Permanent Secretary Ministry of Roads and Public Works. Subsequently, he was appointed Permanent Secretary Ministry of Roads where he served between 2008 to 2013. From April 2013 to March 2015, he served as the Cabinet Secretary for Transport. He was a technocrat who understood how the Government functioned, and he served at every stage for 34 years. During his tenure in the infrastructure sector several flagship projects were initiated and some completed during his tenure in the roads and infrastructure sector who further demonstrates his leadership and expertise in shaping the country's transport policies and infrastructure strategies.

He was the pioneer chairman of the Governing Council of the Management University of Africa thus helping set up the University which eventually received its Charter in the year 2024. Equally, he served as the Chairman of Engineers Registration Board.

**Mr. Elijah Gichaga Wachira**  
Chief Executive Officer NHIF



Elijah Wachira is a seasoned professional with a comprehensive academic and professional background in business and insurance. Holding a Master of Business Administration and a Bachelor of Arts, he is an active member of the Insurance Institute of Kenya and the Marketing Society, demonstrating his deep expertise and dedication to the fields of business development and insurance.

He has held several prominent roles in private insurers. Since October 2023, he has served as the Chief Executive Officer of the National Hospital Insurance Fund (NHIF) and subsequently as the Acting Chief Executive Officer of the Social Health Authority (SHA). His prior leadership positions include Managing Director at CIC General and Acting Group CEO at CIC Group PLC.

Additionally, he served as a general manager at AAR health services before assuming a similar role at Madison insurance in November 2010. Mr. Wachira's career trajectory highlights his success in driving major insurance and business development initiatives.



**Mr. Harry K. Kimtai, CBS**  
 PS Ministry of Health



Mr. Harry is the Principal Secretary of the State Department for Medical Services at the Ministry of Health in the Republic of Kenya. He is responsible for coordinating medical services as the Accounting

and Authorized officer under the direction of the Cabinet Secretary for Health. Currently, he is leading the Health Care Services Reforms aimed at achieving Universal Health Coverage (UHC).

Mr. Harry Kimtai was born on December 13, 1968. He holds a Bachelor of Arts degree in Economics, a Master of Arts in Economics, and a Master of Philosophy in Economics with a specialization in Regional Planning and Economic Development from Bhopal University, India (1989 - 1995).

He has served in various capacities in the Government of Kenya. He was first appointed as the Principal Secretary at the State Department for Livestock from 2018 until 2023. He also served as Director at the Capital Markets Authority from 2016 to 2017. Between 2008 and 2014, he held the position of General Manager at Branded Fine Foods Ltd, a leading private industry player. Prior to joining Branded Fine Foods Ltd.; he began his career at the Kenya Revenue Authority as a management trainee in 1996 and rose through the ranks to the position of Principal Revenue Officer from 2003 to 2006.

**Dr. Jason Kap Kirwok**  
 CS Appointee Ministry of Health



Mr. Kap Kirwok, or simply Kap, is a highly qualified professional with a strong academic background and extensive experience in strategic management, regional economic integration, aviation policy

strategy and strategy, and leadership in general. He holds a Bachelor of Science from the University of Nairobi and a Master's in Business Administration from Eastern University in the USA. Additionally, he has completed specialized certificates in Strategy Development & Execution from The Wharton School and Leadership Development from the University of Cape Town.

Over the years, he has held prominent roles including his current position as the Deputy Chairperson of the NHIF Board as well as the Chairperson of the Social Health Authority Transition Committee. With over 30 years of experience, Kap has demonstrated his expertise in senior leadership roles, consultancy, and as a donor representative.

His career has spanned various sectors, including serving in the Board and as a Senior Executive at Kenya Airways and holding senior leadership positions at Trademark East Africa, the Kaizen Company and Tetra Tech. He has consulted the World Bank, Nestle Equatorial Africa, AgriVie, a private equity investment fund, African Airlines Association, among others.

Kap is also a writer and has published six books (poetry, fiction and non-fiction).

**Mr. Andrew Mugambi Mwiricia**  
CS Appointee Ministry of Health

Andrew has a strong academic background in law. He holds a Post Graduate Diploma from the Kenya School of Law and a Bachelor of Laws (Hons) from the University of Nairobi.

With over 15 years of experience, Andrew has been a Partner at Dentons Hamilton Harrison & Mathews since 2006, following his tenure as a Senior Associate there from 2005 to 2006. Prior to that, he held roles as an Associate at Iseme Kamau & Maema Advocates in Nairobi and Bowyer Mahihu & Co Advocates in Mombasa. Recognized by IFLR 1000, Legal 500, Chambers Global as a leading lawyer in corporate, commercial, banking, finance law, Andrew has significant expertise in local and multinational transactions, including acquisitions, capital market mandates, and public-private partnership (PPP) projects in energy and infrastructure.



(LLB

and  
and

**Mr. Dennis Muthomi Gitari**  
Rep. Council of Governors



Mr. Dennis holds a Bachelor of Laws (LLB) degree and a Post-graduate Diploma from the Kenya School of Law. Currently, Mr. Gitari is pursuing a Master of Laws

(LLM) in Comparative Constitutional Law at the University of Nairobi.

With over six years of legal experience, Mr. Gitari has developed expertise in Commercial, Corporate, and Property Law, along with a notable track record in Employment and Human Rights Law. He serves as a board director at the National Hospital Insurance Fund, representing the Council of Governors after being nominated on January 24, 2023, for a three-year term. Additionally, he is a Commissioner for Oaths, Notary Public, and a registered Patent Agent.

**Mr. Albert Obed Njeru**  
Central Organisation of Trade Unions(K)



Mr. Njeru is a professional accountant with certifications in Social Security and Social Health Protection. He began his leadership journey at an

early age, consistently serving as a prefect throughout his education. Njeru started his career as a shop steward and later worked as an accountant at Ramisi Sugar Company before joining KUDHEIHA in the same capacity. He served as the Embu Branch Secretary from 1997 to 2007.

In 2007, he became the General Secretary of KUDHEIHA Workers, where he has been a diligent advocate for workers' rights. His commitment to the Labor movement and his belief in continuous learning have been central to his leadership philosophy, encouraging workers to continually enhance their skills to remain competitive.

**Mr. Michael Kahiti**  
 Alternate Member CS National Treasury



Mr. Kahiti is a distinguished professional who holds a master's degree in Economic Policy Management from Makerere University and a Bachelor of Economics from the University of Nairobi. His educational background has

provided him with a solid foundation in economic policy and planning.

With extensive experience in the public sector, he currently holds the esteemed position of Director of Planning at the National Treasury, a role he has served in since July 2020. In this capacity, he is tasked with overseeing the formulation of external borrowing plans and conducting financial negotiations for externally funded development projects. Previously, he steered the Central Planning & Project Monitoring Unit from February 2006 to January 2021, where he refined his skills in project monitoring and economic planning.

**Dr. Andrew Were Onyino**  
 CS Appointee Ministry of Health



Dr. Andrew Were Onyino is a Consultant Plastic, Reconstructive, and Aesthetic Surgeon at Kenyatta University Teaching, Referral, and Research Hospital (KUTRRH) in Nairobi, Kenya. He holds an MBChB from the University of Nairobi,

where he also completed his medical degree. Additionally, he received specialized training in Public Health in Complex Emergencies from Makerere University and is a fellow in Capacity Building for Effective Health (CBEH-HRH) from the German Cooperation. Currently, Dr. Were is a Director on the NHIF Board, appointed by the Cabinet Secretary of Health, where he has been a key figure in the Ministry of Health's reform agenda. He successfully lobbied for the passage of the Health Amendment Bill 2021 and the NHIF Amendment Act 2021, advocating for enhanced professional autonomy and improved healthcare regulation.

In addition to his medical and regulatory roles, Dr. Were is the Founder and CEO of Daktari Media Africa LLC, which operates Daktari Online. This leading online medical resource portal serves over 50,000 doctors and healthcare professionals across Africa, providing locally generated and region-specific medical education content.

**Dr. Rachel Monyoncho**  
 Federation of Kenya Employers

Dr. Rachel is a highly accomplished professional in the field of organizational management. She holds a prestigious Doctor of Philosophy (Ph.D.) in Organizational Theory and Behavior, a Master of Business Administration in Strategic Management International Business, and a Bachelor of Science in Chemistry, Botany, and Zoology.

Dr. Rachel brings over two decades of extensive expertise in human resource management and consulting to the table. Her illustrious career includes serving as Human Resource Director at G4S Security Limited from 2009 to 2011 and as the Human Resource Manager for the Northland and Eastern Africa Coca-Cola Subgroup 2006 to 2008. Her comprehensive knowledge and proven track record in strategic management and organizational development make her an invaluable asset in any professional setting. Her commitment to excellence, coupled with her innovative approach, sets her apart as a leader in her field and makes her a compelling choice any organizational endeavor.



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**Ms. Irene Moraa Ogamba**  
**Rep. Council of Governors**



Ms. Ogamba is an Advocate of the High Court of Kenya having been admitted to the Bar in 1999. She is also a Certified Secretary and a public sector management practitioner with more than 21 years of experience - Six of which she served as a corporation Secretary.

Ms. Ogamba has vast experience in institutional, legal and policy development and analysis; Human Rights; corporate governance, administration, lobby and advocacy on social-legal matters, Strategic planning and conveyance.

She has served in the public service of the government of Kenya in various capacities namely; the public service of the government of Kenya in the following capacities: Director Legal Services- Council of Governors- (October 2020 to date)- she is in charge

of the Legal, Human Rights and Constitutional Affairs Committee and the Security and Foreign Affairs Committee, Manager Legal and Board Affairs- National Industrial Training Authority- (December, 2013 to September, 2020), Principal State Counsel- Ministry of Gender, Children and Social Development (2010- 2013) and State Counsel (2001 to November, 2010).

Ms. Ogamba has served on several Boards, National Committees and taskforces. She has professional qualifications; Master of Laws (LLM) (Governance, law and Democracy), Post Graduate Diploma in Law, Bachelor of Law [LLB], Certified Secretary, Governances Auditor. She has attended several professional courses to horn her skills, including Corporate Governance Certification, Public Policy Executive Program, Strathmore University, Strategic Leadership Development Programme, Governance Audit- Institute of Certified Public Secretary, Trustees Development Programme by College of Insurance, Mediation & Conflict Resolution Course, Senior Management Course, Training on Advocacy Skills and Arbitration

**Dr. Zeinab Gura**  
**Alternate Member, PS Ministry of Health**



Dr. Zeinab Roka is a dynamic and accomplished healthcare professional with a remarkable 16-year career encompassing clinical, programmatic, and strategic healthcare management. With over eight years in midlevel to senior management, Dr. Roka has continuously demonstrated her ability to lead and drive impactful change within the public health sector. Her qualifications, including a Master of Science in Applied Epidemiology and a National Security and Strategy course from the National Defense College Kenya, underscore her expertise in addressing complex health challenges at both national and international levels, making her an asset in shaping robust health systems. Dr. Roka's impressive list of over 40 publications on health-related matters reflects her passion for advancing knowledge and best practices within the field.

In addition to her professional achievements, Dr. Roka's leadership extends to her roles as a board member of the National Hospital Insurance Fund, the Kenya Nuclear Regulatory Authority, and the Africa Field Epidemiology Network, as well as her council membership at UMMA University. These positions not only showcase her influence in shaping healthcare policies and regulations but also highlight her dedication to fostering collaboration and partnerships across diverse healthcare institutions.

Overall, Dr. Roka's wealth of experience, coupled with her strong leadership and academic background, positions her as a persuasive and influential figure in driving forward the agenda for Universal Health Coverage and Health Security. Her proven track record and multidisciplinary expertise make her an invaluable asset in addressing the complex challenges facing the healthcare industry today.



CS Catherine Kinya Mungania Corporation Secretary & Director Legal Services  
Advocate & Commissioner for Oaths

Catherine Kinya Mungania is an Advocate of the High Court of Kenya with a distinguished law career and vast experience in legal matters spanning over 17 years. She is one of the few Kenyan lawyers who have been privileged to gain experience from the Bar, the Bench and Corporate field. She holds a Bachelor of Laws (LL.B.) Degree from Moi University, a Postgraduate Diploma in Law from Kenya School of Law, a Master of Laws (LL.M.) Degree in Public Finance from the University of Nairobi, a Certified Public Secretary (CS) and a Diploma in Human Resource from Kenya Institute of Management.

Ms. Mungania is dedicated, versatile and detail oriented with a proven ability to accurately execute a variety of legal, Corporate and administrative functions. She possesses a wealth of experience having worked in various Government parastatals as well as the

Judiciary as a Senior Resident Magistrate.

Ms. Mungania's areas of law practice include *inter alia*: - litigation, commercial law, Arbitration, alternative dispute resolution, employment matters, Policy development and formulation among others. In that regard, her work experience cuts across both public and private matters with keen interest in policy framework development and implementation, Health field, financial management as well as Employment matters. She has an excellent understanding of fundamental principles of laws, legal codes, court procedures, government regulations, policy review and development and relevant legal lingua.



## 2.0 GOVERNANCE

### 2.1 Board Performance

In the period of its tenure, the NHIF Board was guided by performance targets and goals aimed at the provision of healthcare insurance for Kenyans. During this period the Board was appraised and evaluated through the Annual Performance Contracts signed with the Ministry of Health and the Public Service Performance Management Unit as well as being evaluated by the State Corporations Advisory Committee (SCAC). The negotiated contracts were cascaded to management for implementation. The following is a summary of the Board Evaluation Reports:

#### 2.1.1 Board Performance Evaluation Report for FY2023/2024

During the Financial Year 2023/24 the Board scored an overall score of 4.69(93.80) with various individual scores as enumerated below.

	Name	Position	Date of Appointment	Date of Expiry	Score	Score
1.	Michael M. Kamau	Chairperson	23 <sup>rd</sup> Dec-2022	21 <sup>st</sup> Nov. 2024	4.68	93.60
2.	Andrew O. Were	Member	25 <sup>th</sup> May-2022	21 <sup>st</sup> Nov. 2024	4.77	95.33
3.	Andrew Mugambi Mwiricia	Member	23 <sup>rd</sup> Dec-2022	21 <sup>st</sup> Nov. 2024	4.87	97.30
4.	Kapkirwok R. Jason	Member	23 <sup>rd</sup> Dec-2022	21 <sup>st</sup> Nov. 2024	4.80	96.00
5.	Zeinab Gura Roka	Member	19 <sup>th</sup> Jun-2023	21 <sup>st</sup> Nov. 2024	4.89	97.78
6.	Dennis Muthomi Gitari	Member	20 <sup>th</sup> Jan-2023	21 <sup>st</sup> Nov. 2024	4.70	94.00
7.	Irine Ogamba	Member	20 <sup>th</sup> Jan-2023	21 <sup>st</sup> Nov. 2024	4.84	96.89
8.	Rachel Muga Monyoncho	Member	13 <sup>th</sup> July, 2022	21 <sup>st</sup> Nov. 2024	4.80	95.92
9.	Michael Mwangi Kahiti	Member	24 <sup>th</sup> November, 2021	21 <sup>st</sup> Nov. 2024	4.68	93.56
10	Albert Njeru Obedi	Member	25 <sup>th</sup> March 2022	21 <sup>st</sup> Nov. 2024	4.76	95.22
11	Elijah G. Wachira	CEO	9 <sup>th</sup> October, 2023	8 <sup>th</sup> October, 2026	4.52	90.51
12	Catherine K. Mungania	CS	9 <sup>th</sup> October, 2023	8 <sup>th</sup> October, 2028	4.68	93.63
<b>Corporate Full Board</b>					<b>4.69</b>	<b>93.80</b>



### 2.1.3 Board Performance Evaluation Report for FY 2022/2023

During the Financial Year 2022/23 the Board scored an overall score of 4.15(83.04) with various individual scores as enumerated below.

Board Composition						
No.	Name of Board Member	Position	Date of Appt	Expiry of Term	Score	%
1.	Eng. Michael Mwaura Kamau	Chairperson	23rd-Dec-2022	22nd-Dec-2026	4.51	90.30
2.	Mr. Michael Mwangi Kahiti	Member	24th-Nov-2021	23rd-Nov-2024	4.45	89.00
3.	Dr. Andrew Onyino Were	Member	25th-May-2022	24th-May-2025	4.54	90.80
4.	Mr. Dennis Muthomi Gitari	Member	20th-Jan-2023	19th-Jan-2026	4.56	91.10
5.	Ms. Irine Ogamba	Member	20th-Jan-2023	24th-Mar-2025	4.66	93.10
6.	Dr. Rachel Muga Monyoncho	Member	13th-Jul-2022	12th-Jul-2025	4.53	90.69
7.	Mr. Albert Njeru Obed	Member	25th-Mar-2022	24th-Mar-2025	4.55	91.00
8.	Mr. Andrew Mugambi Mwiricia	Member	23rd-Dec-2022	22nd-Dec-2025	4.57	91.40
9.	Mr. Kapkirwok Robbinson Jason	Member	23rd-Dec-2022	22nd-Dec-2025	4.61	92.10
10.	Mr. Rogers Miranyi	Internal	29th-Aug-2023	29th-Aug-2023	4.44	88.88
11.	Dr. Samson Kuhora	Ag. CEO	29th-Aug-2023	29th-Aug-2023	3.84	76.73
<b>Corporate Board</b>					<b>4.15</b>	<b>83.04</b>

## **2.2 NHIF Act & Regulation**

*Article 43 of the Constitution of Kenya 2010* guarantees to every Kenyan the right to the highest attainable standards of health including the right to healthcare services and reproductive healthcare. The Government of Kenya, through the NHIF took all the necessary measures for the attainment of Social Health Insurance. The Board showed its commitment towards achievement towards achieving Social Health Insurance as is evident in the policy, institutional and legislative measures that it progressively undertook over the years.

Significant legislative changes made under the NHIF Act 2022 were geared towards achievement of Social Health Insurance. Upon amendment of the Act, a taskforce was appointed to prepare the Regulations to enable the implementation of the Act.

The Regulations prepared were as follows:

1. Regulations on Beneficiary Identification
2. Regulations on Contributions to the Fund
3. Regulations on Contributor Registration
4. Regulations on Empanelment and Contracting
5. Regulations on Claims and Benefits

The Draft Regulations were subjected to Public Participation. Thereafter, the Regulations were to be subjected to National validations before presentation to the Parliamentary Committee on Health and subsequently to the Committee on delegated Legislation.

The process was on-going before the Government changed the policy direction and resolved to Repeal the NHIF Act 1998, Revised in 2022 by replacing it with the Social Health Insurance Act No. 16 of 2023 through a presidential assent on 19<sup>th</sup> October 2023. The CS for health gazetted the commencement date as 22<sup>nd</sup> November 2023.

## **2.3 Policies & Guidelines**

At the end of October 2022, a total of thirty-two (32) approved NHIF policies existed in the organization. The thirty-two (32) existing policies were reviewed, and twenty-four (24) new policies formulated resulting in a total of fifty-six (56) policies in the entire organization. Fourteen (14) Guidelines/Manuals/Plans were also formulated/reviewed.

## **2.4 Development of the Draft Strategic Plan 2023-2027**

During the period under review, the Board developed the 2023 -2027 Strategic plan. The Strategic Plan was developed at a point in time when the Government was keen to attain Universal Health

Coverage (UHC) inspired by its manifesto and the Bottom-up Economic Transformation Agenda (BeTA) approach.

## 2.4 Audit Matters

### 2.4.1 System Audit by EACC

The Board invited the Ethics and Anti-Corruption Commission to undertake an examination into the systems, policies, procedures and practices of the Fund. The Commission undertook the examination from 31<sup>st</sup> August 2023 to 2<sup>nd</sup> November 2023 and a report of the examination was issued to both the NHIF and SHA Board on 5<sup>th</sup> March 2024. The report identifies loopholes that may provide opportunities for corruption and unethical conduct at the Fund. The report also provides recommendations on how to seal the identified loopholes and to enhance efficiency.

### 2.4.2 Investigations of Healthcare Providers Suspected to Have Engaged in Malpractices

The Board directed for investigations to be undertaken by Internal Audit on several Health Care Providers who were suspected of having defrauded the fund. Arising from the investigations, the HCPs were suspended, recoveries of funds confirmed to be fraudulent were initiated and disciplinary action taken against staff involved. As of 20<sup>th</sup> November 2023, the Board had fully recovered from 12 hospitals Kshs 8,757,082 which defrauded the fund through the Edu Afya Scheme.

### 2.4.3 Resolved Long Outstanding Audit Issues

A loan that had been advanced to both the Kenyatta National Hospital and the Moi Teaching and Referral Hospital was noted to have had insufficient documentation. The NHIF Board undertook to correct the insufficiency and essentially regularized the loan documentation.

Through the intervention of the Board, the Loan of Kshs 312,669,869 to Moi Teaching and Referral Hospital which was overdue now has its repayments on schedule. The contract was executed on the 23<sup>rd</sup> day of October 2023 by NHIF and Moi Teaching and Referral Hospital.

### 2.4.4 Unresolved Long Outstanding Audit Issues

Some of the historical unresolved audit issues are -

- i) ***Disputed ownership of the Karen Land***; The ownership of this parcel of land is in dispute and the matter is in Court. The information available indicates that the Directorate of Criminal Investigations (DCI) has commenced investigation to establish whether there was fraud in the transfer of ownership of the land.
- ii) ***Architectural Design work at Karen Land***; the Fund initiated architectural design works in the Karen Land with capital work in progress balance of Kshs 1,444,687,484 relating to payments for drawings and designs for the proposed Resource Centre. However, the

construction of the Resource Centre did not commence due to the dispute over ownership of the land. The matter is currently active with the Public Investments Committee.

- iii) **Construction of the Multi-storey Car Park;** The Fund entered into an agreement with a local construction firm for construction and completion of a multi-storey car park at a contract sum of Kshs 909,709,305 which was revised to Kshs 1,179,611,756. The project commenced in May 2002 and completed at a cost of Kshs 3,342,120,239 in July 2008, five (5) years after the scheduled completion date of August 2003. Further, expenditure totaling Kshs 626,635,998 and Kshs 4,706,521 was incurred in 2009/2010 and 2010/2011 respectively on the car park increasing its total cost to Kshs 3,973,462,758 resulting in a contract variation of Kshs 3,063,753,453 or 337% of the original contract.
- iv) **Short-term Deposits (Investments) at Consolidated Bank;** There was an amount of Kshs 49,500,000 which had been deposited by the Fund on 26 June 2001 with the Consolidated Bank Limited. The entire deposit of Kshs 49,500,000 was offset by the Bank against a guarantee executed by a former Fund Chief Executive Officer on behalf of Euro Bank Limited. The matter has been handled by the investigative agencies.

## 2.5 Public Consultations and Stakeholder Forums

The Board initiated and facilitated numerous public consultation forums and town hall meetings to gather feedback and provide clarity with various stakeholders. These events involved meetings with key stakeholders, including healthcare provider associations such as Kenya Health Care Federation (KHF), Kenya Council of Catholic Bishops (KCCB) and Rural & Private Hospitals Association (RUPHA) among others; policy makers; NHIF staff; and NHIF members.

## 3.0 ORGANISATIONAL MANAGEMENT

### 3.1 Implementation of Human Resource Instruments

The Board received HR instruments from State Corporations Advisory Committee (SCAC) which included Human Resource Policy and Procedures Manual, Career Progression Guidelines, Organization Structure and Staff Establishment. Although the documents had been approved in November 2020, the Board initiated implementation of the same but the process was not concluded.

### 3.2 Recruitment of the Top Management Team

NHIF experienced a vacuum in its top management for four years during which various managerial staff were tapped to work in acting capacity in ensuring ongoing operations. The Board initiated and concluded recruitment of the CEO and Directors who reported on diverse dates in October and November 2023. During the recruitment, the SHA draft Act was already in motion and hence the recruitment was done in light of the new SHI ACT.

The recruitment followed *Mwongozo* guidelines and was supported by other relevant government agencies. This recruitment was also guided by the institutionalization of regional and gender balance.

### 3.3 Industrial Relations

By the time the Board took over at NHIF, Management and the Union had completed negotiations of the 2021-2023 Collective Bargaining Agreement (CBA). Consequently, the Board approved Implementation of the CBA provisions. The CBA was implemented in two phases through the months of February and March 2023. In the period that the Board operated, it enjoyed a harmonious relationship with the Staff.

### 3.4 Training and Development for Staff

Due to the need to accelerate the achievement of UHC, the board initiated and implemented the training of staff geared towards building capacity for staff tasked with the UHC implementation. The Board has been approving training programs together with corresponding budgets for staff training and development. During its tenure, staff have been trained and professionally developed to handle their responsibilities at individual, departmental and corporate levels. The training is mainly aimed at aligning skills towards the support of UHC. This was despite the reduced budget allocations against the ever-increasing cost of training by the various service providers.

### 3.5 Staff Audit

The Board took cognizance of the prevalent allegations on ghost workers. The Board initiated an audit on staff and dispelled any concerns on staff establishment. Further the Board commenced the process of verification of staff qualification and the process is currently ongoing. When the Board took over in December 2022, NHIF had a total of 1,805 staff compared to 1,721 as at October 2024. This difference was due to natural attrition (death, retirement, or end of service) as tabulated below;

S. NO	REASON FOR SEPARATION	NUMBER
1	Death	17
2	Retirement	53
3	End of Service	23
	<b>TOTAL</b>	<b>93</b>

### 3.6 Court Cases

The Board, while discharging its mandate, faces several challenges including court cases. Some of the cases have been ongoing for a long time like the Karen Land cases which are still ongoing. There

were other cases where the Board has been sued by staff, contractual obligations cases, Constitutional cases etc. A schedule of the cases is hereby annexed.

### **3.7 Disciplinary Cases - Fraud through expose**

In May 2023, there was an expose by the Media involving some facilities contracted by the Fund. The issues also touched on some staff of the Fund. Through the laid down NHIF policies and guidelines, concerned parties were reprimanded by way of termination of contract deregistering the facilities concerned and instituting disciplinary proceedings against implicated staff.

### **3.8 Authentication of Certificates**

In collaboration with Kenya National Qualifications Authority (KNQA), Kenya National Examinations Council (KNEC), Kenya Accountants & Secretaries National Examinations Board (KASNEB) and other professional and institutions of higher learning, the board presided over verification of both academic and professional certificates for all NHIF staff. Confirmation received from KNEC indicated that twenty-one (21) non-management staff had questionable certificates. This represents about 1.2% of the total staff. The NHIF Board has handed over this matter to SHA Board.

### **3.9 Pension**

NHIF has a running pension scheme administered under a trust deed and regulations approved by Retirement Benefits Authority (RBA). As of December 31, 2022, the NHIF-SRBS(DC) scheme was valued at KES 10,103,168,287. This value has since grown to KES 12,045,157,742 in the latest valuation as of June 30, 2024. Noting the sensitivity of this matter, the Board, through the scheme trustees, wrote to RBA requesting guidance on the transition of the scheme from NHIF to SHA for which RBA provided guidance. The Board recommends that the SHA Board should implement the RBA guidelines and take over as the new scheme sponsor.

### **3.10 Enhanced Records Management**

The NHIF Board successfully implemented an Electronic Document Management System (EDMS) and established a dedicated Records Management Unit, significantly improving the organization's records management capabilities. The EDMS streamlined processes, enhanced data accessibility, and ensured the security and integrity of sensitive information.

### **3.11 Security Measures**

To further safeguard sensitive records, the NHIF Board mandated that seventy (70) staff members undergo rigorous vetting by the National Intelligence Services. This proactive measure strengthened the organization's security posture and minimized the risk of unauthorized access or data breaches.

## 4.0 FINANCIALS

### 4.1 Financial Position

During the period the Fund's financial position improved as analyzed below: -

Indicator	FY 2021/2022	FY 2022/2023
Revenue Growth	78,158,543,610	81,596,356,297
Surplus for the year	2,730,841,212	3,007,585,644
Benefits utilization / Loss Ratio	83%	87%
Growth in Membership	15,459,229	16,210,351
Linda Mama Registration	1,186,004	1,276,064
Total Claims settled	58,667,054,263	65,064,176,685

Other key performance indicators for the period include:

- In the reporting period, 8,464,880 claims were processed with a total of Kshs. **57,776,829,383** paid, while capitation monies paid out totaled to Kshs. **7,287,347,302**.
- The total active membership as at **30<sup>th</sup> June 2023** stood at **7,106,911** members from the formal, informal and sponsored programs categories. This constitutes **44%** of the total enrolled members, who were **16,210,351**
- Total benefits pay-out incurred as of **30<sup>th</sup> June 2023** amounted to **Kes 70,886,855,122** against contributions and premiums of **Kes 81,596,356,297** This reflects a loss ratio of **87%**.

### 4.2 Assets and Liabilities

The Board in liaison with the Transition Committee verified and reconciled the Assets and Liabilities of the Fund as of 31<sup>st</sup> December 2023. This evaluation noted that all the assets and liabilities owned by NHIF were fully reconciled and accounted for. The same has been handed over to the Social Health Authority. Details of the Assets are contained in the Asset verification report and final Transition Committee report.

Worth noting, the amount owed to Healthcare Providers was Ksh 25.4B as of 31<sup>st</sup> December 2023 while outstanding amounts owed to NHIF by GOK were Kshs 30B.

### 4.3 Government Debt

During the period the Board followed up and further held several meetings with MoH, the National Treasury and other key MDAs with a view to realize the more than Kshs. 30B owed to the Fund in outstanding premiums for the various enhanced schemes. The respective MDA's need to prioritize

the settlement of these debts thereby availing the much-needed resources for clearing amounts owed to Health Care Providers.

## **5.0 ICT AND TECHNOLOGY**

The Board ensured there was enhancement of NHIF's ICT architecture to enhance service delivery through the following:

### **5.1 ICT Reforms Digitization**

To increase efficiency, the Fund enhanced digitization of its operational services including Company and Member registration which were been done online. The Fund also made it possible for members to interact with NHIF services through the NHIF App, and USSD code. The digitization has helped to guarantee 'ease of service' and reduced system downtime.

### **5.2 ICT Capital Expenditure**

In order to enhance adoption of modern technology, the Fund set Ksh 700 million in the financial year 2023/2024 for the acquisition of an Enterprise Resource Planning (ERP) and upgrading of the Data Centre, to allow for active-to-active data backup. This was meant to address the perennial problem of lack of real-time backups and issues surrounding transactional loopholes on the ERP. However, the Government of Kenya, through the Digital Health Superhighway, took over the ERP and Data Centre project and thus funds set aside were not spent.

### **5.3 Self-care Portal**

NHIF members had difficulty in getting response on transactional activities undertaken, such as payment of contributions and update of Biodata. Consequently, when a member wanted to change facility, they had to visit the nearest NHIF Branch to do so. The Board addressed the challenge by Upgrading the USSD Short code \*155# and revamping the NHIF Portal and Mobile App to allow for real time response and choice of facility.

### **5.4 Data Protection**

During the period under review, the Fund intensified data protection by undertaking user rights audit for staff, blocked intrusion and blocked external data leakage. Consequently, NHIF successfully registered as Data Controller with the Office of the Data Protection Commissioner in line with the Data Protection Act by 10<sup>th</sup> Nov 2023. NHIF ensured that data retention is applied for at least 7years effective 21<sup>st</sup> November 2023, when the Social Health Insurance Act took effect.

### **5.5 Biometric Registration and E-claims**

During the period under review, the Fund experienced challenges of capturing of biometrics and lack of mechanism for verifying genuine claims. This led to increased exposure to fraud and loss of funds. The Board revamped BIOMETTS to allow for full preauthorization's and claims logging and

processing. Consequently, Biometrics was locked to two random fingers as opposed to open 10 fingers, which has eliminated impersonation.

## 6.0 TRANSITION TO SOCIAL HEALTH AUTHORITY (SHA)

### 6.1 Transition Context

The Kenya Kwanza Government of Kenya has prioritized healthcare delivery as one of the core pillars of its Bottom-Up Economic Transformation Agenda (BETA). In the Plan, several commitments were identified towards the delivery of Universal Health Coverage (UHC), key among them was the enactment of the Social Health Insurance Act, No. 16 of 2023 (SHI Act) on 19th October 2023 with a commencement date of 22nd November 2023. The SHI Act established the Social Health Authority to provide a framework for management of social health insurance and to give effect to Article 43(1) (a) of the Constitution. The new laws aim to broaden the scope of public healthcare, provide healthcare and financial protection to all Kenyan citizens and long-term residents, while also bringing about significant changes in healthcare financing and administration.

The SHI Act vide section 54 repealed NHIF Act No. 9 of 1998. Therefore, the Social Health Authority took over all the functions and operations of the Board of National Health Insurance Fund (NHIF) which stated that the NHIF Board pursuant to Section 6 of Schedule one of the SHI Act shall wind up the Fund within one year from the appointed day. In view of the above provision and based on the Attorney General's advisory dated 7th February 2024, where he advised that the mandate for NHIF Board was purely limited to winding up the Fund, the Board commenced the winding up process.

On 14th February, 2024 the Board passed a resolution which stated that, "Pursuant to Kenya Gazette Notice No. 194 dated 21<sup>st</sup> November, 2023 gazetting the appointed day for Social Health Insurance Act, 2023 as 22nd of November, 2023 consequently repealing the National Health Insurance Fund Act, 1998 vide Section 54 of the Social Health Insurance Act, 2023, the Board of the National Health Insurance Fund resolved to forthwith commence the winding up process". Subsequently, following the enactment of the SHI Act No. 16 of 2023, and pursuant to Transitional Provisions under the First Schedule of the Act, a Transitional Committee was appointed Vide Gazette Notice No. 603 of 2024. The Board has worked well with the Transition Committee to ensure smooth transition from NHIF to SHA.

On 4th March 2024 a joint meeting was held between the Transition Committee, the Social Health Authority and the NHIF Board whereby the NHIF Board handed over all the documents, reports and schedules as requested by the Transition Committee. Further the Board was involved in transition

activities like asset verification process as well as requesting for constitution of the tripartite committee charged with the mandate of transiting NHIF staff.

## 6.2 Asset Transition

NHIF Board played a pivotal role in overseeing the transition of National Health Insurance Fund (NHIF) properties to the Social Health Authority (SHA), ensuring smooth verification of assets and maintaining continuity of services. The NHIF Board notes that there was successful verification of NHIF properties including the main SHA building, parking complex, Meru building, motor vehicles and several inventories; and significant achievements in records management, administration of services, and property management under the NHIF Board. The Board, however, noted there were challenges faced due to budget constraints, property maintenance issues, and staff shortages. The NHIF Board recommends increasing budgetary allocations for property maintenance.

### 6.2.1 Social Health Authority Property portfolio

The transition of NHIF properties to SHA was a complex process requiring careful planning and coordination. The NHIF Board played a crucial role in ensuring smooth transfer, working closely with relevant government agencies and stakeholders. As a result, various properties that were previously owned by NHIF were handed over to SHA as per the schedule shown below.

No	Description	Location	L.R No.	Size - Ha	Ownership status	No. of floors	Plinth Area sqft
1	SHA Building	Nairobi Upperhill area	209/15030	1.469 Ha	Leasehold	16 flrs and 5 basement floors	343,433.25
2	SHA parking complex	Nairobi Upperhill area	209/15031	1.469 Ha	Leasehold	7 flrs	
3	SHA Contrust House	Nairobi CBD	209/600	0.0348 Ha	Leasehold	10 flrs and 1 basement floor	20,246.80
4	SHA Meru building	Meru town center	Meru/Municipality/Block II/175	0.0395 Ha	Leasehold	1	
5	Karen Land	Karen Nairobi	24968/2	9.250 Ha	Leasehold	N/A	N/A
6	Nairobi A.S.K Pavillion	ASK Jamhuri Grounds Nairobi	N/A	N/A	N/A	2	3,000 Sq.ft.

No	Description	Location	L.R No.	Size - Ha	Ownership status	No. of floors	Plinth Area sqft
7	Mombasa A.S.K Pavillion	Mombasa ASK Show Ground	N/A	N/A	N/A	ground	3,229 Sq.ft.
8	Nakuru A.S.K Pavillion	Nakuru ASK Show Ground	N/A	N/A	N/A	ground	1189 Sq.ft.
9	Kisumu ASK Pavillion	Kisumu ASK Show Ground	N/A	N/A	N/A	ground	

**Note:** For the ASK show pavilions, the land is owned by ASK but the structures/buildings are owned by SHA and attract subscription annually during Show and exhibition.

### 6.3 Psycho-social Support for Staff on Transition

The enactment of the SHI Act No. 16 of 2023 and the onset of the Transition period, like any change, had effects on the NHIF staff. To counter the negative effect, the Board approved onboarding of professional service providers to assist staff overcome this challenge. The Board also held several *Barazas* both physically and virtually to help staff cope with the turn of events.

## 7.0 REFLECTIONS AND CHALLENGES

### 7.1 Reflections and Learnings

These are some of the key reflections by the Board during its tenure;

- All activities should be patient centered knowing that the lives of people depend on the efficient and timely provision of healthcare services by the government insurer.
- Recognition of Staff matters is key to the delivery of health services.
- Laws & regulations should be sufficiently clear on the transition, especially where two boards exist and are working concurrently during the transition process.
- There is need to increase focus on human resources for health and facilities improvement in addition to financing for health. This will also increase customers and add resources, while focusing on all aspects of health to achieve effective healthcare delivery in addition to ensuring available services within all levels of healthcare.
- Strategic Communication is needed in changing perceptions of stakeholders and ensuring buy-in.
- The Transition Committee needed to be given ample time to conclude its work before the appointment of a new Board. A transition involving critical aspects such as healthcare needs more time, thus the need for critical thought into transitions.

- Technology should drive business and should be seamless. The two systems (NHIF and SHA) should have run parallel instead of having a direct change over. There was a need to map out the systems well beforehand for the new system to be implemented seamlessly.
- There is need to consider stakeholder input with a demonstration of either accepting or rejecting it with reasons.

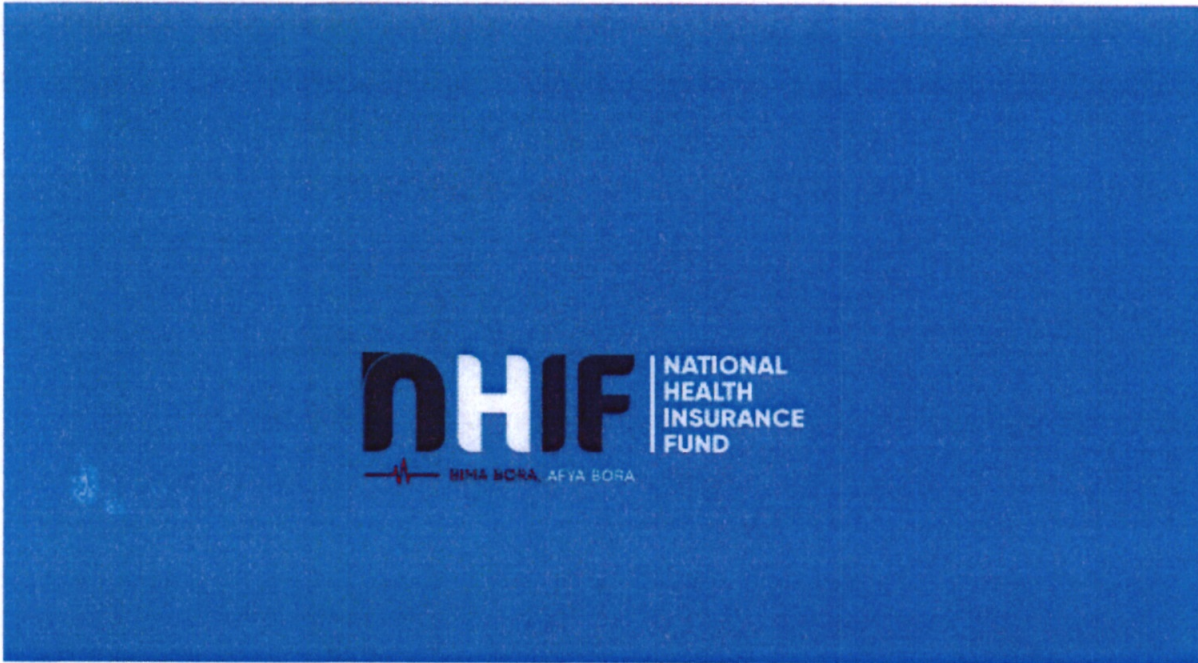
## 7.2 Challenges

The following is a summary of the challenges faced during the Board's tenure:

- i) There were delays in the release of premiums for government run programs.
- ii) Increased Government austerity measures provided challenges in the implementation of initiatives in the annual workplans.
- iii) The Board experienced delays in Budget approval.
- vi) Mismatch between contributions and benefits/claims.

## 9.0 APPRECIATION

The NHIF Board takes great pleasure to appreciate the Executive arm of Government and the Ministry of Health for giving it the opportunity to serve in the leadership of NHIF. Further, the Board takes recognition of all the other government agencies who have worked with it and who have supported its tenure. The Board also appreciates the management and staff of NHIF who have created work synergy to ensure Kenyans receive affordable, accessible, sustainable, and quality healthcare as well as the other NHIF stakeholders who provided their input and insight during the Board tenure. Most of all the Board appreciates NHIF Members and the larger body of Kenyans for trusting it to deliver healthcare to the nation.



**ANNEX 1: ADVISORY LETTER FROM ATTORNEY GENERAL**

**ANNEX 2: SUMMARY OF COURT CASES**

**ANNEX 3: TRANSITION COMMITTEE REPORT**

**ANNEX 4: PICTORIAL AND GALLERY**







ANNEX 1



RECEIVED  
8 FEB 2024

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/119/2/1 VOL. V

7<sup>th</sup> February 2024

Mr. E.G. Wachira  
Chief Executive Officer  
National Health Insurance Fund  
Ragati Road  
NAIROBI

RE: REQUEST FOR ADVISORY OPINION ON THE RESPECTIVE ROLES OF THE NATIONAL HEALTH INSURANCE FUND BOARD OF MANAGEMENT AND SOCIAL HEALTH INSURANCE AUTHORITY BOARD

This has reference to your letter under Ref. HF/HQ/LEG/5/VOL. III(9) dated the 24<sup>th</sup> November, 2023, regarding the transitional arrangements in regard to the respective roles of the National Health Insurance Fund (NHIF) Board and the Board of the Social Health Insurance Authority.

We have reviewed the Social Health Insurance Act, 2023, the NHIF Act and other relevant legislation and we advise as follows:

(a) Date of the repeal of the National Health Insurance Fund Act

We would like to point out that under Article 116 of the Constitution, an Act of Parliament comes into force on the fourteenth day after its publication in the *Gazette*, unless the Act stipulates a different date on or time at which it will come into force. Section 1 of the Social Health Insurance Act, 2023, provides that the Act shall come into force on such date as the Cabinet Secretary may designate by notice in the *Gazette*. Pursuant to section 1 of the Social Health Insurance Act, 2023, the 22<sup>nd</sup> November, 2023, was designated by the Cabinet Secretary for Health, vide Legal Notice No. 194 of 2023, as the date on which the Act shall come into operation. Therefore, the Act commenced on the 22<sup>nd</sup> November 2023. Consequently, the repeal of the NHIF Act also took effect on the 22<sup>nd</sup> November, 2023, as provided by section 54 of the Act upon the commencement of the Act.

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(b) Roles of the NHIF Board and Board of the Authority

We would like to indicate that the NHIF Board was established by section 4 of the repealed NHIF Act as a body corporate. The functions of the NHIF Board were provided in section 5 of the repealed NHIF Act. Upon the repeal of the NHIF Act, by section 54 of the Social Health Insurance Fund Act, 2023, the functions of the NHIF Board under section 5 of the repealed Act ceased, save as provided in the transitional provisions set out in paragraph 6(1) of the First Schedule to the Social Health Insurance Act, 2023. Paragraph 6(1) of the First Schedule to the Act provides—

*6.(1) Notwithstanding the provisions of paragraph (2), the National Health Insurance Fund Board shall wind up the Fund within one year from the appointed day and the cash balances and all other assets shall be transferred to the Authority.*

In light of the fact that the NHIF Act was repealed with effect from the 22<sup>nd</sup> November 2023, the mandate of Board of NHIF under section 5 of the repealed Act ceased. However, by virtue of paragraph 6(1), the NHIF Board was saved with a limited mandate of the winding up the Fund within a period of one year from the 22<sup>nd</sup> November, 2023 as provided in paragraph 6(1) of the First Schedule to Act. Hence, the NHIF Board should undertake the mandate set out in paragraph 6(1) for a period of one year from the 22<sup>nd</sup> November, 2023 and not the mandate set out in section 5 of the repealed NHIF Act.

With regard to the Board of the Social Health Authority, we would like to point out that section 4 of the Social Health Insurance Act, 2023, established the Social Health Authority as a body corporate. The functions of the Authority are set out in section 5 of the Social Health Insurance Act, 2023, and are as follows—

*5. The functions of the Authority shall be to—*

*(a) register the beneficiaries in accordance with this Act;*

*(b) manage the Funds established under this Act;*

*(c) receive all contributions and other payments required by this Act to be made to the Funds;*

*(d) empanel and contract healthcare providers and healthcare facilities upon inspection, licensing and certification of the health care providers and healthcare facilities by the relevant body;*

- (e) consider and make payments to contracted healthcare providers and healthcare facilities out of the Funds in accordance to the provisions of this Act;*
- (f) develop guidelines for the operations and implementation of the Funds established under this Act;*
- (g) establish sectoral linkages for effective management and growth of the Funds;*
- (h) monitor and evaluate programs and activities under the Funds;*
- (i) receive and address complaints that may arise from the implementation of this Act;*
- (j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;*
- (k) implement all government policies on social health insurance and related functions; and*
- (l) perform any other function conferred on it by this Act or any other written law.*

Further, the Social Health Insurance Act, 2023, provides for the Board of the Authority but does not provide for the functions of the Board. However, the Authority is a body corporate and therefore a state corporation to which the State Corporations Act (Cap. 446) and the *Mwongozo: The Code of Governance for State Corporations* apply. Section 2 of the State Corporations Act (Cap. 446) defines "Board" to mean the Board constituted in accordance with section 6(1) of the State Corporations Act or the body or person, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and management of a state corporation.

Therefore, the Board of the Authority is responsible for the carrying out of functions relating to the overall direction and management of the Authority. These functions have been provided for in detail in paragraph 1.2 of the *Mwongozo: The Code of Governance for State Corporations*.

- (c) The undertaking of Board operations by the SHIF Board including signing of contracts in light of the enactment of the Social Health Insurance Act, 2023

The enactment of the Social Health Insurance Act, 2023, resulted in the repeal of the National Health Insurance Act. Pursuant to paragraph 3 of the First Schedule to the Social Health Insurance Act, 2023, all rights, powers, liabilities and duties, whether

arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Fund were on the appointed day, by virtue of that paragraph, transferred to, vested in, imposed on or enforceable by or against the Authority.

The effect of paragraph 3 of the First Schedule to the Social Health Insurance Act, 2023, was to vest all the rights, duties and powers of the NHIF Board, including the power to execute documents, in the Authority. Therefore, the NHIF Board should no longer undertake normal Board functions, including signing contracts, since that power was vested, with effect from the 22<sup>nd</sup> November, 2023, in the Board of the Authority.

(d) The meaning of “winding up” as per the First Schedule to the Social Health Insurance Act, 2023

The repealed Act provided for the establishment the National Hospital Insurance Fund but did not provide for the winding up Fund. However, paragraph 6(1) of the First Schedule to the Social Health Insurance Act, 2023, provides for the winding up of the Fund, by the Board, within one year from the appointed day and the transfer of the cash balances and all other assets to the Authority.

The Social Health Insurance Act, 2023, does not define the term “winding up”. However, we note that the Fund is a national public fund as defined by section 24(12) of the Public Finance Management Act (Cap. 412A) which extends the application of the Public Finance Management Act to all other national public funds including funds earmarked for specific purposes established by an Act of Parliament but does not apply to a public fund established by the Constitution. The Public Finance Management Act also does not define the term “winding up”.

In the absence of a definition, the ordinary meaning of the term “wind up” should apply. According to the Blacks Law Dictionary 4<sup>th</sup> Edition the term “wind up” means to settle the accounts and liquidate the assets of a partnership or corporation, for the purpose of making distribution and dissolving the concern. Thus, the term “winding up” under the First Schedule of the Social Health Insurance Act, 2023 would mean the settling of accounts for the purpose of dissolving the Fund. Since the Fund is a national public fund, the NHIF Board may apply the provisions of the Public Finance Management Act and the regulations made thereunder should there be gaps in the winding up process as provided by the Social Health Insurance Act, 2023.

(e) Whether the Social Health Insurance Authority has any binding obligation not to pay the current NHIF staff that is less than their current salaries

Paragraph 6 of the First Schedule to the Social Health Insurance Act, 2023 provides the transitional provisions regarding the staff of NHIF. Paragraph 6 provides—

*6.(1) Notwithstanding the provisions of paragraph (2), the National Health Insurance Fund Board shall wind up the Fund within one year from the appointed day and the cash balances and all other assets shall be transferred to the Authority.*

*(2) Despite subparagraph (1), the Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff under section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as maybe determined by the Board.*

*(3) Notwithstanding the provisions of subparagraph (1), the staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised.*

*(4) Despite the provisions of sub-paragraph (2) and (3), the Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment.*

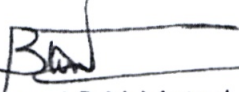
*(5) A staff of the Fund not appointed by the Authority under subparagraph (2) may exercise his or her option to either—*

- (a) retire from public service; or*
- (b) be redeployed within the public service.*

The Social Health Insurance Act, 2023, does not provide for the automatic transition of staff to the Authority and is silent on what would happen during the transitional period before the appointment of any staff by the Authority. We note that pursuant to paragraph 3 of the First Schedule to the Act, all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Fund were, by virtue of the paragraph, transferred to, vested in, imposed on or enforceable by or against the Authority on the appointed day. Therefore, the obligations of NHIF were transferred to and are enforceable against the Authority, including obligations in respect of existing contracts of any nature including employment contracts. In that regard, any existing employment arrangements should during the transition period be dealt with in accordance with the First Schedule to the Act.

- (f) During the transitional period, what is the correct information to communicate to the public to ensure that there is no confusion while awaiting the gazettment of Regulations under Social Health Insurance Act, 2023

The mandate of the Attorney-General is provided for under Article 156 of the Constitution as the principal legal advisor to the Government and therefore the Attorney-General may not be competent to provide an advisory on matters of public communication. Nevertheless, the Ministry of Health which is responsible for policy on matters relating to health and both the NHIF and the Authority may guide on the communication to be issued to the public while respecting the right to access information under Article 35 of the Constitution.

  
Hon. J.B.N Muturi, EGH  
ATTORNEY-GENERAL

Copies to: Mr. Harry Kimtai CBS  
Principal Secretary  
State Department for Medical Services  
Ministry of Health  
Afya House  
NAIROBI

Hon. Shadrack J. Mose  
SOLICITOR-GENERAL

ANNEX 2



12	CIVIL SUIT NO.188 OF 2023	RODGER OGHAM ABISIA VERSUS NATIONAL HOSPITAL INSURANCE FUND	MIGORI CHIEF MAGISTRATES	BREACH OF LEASE CONTRACT	The Plaintiff alleges that the fund breached a lease contract agreement and is therefore claiming monies for loss of profit profits as a result of the fund cancelling the lease before the lease of the contractual term.	AMELI INYANGUL & PARTNERS	50% OF \$27,672 BE PAID	\$27,672	4,933,192	All parties have filed their respective pleadings and the matter is scheduled to come up for hearing.	12/01/2024	HF/ND/LE/5/161
13	ELAC CAUSE (446/2023)	BANKING INSURANCE FINANCE UNION (BIFU) VS. (NHIF) & KEVVA AND ALIED WORKERS (KICWAFWI)	NAROBU EMPLOYMENT AND LABOR RELATIONS COURT	EMPLOYMENT DISPUTE	BIFU seek reimbursement of the union fees as from the month of May,2023 to date for 827 new members and any future members at the rate of 600 per month in line with the legal notice and signing of the recognition agreement.	SOULE & ASSOCIATES LLP	Deposit 340,000 Applied but not processed 1,300,000	2,500,000	2,500,000	Matter has been scheduled for mention to compliance and fix a filing date	12/10/2024	HF/ND/LE/5/173
14	COMMERCIAL SUIT ESAB OF 2023	UP GROUP COMPANIES LIMITED VERSUS NHIF (Contract House treated)	COMMERCIAL SUIT ESAB OF 2023	COMPENSATION FOR LOSS INCURRED	The Plaintiff alleges that the fund breached a lease contract agreement when it did not afford adequate security to them which lead to loss of property during their tenancy at the fund's property (Contract House).	N/A	N/A	0	4,000,000	The Applicant filed a motion : 24rd February 2024 @ Milimani Law Courts	Awaiting court directions	HF/ND/LE/5/177
15	HCCC E274 OF 2023	ANAL HOSPITAL LIMITED & ANOTHER VS NHIF	NAROBU HCCC E274 OF 2023	CONTRACT DISPUTE	This matter arose as a result of NHIF declining to honor a hospital bill for the Plaintiff's treatment at Kenyatta National Hospital and instead paid a retainer.	McGregor & Company Advocates	Fee note submitted, payment pending	7,240,799.46	223,353,982	The Applicant filed a notice to withdraw the matter on 15/10/2024	Awaiting court directions	HF/ND/LE/5/174
16	CHCC NO. E509/2020	EDUARD ESBOM AKATYA VS NHIF	NAROBU	CONTRACT DISPUTE	The Plaintiff alleges that the fund breached a lease contract agreement when it did not afford adequate security to them which lead to loss of property during their tenancy at the fund's property (Contract House).	ANDRE AND COMPANY ADVOCATES	PENDING	300,000	1,848,000	This matter is pending hearing, parties engaged in ADR but could not agree.	waiting for court directions	HF/ND/LE/5/175
17	HCCC 170 OF 2017	BILENT GULAMABA VS NHIF	NAROBU HIGH COURT CIVIL CASE NO.170 OF 2017	MALICIOUS PROSECUTION	Allegation that NHIF proceeded the plaintiff without sufficient evidence leading to removal under 210 of the Criminal Procedure Code.	Ogham, Akhich and Kano Advocates	PENDING	1,815,077	95,111,846.00	The matter is pending up for mention to compliance and fix a filing date	11/11/2024	HF/ND/LE/5/122
18	HCCC 352 OF 2021	WESTBIRN T/A JAMBO PAV VERSUS NHIF	NAROBU HIGH COURT	COMMERCIAL	Integrated revenue collection services for premiums paid by its members Ms. Weblethe was awarded the contract vide letter dated 29/2/2021. Payment for the services to be rendered was made by the Plaintiff in full. Upon completion of each of the four milestones, the Plaintiff made payment. However, later deferred payment for the other milestones Ms. Weblethe moved to court to claim monies for services rendered to the Plaintiff.	ACORN LAW ADVOCATES - LLP	50% PENDING	Pay 50% of 1,1517,467.50 Bal of 1,1517,467.50	900,000,000.00	The applicant has filed a motion for directions for negotiations geared towards amicable settlement of the matter. The matter has been scheduled for hearing on 17/10/2024	17/10/2024	HF/ND/LE/5/129
19	CAUSE NO. 166 OF 2019	JANE WANGICHI GICHOH V NATIONAL HOSPITAL INSURANCE FUND	NAROBU EMPLOYMENT AND LABOR RELATIONS COURT	EMPLOYMENT DISPUTE	The Applicant herein, Shernax applied for a review against the Accounting Officer, National Health Insurance Fund in relation to her appointment as a member of the NHIF/2023/2024 for Provision of Birthdays Services for Provision of Consultancy on Actual Services and; Tender No.NHIF/2023-2024 for Provision of Emergency Lead Evaluation Services for National Health Insurance Fund Scheme Members	Shernax Advocates	213,908.90	Advocate yet to submit fee note	5,000,000.00	Defence hearing closed on 27th May 2024	waiting for court directions	HF/ND/LE/5/128
20	HT 29/2023	FREDRICK OCHINGI VERSUS NHIF	NAROBU HIGH COURT	CONSTITUTIONAL	The Plaintiff is a member of the National Health Insurance Fund. The Plaintiff's access to medical services is being denied by the NHIF. The Plaintiff seeks an order compelling the NHIF to provide medical services to the Plaintiff.	KRENDA & CO ADVOCATES	PAID IN FULL	KSh. 2,000,800	Non-Monetary	Court directed the fund to file the account of statements showing the amounts in its possession with respect to all the respondents' PRICES IN RESPECT TO the and serve written submissions and affidavits to the Plaintiff by 11th May 2024	09/06/2024	HF/ND/LE/5/129
21	ELAC E041 OF 2023	Tony Upendo and 33 others Versus Mediserv Group LTD & 3 others	NAROBU ELAC E041 OF 2023	Contract	The Plaintiff moved to court to challenge the validity of a contract entered into between the Plaintiff and the Defendant on 15th of 2023. The Plaintiff seeks an order compelling the Defendant to pay the Plaintiff the amount of KSh. 1,377,600.	Nemanda and Family Advocates	Pending	500,000	8,494,708	Parties filed their responses and the matter has been scheduled for submission of affidavits of witnesses.	09/06/2024	HF/ND/LE/5/148
22	HCIR PETITION E23 OF 2023	ALINA JOSEPH VERSUS MINISTRY OF HEALTH & SIA	HCIR PETITION E23 OF 2023	CONSTITUTIONAL	The Plaintiff seeks an order compelling the Defendant to pay the Plaintiff the amount of KSh. 1,377,600.	Atorney General	N/A	N/A	Non-Monetary	Matter still in discovery	Awaiting court directions	HF/ND/LE/5/190
23	CIVIL SUIT NO E13 OF 2024	OLIVE SURGICAL VERSUS NHIF	NAROBU	COMMERCIAL	The Plaintiff seeks an order compelling the Defendant to pay the Plaintiff the amount of KSh. 1,377,600.	McGregor, Bigns & Co Advocates	Pending	2,000,000	35,000,000	Matter still in discovery	Awaiting court directions	HF/ND/LE/5/194
24	ELAC CAUSE NO E106 OF 2023	JOSEPH MOUNJUA KIMUJI VS NHIF AND NHON	NAROBU	INSURANCE	The Plaintiff seeks an order compelling the Defendant to pay the Plaintiff the amount of KSh. 1,377,600.	ATMONEY GENERAL	N/A	N/A	KSh. 1,377,600	Judgment was issued declining the right SIA Act unconditional and awaiting court a stay of judgment based pending appeal.	18/10/2024	HF/ND/LE/5/195

25	EM/2013	NHF VERBUS PETER DAVID & FREDRICK KIMEMA	MANDBI	CRIMINAL	Charges were preferred against the accused for allegations of fraud with the intent to defraud NHF of its property in Karen Land. The accused moved to court under it to challenge the decision of the DPP to prefer charges.	DPP	N/A	N/A	N/A	NON-MONETARY	Claim. MNS DISM	CONCLUDED	HF/HQ/LEG/5/19 6
26	MHC APPL ELMC E031 OF 2024	MARY NYACHOLE VS CEO NHF	MANDBI	EMPLOYMENT	The Claimant moved to court to challenge intervention by the NHF	AG	N/A	N/A	N/A	NON-MONETARY	Matter is coming for mention to confirm compliance	14/8/2024	HF/HQ/LEG/9/197
27	ELMC E026/2024	GOMARAWANA WOSI & SUADUA AAI VS SEC & STATE LAW B.2 OTHERS	MANDBI	EMPLOYMENT	The claimants moved to court seeking orders for management to be included in the transition process of the Fund to Social Health Authority.	AG	N/A	N/A	N/A	NON-MONETARY	Matter is coming for mention to confirm compliance.	23/10/2024	HF/HQ/LEG/9/198
28	EM/02 OF 2024	AMMAN MOHAMMED VS CEO NHF AND NHF	MANDBI	EMPLOYMENT	The Claimant moved to court to challenge the decision of the court to award her four months suspension. Her request to nullify her suspension. The disciplinary process was ongoing due to the court case, it did not proceed.	AG	N/A	N/A	N/A	NON-MONETARY	The matter came up for hearing on 17th October, 2024 parties ordered to file their written submissions within 14 days	Mention on 20/11/2024 to confirm compliance and obtain a date for judgment.	HF/HQ/LEG/9/200
29	EM/02 OF 2024	FREDRICK BIRER VS ELIAH WACHIRA & SHIA	MANDBI	CORRUPTION	The complainant moved to court alleging that Mr Wachira had been involved in corrupt dealings.	Attorney General	N/A	N/A	N/A	NON-MONETARY	Awaiting court directions	Awaiting court directions	HF/HQ/LEG/9/205
N/A	ES/01/2024	MAJIDHAT PATEL VS NHF	ES/01/2024	TRAFFIC	One of the Fund's vehicles was involved in an accident and in another vehicle	Insurance	N/A	N/A	N/A	NON-MONETARY	Matter has been fixed for hearing	13/10/2024	HF/HQ/LEG/9/205

ANNEX 3

Report of the Transition Committee to the Social Health Authority



**Republic of Kenya**

**MINISTRY OF HEALTH**

**REPORT OF THE TRANSITION COMMITTEE TO THE SOCIAL HEALTH  
AUTHORITY**

*Smooth Transition and Restoring Confidence in the Social Health Insurance Sector*

**July 2024**

## LETTER OF TRANSMITTAL

Dr. Deborah M. Barasa

The Cabinet Secretary

Ministry of Health

Nairobi Kenya.

Dr. Timothy Olweny

The Chairperson

Social Health Authority Board

Nairobi, Kenya.

Dear Madam CS and Sirs,


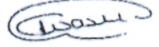



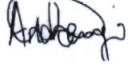


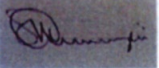
**Eng. Michael Kamau**

The Chairperson

National Health Insurance Fund Board Nairobi, Kenya.

Report of the Transition Committee to the Social Health Authority

**TRANSITION COMMITTEE MEMBERS**

Member	Signature
Kap Kirwok Jason <i>Chairperson</i>	
Jacinta N. Wasike (Dr.) <i>Vice Chairperson</i>	
Daniel Mwai (Dr.), <i>Member</i>	
Kipruto C. Chesang (Dr.), <i>Member</i>	K.C.C
Gladys Wambui Mburu, <i>Member and Chairperson Finance</i>	
Stephen Kaboro Mbugua <i>Member</i>	
Elizabeth N. Wangia (Dr.) <i>Member</i>	
Christopher Leparan Tialal, <i>Member and Chairperson Human Resources</i>	
Jacob Otachi Orina (Dr.) <i>Member and Chairperson Legal, Governance, Strategy and Operations</i>	
Stanley Bii (Dr.) <i>Member</i>	

## RE: REPORT OF THE TRANSITION COMMITTEE ON THE TRANSITION TO THE SOCIAL HEALTH AUTHORITY

The Transition Committee (TC) was appointed *vide* gazette notice No. 603 of 2024 and had a mandate to ensure smooth transition from the National Health Insurance Fund (NHIF) to the Social Health Authority (SHA). In executing its mandate, the TC was required to adhere to the 1<sup>st</sup> Schedule (transitional provisions) to the Social Health Insurance Act, 2023 (the SHI Act) and other law of Kenya.

The TC together with other stakeholders, collaboratively and consultatively developed a windingup roadmap and commenced its implementation whose culmination is the projected smooth transition by the 21<sup>st</sup> of November 2024 (*this is in accordance with the one year winding up period from the "Appointed Day"*). The Report describes the background and context of reforms, the mandate of the TC, the approach, achievements, challenges and recommendations. It also contains a summary of pending work, the relevant actors, attendant timelines, anticipated risks and mitigation measures so as to fully achieve a smooth transition.


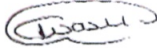






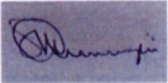
We hope that the Report will inform current and future interventions in enhancing delivery of social health insurance services during and after the transition period. It is therefore our pleasure to formally present the Report for consideration.

**Kap Kirwok Jason**



**Chairperson, Transition Committee**

## TRANSITION COMMITTEE MEMBERS

Member	Signature
Kap Kirwok Jason <i>Chairperson</i>	
Jacinta N. Wasike (Dr.) <i>Vice Chairperson</i>	
Daniel Mwai (Dr.), <i>Member</i>	
Kipruto C. Chesang (Dr.), <i>Member</i>	K.C.C
Gladys Wambui Mburu, <i>Member and Chairperson Finance</i>	
Stephen Kaboro Mbugua <i>Member</i>	
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Jacob Otachi Orina (Dr.) <i>Member and Chairperson Legal, Governance, Strategy and Operations</i>	
Stanley Bii (Dr.) <i>Member</i>	

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## LIST OF ACRONYMS

AG	Attorney General
BETA	Bottom-up Economic Transformation Agenda
CEO	Chief Executive Officer
COG	Council of Governors
CS	Cabinet Secretary
ECCIF	Emergency Chronic and Critical Illness Fund
FAQs	Frequently Asked Questions
FY	Financial Year
GOK	Government of Kenya
HISP	Health Insurance Subsidy Program
HOPS	Head of Public Service
HR	Human Resource
ICT	Information Communication and Technology
KNBS	Kenya National Bureau of Statistics
LSGO	Legal, Governance, Strategy and Operations
MOH	Ministry of Health
MOU	Memorandum of Understanding
NHIF	National Health Insurance Fund
OAG	Office of the Auditor General
PCEA	Presidential Council of Economic Advisors
PHCF	Primary Healthcare Fund
PMT	Proxy Means Testing
PSC	Public Service Commission
RBA	Retirement Benefit Authority
SCAC	State Corporations Advisory Committee

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SDG	Sustainable Development Goals
SHA	Social Health Authority
SHI	Social Health Insurance
SHIF	Social Health Insurance Fund
SRC	Salary and Remuneration Commission
TAP	Technical Assistance Person
TC	Transition Committee
TNT	The National Treasury
TOR	Terms of Reference
UHC	Universal Health Coverage

### **DEFINITION OF TERMS**

Appointed Day- as defined in section 2 of the SHI Act, 2023

Fund- as defined in section 2 of the SHI Act, 2023

Social Health Authority- as defined in section 2 of the SHI Act, 2023

Social Health Insurance- as defined in section 2 of the SHI Act, 2023

Universal Health Coverage- as defined in section 2 of the SHI Act, 2023

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The legal and institutional framework for coordinated transition together with the guidelines and operational mechanisms were collaboratively developed with the technical input, policy direction, and support from experts and personnel drawn from a number of institutions including: the National Treasury and Planning, Public Service Commission, the Ministry of Public Service, Performance and Delivery Management, Ministry of Labour and Social Protection, Office of the Attorney General, Ministry of Health, the State Corporations Advisory Committee, Inspectorate of State Corporations, Ministry of ICT, Ministry of Lands and Physical Planning, ICT Authority, NHIF and the Presidential Council of Economic Advisors.

Indeed, the work of the Transition Committee received invaluable leadership of the TC led by Mr. Jason Kap Kirwok (Chairperson), Dr. Jacinta N. Wasike (Vice Chairperson), Ms. Gladys Mburu (Chairperson, Finance Subcommittee), Mr. Christopher Tialal, (Chairperson, Human Resource Subcommittee) and Dr. Jacob Otachi (Chairperson, Legal, Governance, Strategy and Operations) and other Members of the Committee: Daniel Mwai (Dr.), Member, Kipruto Chermusoi Chesang (Dr.), Mr. Stephen Kaboro Mbugua, Dr. Elizabeth N. Wangia and Dr. Stanley Bii.

Special gratitude is also conveyed to the Board of the Social Health Authority led by the Chairperson. Dr. Timothy Olweny and the Ag. Chief Executive Officer Mr. Elijah Wachira for all the administrative and logistical support extended to the Transition Committee. We equally load

the NHIF Board led by the Chairperson Eng. Michael Kamau for their dedication and commitment to the transition process.

We recognize the editorial work done by the Transition Committee's Secretariat led by Mr. Justus Bundi along with team members: Dr. Hezron Omollo, Mr. Japheth Athanasio and Dr. Tracey John. The concerted effort of the Secretariat ensured the coordination of the activities of the Transition Committee.

We also recognize the support of the development partners who made possible the execution of programmes and initiatives of the TC. Finally, the achievements and the surmounted challenges are as a result of a conglomerate of diverse actors including: the health care providers, health facilities, civil society organizations, the media, academia and the People of Kenya to whom we are eternally grateful for.

Once again, a deep thank you.

May God bless you.

### **MESSAGE FROM THE CHAIRPERSON**

The greatest measure of wealth of any country is the health of its people. From the independence constitution to the current one, Kenya has restated its commitment to better healthcare of its people. Indeed, Constitution of Kenya codifies this in form of a fundamental human right (*Article 43 (1) (a)*) provides that every person has the right to the highest attainable standard of health.

Kenya has made tremendous progress in addressing pressing health priorities through its commitments in various development blueprints, notably the Vision 2030 and now the Bottom-Up Economic Transformation Agenda (BETA) in which healthcare is one of the five priority pillars besides Agriculture; Micro, Small and Medium Enterprise (MSME); Housing and Settlement; and Digital Superhighway and Creative Economy.

## Report of the Transition Committee to the Social Health Authority

Through strategic reforms and investments in the healthcare sector, the Kenya Government seeks to ensure access to high quality, affordable and financially sustainable healthcare for all Kenyans regardless of age or economic status.

It is an ambitious reform programme, but one that is long overdue. When it is fully implemented, it will finally deliver Universal Health Coverage (UHC) while protecting households from catastrophic health related spending, currently estimated at Sh150 billion in out-of-pocket expenditure each year.

Kenya's enactment of the Social Health Insurance Act, 2023, and the establishment of the Social Health Authority (SHA), is a major step towards UHC. The change from NHIF to SHA represents a significant shift in the provision of healthcare in the country. It is a step towards a healthier, more inclusive future for the country.

To ensure a smooth change from NHIF to SHA, the Cabinet Secretary of the Ministry of Health appointed a Transition Committee (TC) on Social Health Authority (SHA) vide a Gazette Notice No. 603 of Friday, 26<sup>th</sup> January 2024. The overall objective of the Transition Committee is to ensure seamless transition of NHIF to Social Health Authority (SHA) within a period of six (6) months.

The Transition Committee, consisting of 10 members including the Chairperson, worked through 3 subcommittees namely: Finance; Human Resources and Legal, Governance, Strategy and Operations. The TC was consultative and interactive, drawing on the expertise and experience of professionals from within and outside government.

I take this opportunity to thank all members of the TC for their exemplary work. To all the stakeholders (public, private sector, civil society, development partners) and the resource persons, your contributions and support are what have made this report possible. Your collective efforts have contributed to the long and complex journey of building Kenya.

**Jason R Kap-Kirwok**



**Chairperson, Transition Committee**

## EXECUTIVE SUMMARY

### **1. Background and Context**

Universal Health Coverage (UHC) is a subset of one of the seventeen interconnected United Nations (UN) Goals that aim at Sustainable Development for all people by 2030. UHC aims to ensure access to quality and equitable healthcare for all without experiencing financial hardship.

The Government of Kenya, through its Bottom-Up Economic Transformation Agenda (BETA) 2022-2027, prioritized the attainment of UHC. The Social Health Insurance Act, 2023, the Primary Health Care Act, 2023, the Digital Health Act, 2023, and the Facilities Improvement Financing Act, 2023 were enacted to accelerate the realization of UHC and achieve the right to the highest attainable standard of health as provided for under Article 43 of the Constitution of Kenya.

The SHI Act repealed the NHIF Act and established the Social Health Authority (SHA) whose primary function is the pooling of resources and strategic purchasing of healthcare services from the healthcare providers and facilities. The establishment of three Funds namely: Primary Healthcare Fund (PHCF), Social Health Insurance Fund (SHIF), and Emergency, Chronic and Critical Illness Fund (ECCIF) aim to strengthen health financing towards UHC attainment.

### **2. Objectives and Functions**

Following the enactment of the SHI Act, the Transition Committee was established on 26th January 2024, by the Cabinet Secretary, through Gazette Notice 603 (throughout this Report, the words 'Transition Committee', and the initials 'TC', are used interchangeably). The main mandate of the TC was to ensure a seamless transition from the National Health Insurance Fund to the Social Health Authority.

The TC had four major functions: (i) to develop a legal and institutional framework for the coordinated transition while ensuring continued service delivery, (ii) to develop the guidelines and operational mechanisms for the audit, verification, and transfer to the authority of assets and liabilities; human resources; pensions and other staff benefits of employees of NHIF, (iii) to

develop a roadmap for winding up of the NHIF, and (iv) to consider, perform, or advise on any other connected matter.

The interpretation of the TC's work was guided by the Constitution of Kenya 2010, the Social Health Insurance Act, 2023, other relevant laws of Kenya, the Advisory of the Attorney General issued on the 27th of February 2024, and consultation with key stakeholders.

### **3. The Approach**

The TC adopted a highly consultative approach in its work, seeking input from many stakeholders and experts. The TC also conducted desktop reviews of applicable documents - official reports, policies, laws, regulations, guidelines and circulars. To augment data from the desktop review, the TC carried out Key Informant Interviews (KIIs), institutional visits, face-to-face and online meetings, and Focus Group Discussions (FGDs) with representatives from both state and nonstate institutions. These sources of information became a rich resource that guided the TC in making its resolutions and formulating the guidelines required for the transition.

Further, the TC co-opted experts from several agencies including the Office of the Attorney General, Office of the Data Protection Commissioner, Ministry of ICT and Digital Economy, ICT Authority, Public Service Commission, State Department for Labor, State Corporations Advisory Committee, The National Treasury, Parliament of Kenya, Insurance Regulatory Authority, Council of Governors, NHIF, and MOH among others.

To receive feedback and information on its work, the TC worked with a Secretariat office where all official correspondence was received and addressed. Additionally, the TC invited concerned parties and stakeholders to its meetings. The TC also developed tools for reporting, monitoring, and evaluation of its activities that were updated periodically. The ways and means of communicating adopted by the TC included official letters, memos, emails, workshops, formal reporting sessions, courtesy calls, and consultative meetings.

### **4. The Framework for Coordinated and Seamless Transition**

In fulfilling one of its core mandates, namely, developing a legal and institutional framework for the transition from NHIF to SHA, the TC was alive to the need to ensure continued,

uninterrupted service delivery. To ensure a coordinated and seamless transition, the Transition Committee considered the existing legal and institutional frameworks and the guidance from the Attorney General and developed a series of advisories. They include the following: Immediate Actions and Outcomes; Delineation of Roles of the NHIF and SHA Boards, and MoH; Winding Up Resolution of the NHIF; Guidelines for Reference During the Transition Period; and a Transition Roadmap.

Other immediate actions included guidance on the transfer of certain Rights, Powers, Obligations and Liabilities, specifically the following: Healthcare Provider Guidelines; Enhanced Schemes; Leases on Land, Motor Vehicles and Building; Employment-related Contracts; ICT-related Obligations; and Legal Actions and Suits. To ensure seamless service delivery, the TC provided guidelines on handling of Claims; Engagement with Healthcare Providers and Facilities; Maintenance of the ICT System; and Management and Protection of Records.

Among the Emerging Issues that required TC's input were: Social Health Insurance (General) Regulations; the Essential Benefits Package; Centralized Digital Platform; Registration; Communication; Empanelment and Contracting. The summary of the legal and institutional framework and TC's advisories are summarized in Chapter 3 of this Report and associated annexes and appendixes.

## **5. Transition of Assets and Liabilities**

Concerning guidelines and operational mechanisms for the audit and transfer of Assets and Liabilities, the Transition Committee was assisted principally by a team of officers from the National Treasury. Using the tools developed, validated and piloted, the Asset and Liabilities Verification team conducted a country-wide verification of assets and liabilities. The Report of that exercise, complete with challenges and recommendations, is summarised in Chapter 4 of this Report and associated annexes.

The term of the Transition Committee lapsed before the following could be done: formulation of an assets and liabilities Transfer and Handover Plan documenting clearly what assets are ready for immediate transfer, the legal transfer instrument for certain assets and liabilities, and assets and liabilities that require further audit and verification.

## **6. Human Resources Transition**

Guided by the transition provisions of the SHI Act, 2023, and expert input from a wide range of resources persons, the Transition Committee developed guidelines and operational mechanisms and provided guidelines and specific instruments for the employee transition from NHIF to SHA.

These covered the classification of SHA by the State Corporations Advisory Committee (SCAC); the review of qualifications of all staff; formation of a Tripartite Committee; Human Resource (HR) Instruments, including a proposed Staff Establishment; Job Description Manual; and a comprehensive Employee Transition Advisory detailing the steps to follow to recruit staff for SHA and to redeploy or retire NHIF staff that would not be absorbed into SHA. Guidelines were also provided on the Staff Retirements Benefits Scheme. The HR Transition process is summarised in Chapter 5 of this Report and associated annexes.

## **7. Communication, Outreach and Training**

Transitions require effective communications and information management. The 'chief communicator' of the transition, indeed of the reforms in the health sector, is the Cabinet Secretary of the Ministry of Health. The CS could, from time to time, delegate communication to the relevant Principal Secretary and/or the Chairs of SHA or NHIF. The TC, working with key stakeholders, helped develop a Communications Strategy and several products to guide the transition with key messages targeted to pre-mapped and segmented audiences. The summary of TC's actions and outputs on communication, including communication products, outreach, and training are summarised in Chapter 6 of this Report and referenced annexes.

## **8. Reflections/Observations and Lessons**

The ongoing reform initiatives in the health sector are arguably the boldest and potentially the most transformational since Kenya's independence. In guiding the change from the National Health Insurance Fund (NHIF) to Social Health Authority (SHA), the Transition Committee was keenly aware of the context within which these reforms are being undertaken: a time of difficult economic adjustment globally and domestically – specifically, fiscal austerity; and similar reforms in other sectors, for example, education, agriculture, housing and digital economy. This context,

along with suboptimal communication of the justification for reforms, contributed to the overall complexity of the transition process, making it less seamless, smooth and timely.

Specific challenges encountered included the suspension of the implementation of SHAI Act 2023 by the High Court and the subsequent declaration by the Court of Appeal that the Social Health Insurance Act, 2023, the Primary Health Care Act, 2023 and the Digital Health Act, 2023 were unconstitutional.

Delays in accessing both financial resources and technical resource persons, and administrative support needed by the Transition Committee contributed to slippage of Roadmap timelines.

The uncertainty around the introduction of the new ICT system, fully capable and ready, was highlighted by the Transition Committee as a major risk. At the lapse of the TC's term, the risk had crystallized.

In retrospect, the verification of all assets (38,860) and liabilities (including 2.7 individual hospital-related trade payables) required more than the three months that the verification team was given. A more comprehensive reflection, with lessons learnt, is described in Chapter 7 of this Report.

## **9. Recommendations**

In this Report, specific recommendations have been made at the end of Chapters 4, 5 and 6. These should be implemented. Here below, we highlight only some of the critical recommendations.

- a. To facilitate the transfer of assets and liabilities, including obligations arising from contracts, MOUs, agreements, and court cases from NHIF to SHA, a Transfer and Handover Plan should be developed as soon as possible.
- b. During the winding-up process, special attention should be given to unverified assets. The SHA Board and MoH should not only ensure these assets are fully supported with complete, accurate information, they should urgently strengthen financial management practices consistent with accepted international standards. Individuals should be held accountable for any misdeeds.
- c. To facilitate employee transition, the SHA Board should seek approval of HR Instruments from relevant entities, complete the suitability assessments of all NHIF staff and follow up

## Report of the Transition Committee to the Social Health Authority

with the Head of Public the request to establish a Tripartite Committee. In short, implement the roadmap contained in the Employee Transition Advisory.

- d. The SHA needs to take immediate actions to address communication challenges. This includes prioritizing communication, forming a dedicated communication core team, giving priority to transitioning the communication staff during recruitment, and engaging the public to foster a clearer understanding of the reforms towards UHC.
- e. The SHA Board should urgently formulate a comprehensive Strategic Plan for the Authority.

## CHAPTER ONE: BACKGROUND AND CONTEXT

### 1.1 Overview

This chapter presents the contextual background and reforms towards realization of Universal Health Coverage (UHC). It further summarizes the role of the Transition Committee including: its membership, terms of reference terms, structure and operations towards a seamless transition to the Social Health Authority.

### 1.2 Background and Context of the Healthcare Reforms

UHC's goal is to ensure that all can access healthcare services that are of good quality, whenever they need them and without facing financial hardships. One of the most sustainable and adaptable models of realizing UHC has been through Social Health Insurance (SHI). SHI is a healthcare financing model that is based on the principles of risk pooling, financial protection, equity and accountability in order to deliver Universal Health Coverage. SHI principles include: universal coverage, participation, risk pooling, equitable contributions, defined benefit packages, nondiscrimination, and financial protection. Kenya has made attempts towards the realization of UHC through a number of aspirations and commitments including those in the Constitution, Vision 2030 and under the Bottom Up Economic Transformation Agenda (BETA).

#### 1.2.1 The Constitution

In the year 2010, Kenya promulgated its current Constitution which put UHC at the core of the aspirational and much needed fundamental rights to be enjoyed by all citizens. Under *Article 43 (1) (a)*, the right to the highest attainable standards of health-care services, including reproductive healthcare is guaranteed to all persons. This is also echoed under *Article 55 (1)(c)* where every child has a right to basic nutrition, shelter and health-care. Further, *Article 56* of the Constitution obligates the State to take affirmative action programmes designed to ensure that minorities and marginalized groups have reasonable access to health services.

#### 1.2.2 Vision 2030

Kenya's Vision 2030, under the social pillar, envisions a nation that is **healthy and prosperous**. To achieve this vision, a number of success indicators are to be realized including the reengineering of healthcare services and the provision of functional, efficient and sustainable health infrastructure network across the country.

#### 1.2.3 Bottom-Up Economic Transformation Agenda

The Government identified healthcare delivery as one of the core pillars of its Bottom-Up Economic Transformation Agenda (BETA).

The broad framework under BETA is to accelerate realization of UHC via two main approaches. First, the reduction of the number of people falling ill through health promotion and prevention measures and encouraging early and prompt referrals for those likely to be unwell. Second, ensuring that those who fall ill have access to immediate and efficient care without financial hardships and operates within a quality assurance framework. These approaches necessitated legislative and policy reforms in the health sector.

#### **1.2.4 Enactment of Key Health Legislation**

The Parliament of Kenya enacted four crucial laws (in addition to existing health laws) that are aimed at accelerating the realization of the right to healthcare as envisioned in the Constitution and the UHC goals. These Acts are the Primary Health Care Act, 2023 (PHC Act), the Facilities Improvement Financing Act, 2023 (FIF Act), the Digital Health Act, 2023 (DHA) and the Social Health Insurance Act, 2023 (SHI Act). Each legislative instrument addresses different aspects of UHC. On one hand, the SHI Act establishes a legislative framework to regulate the provision of social health insurance, establishes the Social Health Authority as a strategic purchaser of healthcare services and as an administrator of three funds aimed to ensure that all legible beneficiaries have access to affordable and comprehensive quality health services. The Funds established under the SHI Act are: Primary Healthcare Fund (PHCF), Social Health Insurance Fund (SHIF) and Emergency, Chronic and Critical Illness Fund (ECCIF). These Funds are to facilitate the financing and delivery of healthcare services from **prevention, promotion, curative, rehabilitative and palliative care.**<sup>1</sup>

On the other hand, the DHA provides a framework for improved healthcare efficiency, convenience, accountability, and service delivery through an integrated health information system and regulatory framework. Further, the PHC Act provides a framework that is to promote disease prevention through primary care networks and community health units, supported by the Social Health Insurance Act's primary healthcare fund for levels 2 and 3 operations (dispensaries and health centres). Finally, the FIF Act provides a framework to ensure funds from public facility services are available and securely managed to enhance service delivery, and quality of care.

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<sup>1</sup> These funds will help reduce out-of-pocket expenses for healthcare and ultimately reducing the cost burden among contributors.

### **1.3 Transition to the Social Health Authority**

The SHI Act establishes the Social Health Authority (SHA) as one of the entities driving provision of social health insurance in Kenya. SHA replaces the NHIF and is to primarily become a strategic purchaser of healthcare services from health facilities and providers.<sup>2</sup> Under the SHI Act, NHIF was to wind up within a period of 12 months after the appointed day.<sup>3</sup> The Cabinet Secretary gazzetted the 22<sup>nd</sup> day of November 2023 as the appointed day. The import of this is that the transition period commenced and is purposed to lapse within one year.

#### **1.3.1 The Transition Committee**

To support the transition process, the Ministry of Health established a Transition Committee (TC) whose overall mandate was to ensure seamless transition from the National Health Insurance Fund to the Social Health Authority.<sup>4</sup> The TC comprised of ten experts in various fields (medicine, law, governance, administration, finance, economy and human resources) and drawn from both private and public sector. The Members of the TC are listed below:

- i) Kap-Kirwok R. Jason – Chairperson ii)  
Daniel Mwai (Dr.), - Member
- iii) Kipruto Chemursoi Chesang (Dr.), - Member iv)  
Jacinta N. Wasike (Dr.), - Member
- v) Gladys Wambui Mburu, - Member vi)  
Stephen Kaboro Mbugua, - Member
- vii) Elizabeth N. Wangia (Dr.), - Member
- viii) Christopher Leparan Tialal, - Member
- ix) Jacob Otachi Orina (Dr.), - Member
- x) Stanley Bii (Dr.), - Member

#### **1.3.2 The Terms of Reference for the TC**

The TC in ensuring smooth transition, was required to:

- (a) Develop a legal and institutional framework for the coordinated transition to the Social Health Authority while ensuring continued service delivery;

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<sup>2</sup> SHI Act, Section 5.

<sup>3</sup> SHI Act, 1<sup>st</sup> Schedule, Para 6.

<sup>4</sup> Gazette Notice No. 603 of 2024, January 26<sup>th</sup> 2024.

## Report of the Transition Committee to the Social Health Authority

- (b) Develop, in accordance with the transitional provisions of the Social Health Insurance Act, 2023, the guidelines and operational mechanisms during the transition period for audit, verification and transfer to the Social Health Authority of:
- (i) Assets and Liabilities;
  - (ii) Human Resources;
  - (iii) Pensions and other staff benefit of employees of the National Health Insurance Fund; and
  - (iv) Any other connected matter.
- (c) Develop a clear roadmap for winding up of the National Health Insurance Fund to the Social Health Authority;
- (d) Develop a roadmap for winding up of the National Health Insurance Fund; and
- (e) Consider, perform, or advise on any other matter or subject ancillary to the above.

### 1.3.3 Structure and Operations of the TC

Consistent with its terms of reference, and for efficient execution of its mandate, the TC established the following sub-committees:

- a. **Human Resources:** responsible for matters related to HR transition, including pensions and other staff benefits of the employees of the National Health Insurance Fund (NHIF). The membership and secretariat to this sub-committee was as follows:

Member	Role
Mr. Christopher Tialal	Chairperson
Dr. Daniel Mwai	Member
Dr. Jacob Otachi	Member
Dr. Jacinta Wasike	Member
Ms. Gladys Mburu	Member
Dr. Stanley Bii	Member
Dr. Hezron Omollo	Secretary

- b. **Finance:** responsible for matters concerning the verification and transfer of assets and liabilities. The membership and secretariat to this sub-committee was as follows:

Member	Role
--------	------

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Ms. Gladys Mburu	Chairperson
Dr. Elizabeth Wangia	Member
Mr. Christopher Tialal	Member
Dr. Kipruto Chesang	Member
Dr. Stanley Bii	Member
Dr. Jacinta Wasike	Member
Mr. Stephen Kaboro	Member
Dr. Tracey John	Secretary

- c. **Legal, Governance, Strategy and Operations:** responsible for matters related with the legal and institutional framework for the coordinated transition to the Social Health Authority while ensuring continued service delivery. The membership and secretariat to this subcommittee was as follows:

Member	Role
Dr. Jacob Otachi	Chairperson
Dr. Daniel Mwai	Member
Dr. Kipruto Chesang	Member
Dr. Elizabeth Wangia	Member
Mr. Stephen Kaboro	Member
Mr. Japhet Athanasio	Secretary

## **CHAPTER TWO: THE APPROACH**

### **2.1 Overview**

This chapter presents the approach applied by the Transition Committee in the execution of its mandate. It includes the interpretation of its mandate, stakeholder mapping and engagement, information gathering and review, the co-option of experts, development of guidelines and operational mechanisms, complaints handling and feedback mechanisms, monitoring, evaluation and reporting. It also summarizes key outcomes out of the engagement approaches.

### **2.2 Interpretation of the TC's Mandate**

The TC's mandate was to ensure a smooth transition from the National Health Insurance Fund to the Social Health Authority as coded in the Gazette Notice 603 of 2024 (*Appendix 1*). There were four major functions namely: (i) develop a legal and institutional framework for the coordinated transition while ensuring continued service delivery, (ii) develop the guidelines and operational mechanisms for the audit, verification and transfer to the authority of: assets and liabilities; human resources; pensions and other staff benefits of employees of NHIF, (iii) develop a roadmap for winding up of the NHIF, and (iv) consider, perform, or advise on any other connected matter.

In interpreting its mandate, the TC relied on the Constitution of Kenya 2010, the Social Health Insurance Act, 2023 and the 1<sup>st</sup> Schedule (*Transitional Provisions*) to the SHI Act, Other laws of Kenya and the Advisory (on the role of NHIF during the transition period) by the Attorney General which was issued on the 27<sup>th</sup> of February, 2024. The TC additionally engaged and consulted key stakeholders unbundled the tasks under each function as provided for in Table 2.1 below.

**Table 2.1: Role of Transition Committee**

<b>Description of TOR</b>	<b>Status (as at the inauguration of the TC on the 30<sup>th</sup> of January, 2024)</b>	<b>Tasks of the Transition Committee</b>
I. Develop a legal and institutional framework for the	- Four crucial Acts namely: the Social Health Insurance Act, 2023; the Digital Healthcare	- Coordinate the development of a <i>Service Delivery and Contingency Plan</i> for the transition period so as to forestall service delivery interruptions; the plan to be

## Report of the Transition Committee to the Social Health Authority

coordinated transition while ensuring continued service delivery

- Act, 2023; the Primary Health Care Act, 2023 and the Facility Improvement Financing Act, 2023 had been enacted; In accordance with section 1 of the Act, the Cabinet Secretary gazzetted the 22<sup>nd</sup> of November, 2023 as the appointed day, effectively repealing the NHIF Act and the Fund;

- The SHA Board (Chairperson and members), an acting CEO and a skeleton secretariat had since been appointed;

- A Technical Working Group was appointed to draft regulations to the Social Health Insurance Fund, Act, 2023 and following the lifting of the orders that had

- endorsed by both the NHIF, SHA Board and the CS;

- Promote the fast-tracking of the finalization and gazettment of the regulations to the SHI Act and other regulations for crucial Acts. *This would necessitate meeting the relevant stakeholders including the technical working groups;*

- Develop a legal and institutional risk matrix together with mitigation measures. This would include an examination of ongoing and potential suits against the SHA before and after the appointed day;

- Fast-track the development of the digital system for registration of Kenyans to SHA;

- Generate and or access a report of benefit schemes and packages being provided by the Fund and those that will lapse upon expiry of contracts hence have to continue in the interim by virtue of clause 5(2) of the transitional provisions;

- Provide guidelines for an intensive examination of contracts, existing claims and MOUs;

- Generate or access a list of existing contracts and MOUs under the Fund, assess the contractual obligations,

- earlier been made by the High Court suspending implementation of the four Acts, public participation on the regulations has commenced;
- financial implications and make appropriate recommendations; Regular updates with the SHA and NHIF Boards and the CS.
- Development of Regulations for the Digital Healthcare Act, 2023, and the Primary Healthcare Act, 2023 was yet to commence;
- Development of the means testing tool was ongoing;
- The Transition Committee was appointed on the 26<sup>th</sup> of January, 2023;
- The Ministry of Health was supporting a smooth transition.

Report of the Transition Committee to the Social Health Authority

2. Develop the Transition Committee to develop guidelines and operational mechanisms for the audit, verification and

- Develop guidelines for the **audit, verification and transfer of the assets and liabilities**. The guidelines to include all other property (movable and immovable) and the offices/ officers accountable. With

transfer to of:  
authority and  
assets and  
liabilities; staff  
human of  
resources;  
pensions  
other  
benefits  
employees  
NHIF

- concurrence of the SHA, NHIF and the CS, the process could be initiated;

Develop or access the inventory of all the funds, assets, liabilities now

- vesting in the Authority by virtue of clause 2(1) of the 1<sup>st</sup> Schedule of the Act;

Develop guidelines and operational plan for the skills and suitability verification of NHIF employees for purposes of clause 6 (4) of the Transitional Provisions which require the Authority to review qualifications of the Fund;

- Develop guidelines for the development of an inventory of pensions and other staff benefits of NHIF employees;

- Facilitate the development of an operational plan together with a list of Fund staff who may opt for early retirement or redeployment within the Public Service;

		- Fastrack the development and approval of the SHA staff establishment.
3. Roadmap for winding up of the NHIF	- Appointed day gazetted;	- Develop, implement, monitor and evaluate roadmap and:
	- 12-month period commenced;	- Request the NHIF Board to make a Special Resolution to commence the winding up process;
	- Transition Committee	- Request the NHIF Board to prepare a Statement of Affairs;
	Appointed to ensure smooth winding up;	- Ensure the tracing and securing of the assets after accessing the Statement of Affairs;
		- Realize the assets of NHIF\SHA;
		- Preparation of the debt inventory;
		- Develop a Transfer and Handover Plan.

Report of the Transition Committee to the Social Health Authority

<p>4. Consider, perform, or advise on any other connected matter.</p>	<p>Was agreed during the deliberations</p>	<p>The TC considered the following as crucial for a smooth transition and continued service delivery.</p> <ul style="list-style-type: none"> <li>- Managing change process;</li> <li>- Staff psychosocial support;</li> <li>- Development of a Strategic Plan;</li> <li>- Change Communication Plan;</li> <li>- ICT security and contingency plan;</li> <li>- Development of the Benefits Package</li> <li>- Development of contracting and empanelment framework;</li> <li>- Claims Management;</li> <li>- Development of a service delivery charter; and</li> <li>- Continuous stakeholder engagement.</li> </ul>
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**2.3 Stakeholder Mapping and Engagement**

The TC was (in the execution of its mandate) required to hold meetings and consultations as it deemed necessary in realizing its objectives. To effectively engage the stakeholders, the TC undertook a mapping of its stakeholders as provided for in *Table 2.2* below. We have further detailed the role of each of the stakeholders in *Appendix III*. By the end of the term of the TC, several physical and virtual meetings had been held with the various stakeholders using different fora as already identified.

Report of the Transition Committee to the Social Health Authority



The TC receives messages with the management officials on the 28th April at the Social Building.

TC members and experts during a consultative workshop to develop asset and liabilities verification tools.



Report of the Transition Committee to the Social Health Authority



Joint briefing (SHA, NHIF, MOH) session on the status

of transition.

Table 2.2: List of Stakeholders

Stakeholder	Expectations	Mode of Engagement
<ul style="list-style-type: none"> <li>• <b>The Social Health Authority Board</b></li> </ul>	<ul style="list-style-type: none"> <li>□ Acting on resolutions of the TC;</li> <li>□ Supply of crucial information and documents; Other incidental support.</li> </ul>	<ul style="list-style-type: none"> <li>- Letters;</li> <li>- Memos;</li> <li>- Email;</li> <li>- Consultative meetings;</li> </ul>
<ul style="list-style-type: none"> <li>• <b>The National Health Insurance Fund Board</b></li> </ul>	<ul style="list-style-type: none"> <li>□ Acting on resolutions of the TC;</li> <li>□ Supply of crucial information and documents; Other incidental support.</li> </ul>	<ul style="list-style-type: none"> <li>- Letters;</li> <li>- Memos;</li> <li>- Email;</li> </ul>
<ul style="list-style-type: none"> <li>• <b>The National Health Insurance Fund Staff</b></li> </ul>	<ul style="list-style-type: none"> <li>□ Contact persons appointed to work with the TC Sub Committees</li> <li>□ Engagement with representatives of Management and Union Staff</li> </ul>	<ul style="list-style-type: none"> <li>- Consultative meetings;</li> <li>- Letters/Unions;</li> <li>- Memos;</li> <li>- Email;</li> <li>- Consultative meetings;</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Contracted Healthcare Providers</b></li> </ul>	<ul style="list-style-type: none"> <li>□ Facilitation of TC Activities</li> <li>• Provide advice on continued and uninterrupted service delivery;</li> <li>• Provide information and documentation required to ensure smooth transition.</li> </ul>	<ul style="list-style-type: none"> <li>• Letters;</li> <li>• Consultative meetings;</li> </ul>

- Provide guidance on effecting smooth transition; Passage of crucial legislation and regulations.
  - Courtesy calls
  - Consultative meetings;
  - Workshops.
  
- Provide guidance and advise on transition;
  - Consultative meetings;
- Provide technical support and information incidental to the transition process;
  - Workshops;
- Link between health facilities being managed by County Governments.
  - Courtesy calls.
  
- Provide technical support and information incidental to the transition process;
  - Letters;
  - Consultative meetings;
- Advise on better transition methodology especially at the County facilities.
  - Workshops

- **Parliamentary Committees on Health (National Assembly and the Senate)**
  - Advice on procurement matters relating to existing contracts between NHIF, contractors and other service providers;
  - Advice on procurement obligations and transfer of the same to SHA;
  - Letters;
  - Consultative meetings.
- **The Council of Governors- Health Committee**
  - Provide other advice in relation to assets retrieval, management, transfer and disposal.
- **Caucus for Health CECs**
- **Public Procurement**
  - Advice on insurance matters
  - Letters;
  - Consultative meetings.

- |  |  |   |
|--|--|---|
| <ul style="list-style-type: none"> <li>• <b>Regulatory Authority Insurance Regulatory Authority</b></li> </ul> | <ul style="list-style-type: none"> <li>- Advice on legal and administrative of justice matters</li> </ul>  | <ul style="list-style-type: none"> <li>- Letters;</li> <li>- Consultative meetings.</li> </ul>                              |
| <ul style="list-style-type: none"> <li>• <b>The Law Society of Kenya and or its membership</b></li> </ul>      | <ul style="list-style-type: none"> <li>- Provide advice on staff redeployment</li> </ul>   | <ul style="list-style-type: none"> <li>- Letters;</li> <li>- Consultative meetings;</li> </ul>                              |
| <ul style="list-style-type: none"> <li>• <b>Public Service Commission</b></li> </ul>                           | <ul style="list-style-type: none"> <li>- Provide financial advice in relation to transition; Advise on supplementary budget if needed for the smooth transition.</li> </ul>  | <ul style="list-style-type: none"> <li>-Consultative meetings;</li> <li>- Workshops;</li> <li>- Courtesy calls.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>The National Treasury</b></li> </ul>                               | <ul style="list-style-type: none"> <li>- Provide advice on how to safeguard the interests of the NHIF staff and the employer;</li> <li>- Provide other advice in relation to implementation of transitional provisions on staff redeployment, suitability tests and exits (if any).</li> </ul> | <ul style="list-style-type: none"> <li>- Consultative meetings;</li> <li>- Workshops;</li> <li>- Courtesy calls.</li> </ul> |
| <ul style="list-style-type: none"> <li>• <b>Federation of Kenyan Employees</b></li> </ul>                      |  |   |

- - Provide advice on how to safeguard the interests and the rights of workers, during and after the transition.
    - Consultative meetings;
    - Workshops;
    - Courtesy calls.
  - Provide advice on legal matters incidental to the transition.
    - Consultative meetings;
    - Workshops;
    - Courtesy calls.
  - Provide advice on the remuneration of the TC and TC Secretariat
    - Advisory letters
  - Provide guidance on audit matters
    - Advisory letters
  - Advise on data protection especially on transfer of existing data to SHA;
    - Consultative meetings;
    - Courtesy calls;

- **COTU**
    - Provide support to the Transition Process
  - **The Attorney General**
  - **Salaries and Renumeration Commission**
  - **Auditor General**
  - **Office of the Data Protection Commissioner**
  - **MOH**
- Consultative meetings;
- Workshops;
  - Administrative support;
  - Courtesy calls.

- **Presidential Council of  
Advisors**
  - Provide input on the transition
  - Consultative meetings;  
- Courtesy calls.
- **Development Partners**
  - Support to the Transition
  - Consultative meetings;  
- Courtesy calls.

## **2.4 Information Gathering and Review**

The TC reckoned that transition was a monumental task and would as of necessity require the collection and analysis of a number of official documents, policies, laws, regulations and other official guidelines and circulars. The TC conducted desktop reviews of the applicable documents as detailed in *Appendix II*. In order to augment data from desktop review, the TC carried out: Key Informant Interviews (KIIs), institutional visits, face-to-face and online meetings, and Focus Group Discussions (FGDs) with representatives from both state and non-state institutions. These sources of information became a rich resource that guided the TC in making its resolutions and the formulation of the guidelines required for the smooth transition.

## **2.5 Co-Option of Experts**

In order to effectively execute its mandate the TC considered it necessary to co-opt experts from The TC co-opted experts from a number of agencies including the Office of the Attorney General, Office of the Data Protection Commissioner, Ministry of ICT and Digital Economy, ICT Authority, PSC, State Department for Labor, SCAC, The National Treasury, Parliament of Kenya, Insurance Regulatory Authority, Council of Governors, NHIF, and MOH among others provided in *Appendix IV*.

### **2.5.1 Data Actuaries**

The data actuaries provided the TC with actuarial expertise and supported in the development of predictive model scenarios for existing schemes (cash flow and claims) and their impact on NHIF funds. The support also facilitated the development of risk mitigation measures for minimization of loss ratio for the existing and future benefit packages.

### **2.5.2 ICT Experts**

The ICT experts drawn from the Ministry of ICT, ICT authority, office of the Data Protection Commissioner, MOH assisted the TC in a number of functions as follows: (i) reviewed the NHIF ICT infrastructure setup, configuration, hardware, software, network systems and develop an infrastructure map, draft guidelines, and operation mechanisms for it's winding up; (ii) reviewed user access of all NHIF ICT platforms detailing the individuals with access, the level of access, and how user access will be managed during transition; (iii) reviewed the usage of current data, identify specific functionalities or processes that heavily rely on the data, and draft guidelines and operational mechanisms to be used during winding up; (iv) reviewed data backup by describing the current backup procedures including frequency, storage locations, and draft guidelines and

operational mechanisms to chaperon winding up; (v) reviewed the encryption implemented to secure data, including algorithms, key management, any additional security measures and draft guidelines and operational mechanisms for winding up; (vi) reviewed the access logs and reports to describe who used, frequency, the nature of the access, and draft guidelines and operation mechanisms for the purpose of winding up (vii) developed security guidelines to ensure that data utmost PII confidentiality during transition and for the NHIF data that will be archived; (viii) supported the review ICT related contracts; and (ix) advised the TC on IT matters during the transition.

### **2.5.3 Communication Experts**

The TC also incorporated communication experts from the Ministry Health, the NHIF/SHA, development partners to specifically: (i) provide technical assistance in the development of a communication plan for the Transition Committee and SHA where applicable; (ii) support the TC and SHA (where applicable) in the development of information, communication briefs and messages during the transition period; and (iii) prepare for stakeholder consultation events and prepare reports of the same.

### **2.5.4 HR Experts**

The TC co-opted experts from the Public Service Commission (PSC), State Corporations Advisory Committee (SCAC), the Ministry of Health, the Ministry of Health, Public Service, Performance and Delivery Management and the Ministry Labour and Social Protection. They provided technical assistance in the development of the draft human resource instruments, job description manual and employee transition advisory.

### **2.5.5 Finance Experts**

The TC, through the Principal Secretary, State Department of Medical Services, made a request to the Principal Secretary, National Treasury and Planning for Finance and Accounting Experts to offer technical assistance in the verification exercise. As a result, a team of twenty-three experts drawn from different functions of TNT was forwarded to the Sub Committee to support the exercise. The Sub Committee also co-opted experts from the Ministry of Health, Ministry of Lands and Physical Planning, ICT Authority and NHIF.

## **2.6 Feedback Mechanisms**

In order to receive feedback and information on its work, the TC adopted an open-door policy. It established a secretariat office at the 9<sup>th</sup> floor of the NHIF building where there was a dedicated officer manning and receiving correspondence on behalf of the TC and relaying the same to the TC. In addition, the TC created an email account [transitioncommittee.sha@health.go.ke](mailto:transitioncommittee.sha@health.go.ke) where all official correspondence was received and addressed. The TC also invited concerned parties and stakeholders to its weekly meetings either at the sub-committees and at the main TC. By the end of its tenure, the TC had received and processed several information requests, complaints and general enquiries.

## **2.7 Staff of the Fund**

The TC at the outset reckoned the import of the transition to the staff of the Fund and their crucial role in the process. Consequently, the TC set out a deliberate and elaborate plan for continuous engagement.

### **2.7.1 Staff Engagements**

Consistent with its mandate, the Transition Committee engaged the NHIF employees as key stakeholders. This engagement took the following forms: townhall meetings, regular communication to and with staff, meetings with representatives of union employees and nonunion management employees. The TC also held progress briefings of all staff during the Assets and Liabilities verification exercise (May and June 2024) in all field locations.

### **2.7.2 Support Mechanisms**

As the TC set out its work, it emerged that staff of the Fund were facing anxiety on account of the perceived job losses, competitive recruitment, transfer within the public service and early retirement. The TC organized for in-person meetings and made requests to the SHA/NHIF Boards to initiate staff support mechanisms including counseling and psychosocial support. The TC was also available for in person consultations, regular briefings and information sharing.

## **2.8 Monitoring, Evaluation and Reporting**

The TC adopted multiple monitoring, evaluation and reporting strategies including weekly reporting meetings, sub-committee reviews, thematic leads with key accountabilities. There were also regular consultative meetings with the NHIF and SHA Boards, sharing progress updates and feedback. Progress reports on implementation were further shared with various stakeholders

during the workshops and meetings that were held over the last six months. These efforts were augmented through biweekly updates with the Cabinet Secretary for health.

## **2.9 Risks and Mitigation Measures**

The TC also collaboratively mapped out a number of risks and mitigation measures and presented below.

### **2.9.1 Legal Risks**

The legal risks identified included petitions, delays in empanelment, data security breaches and staff rights during transition that if not addressed on time would delay the process. The TC provided detailed mitigation measures by way of guidelines, reports and advisories.

### **2.9.2 Institutional and Administrative Risks**

The institutional risks identified included inadequate support from staff on account of transition, lack of internal policies, loss of crucial documents, lack of a strategic and internal policy framework and apparent delays to set up systems and processes for service delivery.

### **2.9.3 Finance Risks**

The finance risks included delays approval processes, exaggerated claims during the transition, loss of assets among others detailed in the relevant annex.

### **2.9.4 HR Risks**

The HR related risks included low staff morale, delays in approval of necessary instruments and structures and apparent inaction by relevant agencies to act. Mitigation measures were provided within advisories that the TC submitted to NHIF, SHA and MoH.

## **CHAPTER THREE: THE FRAMEWORK FOR COORDINATED AND SEAMLESS TRANSITION**

### **3.1 Overview**

This chapter presents a summary of the legal and institutional framework and the TC's actions towards coordinated and smooth transition. It further highlights the milestones, challenges encountered and reflective actions moving forward.

### **3.2 Nature of Seamless Transition?**

The enactment of the Social Health Insurance Act, 2023 (the SHI Act) in October, 2023 effectively repealed the National Health Insurance Fund Act, 1998. Consequently, the National Health Insurance Fund (*NHIF as then was*) became defunct and a new entity referred to as the Social Health Authority<sup>5</sup> was established as the successor body. The winding up period is to be done within one year from the appointed day which is the 22<sup>nd</sup> of November, 2023.

#### **3.2.1 Transition and Service Delivery Questions**

Among the terms of reference for the TC was to develop a legal and institutional framework for the coordinated transition to the SHA while ensuring **continued service delivery**. The SHI Act fundamentally shifted the operations of the successor body (SHA) and further: (i) changed the claims management process, (ii) introduced a new empanelment procedure for health care providers (HCPs), (iii) fundamentally revised the benefit package, (iii) established 3 funds to be managed by the SHA and (iv) occasioned a paradigm shift to place reliance on a centralized digital platform for delivery of the strategic purchasing function for social health insurance services.<sup>6</sup> The immediate questions that needed to be addressed were twofold: (i) what needed to be done to ensure proper winding up and transition to SHA? and (ii) what would be done in the interim to ensure continuity of services? There was also the immediate need to address emerging issues as detailed in this chapter and elsewhere in the Report.

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<sup>5</sup> The Social Health Insurance Act, 2023, Section 4.

<sup>6</sup> The SHI Act, 2023.

### 3.3 The Legal Framework

#### 3.3.1 The Social Health Insurance Act, 2023

Parliament had enacted the Social Health Insurance Act, 2023 (*hereinafter the SHI Act*) and 3 other pieces of legislation<sup>7</sup> aimed to accelerate the realization of Universal Health Coverage (UHC) in Kenya. These pieces of legislation also provide a framework which guarantees the realization of the right to the highest attainable standard of health as provided for under *Article 43* of the Constitution. The SHI Act repealed the NHIF Act No. 9 of 1998 and aims to:

- (i) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;
- (ii) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;
- (iii) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and
- (iv) promote strategic purchasing of healthcare services as a means of reducing healthcare costs in Kenya.

The TC reflected on the above objects and referenced the 1<sup>st</sup> Schedule (*Transitional Provisions*) as it developed: the winding up roadmap, subsequent guidelines and operational mechanisms for smooth transition.

#### 3.3.2 Employee Rights and Labour Relations

The Constitution of Kenya does entrench additional rights (especially those of employees) with regards to participation, access for information, fair remuneration, right to join a union, nondiscrimination, right to petition among others. These rights and those under the labour related and employment law were upheld during the TC's deliberations with regards to the transition of human resources and their benefits to the Social Health Authority and as provided for in the SHI Act.

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<sup>7</sup> These other laws are the Digital Health Act, 2023, the Primary Healthcare Act, 2023 and the Facility Improvement Financing Act, 2023.

### **3.3.3 Other Laws and Circulars**

The TC also reviewed and referenced other laws among them: Public Service Commission Act, the Public Finance Management Act, 2012, the Public Procurement and Assets Disposal Act, 2015; the Public Audit Act, 2015, the County Governments Act, 2012, the Digital Health Act, 2023, the Health Act among others. There were a number of public service circulars such as public service values and employee management that informed the TC work as provided in *Annex II*. The TC heavily relied on these pieces of legislation as it ensured smooth and coordinated transition.

## **3.4 The Institutional Framework**

### **3.4.1 The Ministry of Health**

The NHIF and now SHA are entities under the Ministry of Health. The MOH provided policy direction, guidance, technical support and overall leadership, guidance and support during the transition process.

### **3.4.2 The Social Health Authority**

The SHI Act further establishes the Social Health Authority whose primary function is to be a strategic purchaser of healthcare services and in addition performs functions as set out in Section 5 of the SHI Act. The Board of the SHA comprises of 11 members.<sup>8</sup> At the time of commencement of the TC's work, the Board was yet to be fully constituted. At the expiry of the TC's term, the Board had been optimally constituted with a chairperson and the relevant committees in place. The SHA Board had also appointed the NHIF CEO as their acting CEO and Staff of the NHIF were supporting the SHA Board in undertaking its functions.

### **3.4.3 The NHIF Board**

The NHIF Board was established under the NHIF Act of 1998. At the commencement of the TC's work, the Board was in place and had the relevant Committees. The Board supported and was fully committed to the transition process.

### **3.4.4 The Public Service Commission**

The Public Service Commission is the constitutional entity responsible for human resource development and the establishment of offices within the national public service. The TC engaged the PSC so as to receive feedback and guidance on the HR related matters.

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<sup>8</sup> Section 7 of the SHI Act:

### **3.4.5 The National Treasury**

The National Treasury was to later play a key role in the transition especially in supporting asset and liabilities verification.

### **3.4.6 Parliament**

Parliament has a responsibility to offer oversight to implementation of government programmes. The National's Assembly's and Senate's Health Committees are the relevant committees that the TC would later work with during the transition period. The TC received an invitation to respond to transition matters and provide an update to the National's Assembly's Health Committee on Health on 8<sup>th</sup> of April, 2024. The TC prepared a brief and received valuable input and insights on how to handle the transition.

### **3.4.7 Other Public Institutions**

To support smooth transition, the TC worked with other crucial institutions including the Office of the Attorney General, the Salaries and Remuneration Commission, Office of the Data Protection Commissioner and the State Corporations Advisory Committee.

## **3.5 Immediate Actions and Outcomes**

### **3.5.1 Delineation of Roles for the NHIF and SHA Boards**

At the time the TC commenced its work, both Boards (SHA and NHIF) were in place. The NHIF Board, had sought an advisory from the Hon. Attorney General on their roles. This advisory indicated that the NHIF Board was to undertake winding up roles during the transition period. In addition to the advisory by the Attorney General that had been issued, the TC further guided roles by both Boards, form of continuous engagement and consultation so that the transition would be smooth. A first joint meeting of both Boards was held where a number of requests (information and documents) and actions were relayed as provided in *Appendix IV*.

### **3.5.2 Winding Up Resolution of the NHIF Board**

The TC reckoned that whereas the SHI Act provided for the constitution of the SHA Board, there was no framework to have the NHIF Board commence the winding up process. In this regard, the TC passed and conveyed a request to the NHIF Board to by a special Board resolution, commence the winding up process. Consequently, the NHIF made this resolution which paved way for the commencement of winding up process.

### 3.5.3 Guidelines for Reference During the Transition Period

Pursuant to the provisions of the 1<sup>st</sup> Schedule (*Transitional Provisions*) to the Social Health Insurance Act, 2023, the Transition Committee provided interim Guidelines for reference during the transition period (*Appendix VI*). The Guidelines, although not exhaustive, were developed in reference to the Social Health Insurance Act, 2023, other applicable laws in Kenya and best practices. The Guidelines addressed seven crucial areas namely: (i) assets and liabilities, (ii) finance and accounts, (iii) human resources, (iv) contracts, memorandum of understandings (MoUs) and agreements generally, (v) operations and service delivery, (vi) legal proceedings, and (vii) coordination and communication. Consequently, staff of the Fund continued to support both the NHIF and SHA during the transition period, assets and liabilities were safeguarded and there was semblance of the intended smooth transition save for emerging issues which this Report addresses later.

### 3.5.4 Transition Roadmap

The TC consultatively developed a one year winding up roadmap in accordance with the transitional provisions of the SHI Act. The roadmap addressed the realization and verification of NHIF assets and liabilities and the transition of human resources. During this period, the TC also mapped on how it would contribute and take remedial actions that were to ensure continued service delivery including engagement with healthcare providers, claims handling, communication, the benefit package, ICT, and the roll out of the centralized digital platform as detailed in this chapter. The TC also provided: preliminary winding-up activities and additional winding up roles for the NHIF Board as well as responsibilities of SHA Board during the transition period (*Appendix VII*).

### 3.6 Rights, Powers, Obligations and Liabilities

The transition to SHA is unique owing to the legal requirement to immediately shift after the appointed day while accommodating maintaining a one year winding up period.<sup>9</sup> Paragraph 3 of the transitional provisions to the SHI Act does provide that on the appointed day, ***all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or***

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<sup>9</sup> Ibid, Para, 6 (1).

**against the Government for and on behalf of the Fund shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.** The import of this is that even obligations arising from contracts, MoUs, agreements, court cases under NHIF shifted on the appointed day and are therefore obligations of SHA.

### **3.6.1 Health Care Provider Contracts**

From the records shared with the TC, majority of the contracts under the NHIF were those with HCPs. This was understandable owing to the nature of the business of NHIF which was health insurance. There are about 8,547 contracts with healthcare providers which included 7,889 (comprehensive contracts) and 658 (non-comprehensive contracts).

The TC reviewed and provided the financial and legal obligations and recommendations in its detailed Report (*Annex 1*). The Report further described the guidelines and mechanisms that would be utilized by the SHA Board (*if the Board adopted them*) to address upcoming and future empanelment and contracting as required under the SHI Act.

### **3.6.2 Enhanced Schemes**

Enhanced schemes were part of the contracts that had been entered into by the NHIF. On the appointed day, NHIF had about 67 enhanced schemes that were active among them: Edu Afya, Linda Mama, Comprehensive Medical Insurance Scheme for Civil Servants, NPS & KPS, County Governments, County Executive County Assemblies, Parastatals/State Corporations, Public Universities, Water and Sewerage Companies, and Public Sector Retirees Scheme. Some of these enhanced schemes placed a number of legal and financial obligations under NHIF as described in the TC's detailed report (*Annex 1*). The TC has equally analysed the interplay between these enhanced schemes and their continuity in light of the provisions of the SHI Act. As such, the TC equally provided recommendations and way forward on the same.

### **3.6.3 Leases on Land, Motor Vehicles and Buildings**

From the review, NHIF had entered into about 106 leases that generally covered rent for land, cars and buildings. Some of these leases had expired on the 22<sup>nd</sup> November 2023 while others were to expire within the winding up period. Despite some being active and others expired, the subsisting obligations arising from the leases were now vested in the SHA under the SHI Act. Some of the leases (whether active or not as at the appointed day) had direct and indirect financial obligations. From the desk-top review, an approximate amount value of Kshs. 2,107,600.00 had

accrued or was payable for branch office leases. In addition, a total value of Kshs. 361,512,051.87 was payable to the Rentco EA Ltd (Kshs. 239,953,267.20) and Isuzu EA Ltd (Kshs. 121,558,784.67). The TC recommended immediate actions that are crucial to guarantee continued service delivery as provided for in *Annex I*.

#### **3.6.4 Employment Related Contracts**

As at the appointed day, NHIF had about 1740 employees on permanent and pensionable basis while about seven (7) were employed on contract basis. Employment contracts had implied and direct financial and legal obligations including: payment of salaries, allowances and statutory deductions among other benefits.

The TC reviewed and provided guidance on the employment related issues including: (i) WIBA/GPA/GL/Last Expense, (ii) staff emoluments, pensions for retired/retiring staff, benefits and contribution to staff who had transferred service elsewhere, (iii) Staff Car Loan and Mortgage Schemes, (iv) Collective Bargaining Agreements for staff of the Fund, (v) SACCOs and Bank Obligations, and (vi) generally the duty of care. Specific TC's analysis, options and recommendations are contained in *Annex I* and associated annexes on HR.

#### **3.6.5 ICT Related Obligations**

The NHIF IT system is supported by IT related contracts which addressed: maintenance, storage, security updates, intellectual property, data protection, server back-ups and other IT issues. The TC also received a report from NHIF to the effect that some of the contracts with respect to licenses were due to expire around June 30<sup>th</sup> 2023 (*Annex II*). The TC was emphatic that all efforts needed to be undertaken so as to secure the systems including renewing or seeking alternatives so as to secure and guarantee continued service delivery. With the support of experts from the Ministry of Information and Communication Technology and the Digital Economy, the Office of the Data Protection Commissioner, and the ICT Authority, the TC conducted an independent assessment as to the status, security of NHIF IT systems and related obligations. The Report (*Annex III*) pointed out (*among other crucial findings and recommendations*) that it was imperative to maintain the existing systems (at-least for an applicable period) until the new system had been fully deployed.

### **3.6.6 Legal Actions and Suits**

The TC received a list of ongoing and active court cases, their status, and possible financial implications as at the appointed day (*Annex V*). Upon the TC's review of the Report, some of the pending cases were against the NHIF as regards payment of claims, alleged inaction or omission on the part of NHIF, employer-employee claims and alleged breach of contract.

It was the TC's view that the SHA Board was required to enter proper appearance in all the matters and where applicable seek proper representation. The TC further recommended that, where applicable, as the SHA Board was yet to attain the optimal staff compliment and legal transfer of some of its property, additional time would be sought before the relevant Courts.

These proposals were intended to forestall financial loss and "unexplainable" legal fees during and after the transition on account of transition. In this regard, the TC issued succinct guidelines (*Appendix VII*) for adoption and implementation by the SHA Board.

## **3.7 Operations and Continued Service Delivery**

### **3.7.1 Claims Handling**

The Transition Committee's TORs included development of guidelines and operational mechanisms and guidelines for transfer of liabilities to the SHA. The TC understood this to include liabilities that were active before the appointed day. The TC analyzed and prepared the attendant guidelines for claims handling during and after the transition period (*Annex I*). Some of the major recommendations in the advisory include verification of claims, retirement of old claims and maintenance of the systems and data for purposes of possible future audit. In addition to this advisory, the TC with the support of financial and audit experts from the National Treasury conducted an independent review of the claims and have provided additional findings and recommendations on matters of claims as detailed in *Chapter 5* and in *Annex VI*.

### **3.7.2 Engagement with Healthcare Providers and Facilities**

By the time the TC commenced its work, it was public knowledge that some healthcare providers and facilities had reportedly sent away patients on account of the transition or apprehension that their claims were delayed or would not be processed promptly. The TC in its guidelines (*Appendix VII and Annex I*) provided that the HCPS ought to be proactively engaged so that there is continued service delivery across the Republic of Kenya. In this regard, the Ministry of Health and SHA Board did issue out communiques and further held consultative meetings to forestall service

interruption. With respect to claims by HCPs, the message was clear that obligations had shifted to SHA on the appointed day and that these could be processed in the usual manner by the SHA. Therefore, the TC recommended efficient handling and processing payment provided that verification and reconciliation of the claims had been done in accordance with the applicable procedures and the law.

### 3.7.3 IT Assets and System Maintenance

The NHIF services such as registration, beneficiary registration, preauthorization and claims, relied on the IT system. The Fund had carried out significant ICT investments and had implemented, and upgraded various ICT systems, to enable the organization to be a world-class health insurer.

As the Fund matured its ICT capabilities, business models in health insurance, service providers, beneficiary management, and the entire healthcare ecosystem have significantly changed.

#### *Analysis*

#### **ICT Systems Running at the Defunct NHIF.**

- (i) **Great Lakes Financial System (Fourgen ERP):** This is the main Enterprise Resource Planning system supporting the back-office operations at the Fund. It is a legacy system purchased in 1997 and is not a graphic user interface (GUI) or Web-based thus not user-centric in terms of reports, and screen interface, among others.
- (ii) **Electronic Health Management Information System (HICS):** This system is used by health service providers to check member details, launch pre-authorizations, and launch medical claims.
- (iii) **Biometric Registration System (BIOMETs):** This system is used to register member biometrics and to validate member biometric authenticity.
- (iv) **Self-Care/Online Platforms:** These platforms are designed to offer one-stop-shop access to members' information. The platforms include:
  - 1. NHIF Mobile App on Android Play Store and Appstore;
  - 2. NHIF USSD Code \*155#;
  - 3. NHIF Self Care Portal; 4. Employer Byproduct Portal; and
  - 5. NHIF -E-citizen Services Portal.

- (v) **Customer Relationship Management System (CRM):** This system is designed to handle customer relationships by tracking issues or requests raised and responding to them on time.
- (vi) **Electronic Documents Management System:** This system handles documents electronically, from correspondence to processing payments. This platform is integrated with the core systems and offers a seamless flow of processes.
- (vii) **Application Programming Interface System (API):** This is a system used to integrate with other third-party systems, to allow for data sharing, such as Kenya Revenue Authority, National Registration Bureau, Kenya Medical Practitioners and Dentist Council.

#### *Action Taken*

The TC provided comprehensive guidelines on the safeguards addressing data protection, encryption, access and securing during the transition period. At some stage the TC recommended maintenance of both systems (the old and the proposed new) so as to allow accountable transfer, audit and settlement of claims and maintenance of data for a while (*Annex IV*). Further, with the support of independent IT experts, NHIF ICT systems were reviewed and assurance given as to their integrity and security (*Annex III*). This analysis was in addition to a report shared by the NHIF IT director (*Annex II*).

#### *Roadmap for Handover of Digital Assets*

A number of digital assets were also identified and were ready for handover to the SHA among them: member data, employer data, scheme data, hospital data, employee data and claims data as well as ICT hardware and software as listed roadmap for handover of digital assets (*Annex VII*).

#### **3.7.4 Records Management and Protection**

The TC made a request to the NHIF Board to maintain existing data and records for purposes of their safe custody and handover to the SHA (*Appendix VII*). The TC received written assurance that the records were secure and would be available for inspection and transfer at any convenient time. Further action was assigned to the mandated public body namely the Kenya Archives and Documentation Commission for purposes of a proper audit, verification and subsequent transition to SHA as per the existing laws. At the lapse of the TC's mandate, this Report was yet to be made available.

### **3.8 Emerging Issues**

As the TC executed its mandate, a number of emerging issues arose that were incidental to the operations and continued service delivery as described below:

#### **3.8.1 Social Health Insurance (General) Regulations**

Although the required actions towards the gazettment the Regulations under the SHI Act was not a strict mandate of the TC, we recognized that the SHI Act would not be effectively implemented without the SHI (General) Regulations and SHI (Tribunal Procedure) Rules. As a result, the TC participated in stakeholder engagements and incorporation of feedback into the Regulations. The Regulations were later validated and subsequently gazetted by the Hon.

Attorney General on the 8<sup>th</sup> of March, 2024.

#### **3.8.2 The Essential Benefit Package**

Transition to the SHA also entailed the essential benefit package. Many beneficiaries were looking forward to improved and better services. Therefore, transition meant that the beneficiaries (new and existing NHIF members) would access this package whenever they would visit health facilities (upon registration and commencement). In this regard, the TC provided some feedback to the conceptualization, design, roll out and implementation of the benefit package as the same had been worked on by relevant experts. The TC also followed up with the relevant actors including the Ministry of Health and the SHA Board for the necessary approvals as the roll out date approached. When it occurred to the TC that the anticipated roll out date of 1<sup>st</sup> of July 2024 were to delay, the TC provided the necessary guidelines and recommendations as detailed in *Annex IV*.

In addition to the foregoing, the TC worked with a team of health and communication experts to develop information products that were to be utilized to provide the public with relevant information on the new benefit package, what had changed and how beneficiaries were to access the same. Chapter six of this Report provides details on the messages and communication products that were developed. This approach (amid widespread protests about the Finance Bill, 2024) enhanced enhance interaction, feedback and acceptability of the transition.

#### **3.8.3 Centralized Digital Platform**

The SHI Act provides that the SHA services such as registration, member identification, contributions, empanelment, contracting, claims management are to be fully digitalized.

The SHI Act further envisages an appropriate, reliable, secure, inter-operable, verifiable and responsive technology.<sup>10</sup> The SHA digital system (part of the digital superhighway) is being developed by the Ministry of Health in conjunction with the developers, to address the various challenges in the Universal Healthcare ecosystem among them fraud, inadequate linkages for comprehensive patient care and inadequate access to information.

The TC therefore reckoned that transition to SHA was heavily dependent on the availability, accessibility and operationalization of the centralized digital platform.

This moved the TC to hold regular consultative meetings with the Ministry of Health, SHA Board and project management team to appreciate, ascertain and follow up the status of procurement, design and deployment of the proposed new system. This dependency was apparent during the discussions on the staff compliment that the SHA Board would require as well as the readiness to roll the essential benefit package. The TC also participated in the system readiness test and made applicable recommendations as provided for in Annexes I, III, IV and VII.

#### **3.8.4 Registration**

The SHI Act requires that all legible persons to register with the Social Health Insurance Fund (SHIF) for them to benefit from the social health insurance services. In the transition plan, it was anticipated that registration was to commence immediately after the gazettelement of Regulations (about March 2024). However, this officially commenced on the 1<sup>st</sup> of July 2024. This registration included existing NHIF members. The TC received a number of enquiries with respect to the rollout and process of registration, documentation needed and safety of the data. In addition, the TC prepared responses to the transition questions around member data, its security and whether their contributions would be transitioned to the SHA. This was done through detailed Frequently Asked Questions (FAQs) (*Chapter 6 and Annex 10*).

In addition to the FAQs, the TC developed a communication, training and outreach plan targeting at-least 85% of the Kenyan population by the end of the transition period. In the plan (*Chapter 6 and Annex 10*), the TC had set out to at-least achieve above 1,000,000 persons registering every week.

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<sup>10</sup> SHI Act, Section 47.

By lapse of the TC term, the TC had made concerted efforts to encourage registration of beneficiaries to the SHA. The numbers stood at about a paltry 400,000 which was attributable to IT system delays, petitions and general public misinformation about the benefit package.

### **3.8.6 Communication**

The TC offered comprehensive guidance on communication initiatives and activities for the Ministry of Health (MoH), the SHA Board and the NHIF Board. This included strategies to maintain effective and consistent communication, facilitating smooth cooperation and coordination. A number of communication products including FAQs, leadership toolkit and parliamentary briefs, were also developed and shared with MoH/SHA/NHIF.

The target audience included HCPs, staff, the general public, beneficiaries and other stakeholders. A detailed communication plan with the key products is annexed to this Report (*Annex 10*). On account of significant of communication in change management, we have further dedicated Chapter Six of this Report to address communication outreach and training.

### **3.8.7 Empanelment and Contracting**

As the TC was planning for a rollout to the SHA on the 1<sup>st</sup> of July 2024, it emerged some of the HCP contracts were due to expire on the 30<sup>th</sup> of June, 2024. Potentially, this meant that the process of empanelment and contracting had to be complete before the due date.

The SHI Act provides for Empanelment and Contracting of Healthcare Providers and Healthcare Facilities under section 33 and 34 respectively.

Section 33 (2) and (3) of the Act states:

*(2) A healthcare provider or healthcare facility seeking to be empanelled under the Act shall make an application to the body responsible for accreditation for quality of care in the manner prescribed by the Cabinet Secretary; and*

*(3) Upon the publication of the list of empanelled healthcare providers and healthcare facilities on the website and in the Kenya Gazette, the Authority may contract the healthcare providers or healthcare facilities within thirty days of the date of the publication of the list.*

Section 34 states:

*(1) The Authority may from time to time negotiate and enter into contracts with healthcare service providers and healthcare facilities who qualify under section 33(3) for the provision of health services to the beneficiaries.*

While the timelines were fast approaching, it was clear to the TC that any procurement of healthcare providers and facilities should be guided by the Public Procurement laws and Regulations in view of the fact that the Public Procurement and Asset Disposal Act, 2015.<sup>11</sup> The TC has made recommendations to guide the empanelment and contracting of the HCPs (*Annex I*).

### **3.9 Challenges and Lessons**

The TC navigated through a number of challenges as summarized below:

#### **3.9.1 Uncertainty of the NHIF/SHA Funding**

It was unclear on how both NHIF and SHA Board were to address their financing needs. On one hand, the funds available had been appropriated by Parliament to NHIF. On the other hand, the transitional provisions indicated that the budget had been shifted to the SHA.<sup>12</sup> Herein, NHIF and SHA would not spend the available funds. This was resolved with advice of the NT where the necessary approvals were sought.

#### **3.9.2 Reporting Relationships**

When the TC commenced work, it was unsettled on where reporting accountability lay with regards to the staff of the Fund. On the appointed day, the NHIF was technically defunct save for undertaking winding up roles. All assets and liabilities and shifted to SHA.<sup>13</sup> This was further compounded by the provisions of the Act which indicated that SHA were to recruit its own staff while giving priority to the Staff of the Fund.<sup>14</sup> The TC provided guidelines to the effect that staff of the Fund were to support both boards during the transition period (*Appendix VII*).

#### **3.9.3 Lack of a Strategic Model/Plan**

The institutional and administrative reforms under the SHI Act no doubt required a new strategic model. This would facilitate the envisionment and identification of clear goals and objectives on

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<sup>11</sup> Public Procurement and Asset Disposal Act, 2015, Section 5. *This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and asset disposal except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services.*

<sup>12</sup> Para. 7 of the 1<sup>st</sup> Schedule to the SHI Act. {The annual estimates for the Fund for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Authority for the remainder of that financial year: Provided that such estimates may be varied by the Board of the Authority in such manner as the Cabinet Secretary may approve.}

<sup>13</sup> Para. 2 of the 1<sup>st</sup> Schedule to the SHI Act.

<sup>14</sup> Para 6, Sub Para 2 of the 1<sup>st</sup> Schedule to the SHI Act.

the desired new entity (namely the SHA). However, both the SHA Board and management only reported availability of a draft but remained non-committal on the finalization of this crucial document and on the utilization of the support the TC had offered to jointly develop an interim one-year service delivery model. Consequently, the organization structure and other crucial transition documents were developed devoid of this crucial framework.

#### **3.9.4 Proxy Means Testing**

Proxy Means Testing (PMT) is intended to estimate the income or wealth of a household for purposes of state contributions for households that cannot afford (indigents and the vulnerable) or for households whose income is derived from non-salaried employment.

This process is to utilize a self-administered, scientifically proven, and credible tool to determine premiums. It is also intended to promote equity within the system, prevent undue financial burden on individuals, and identify poor people. Whereas this was the understanding, it turned out at the initial stages (as the system was being tested), the values were unrepresentative of existing economic realities of some households. The TC made these observations and provided recommendations on how this tool would optimally perform as expected in its report in *Annex IV*.

#### **3.9.5 Misinformation and Public Perception**

Health insurance is a critical component of universal health coverage. Many rely on insurance to cater for their healthcare needs. As would be expected, Kenyans had come to accept NHIF as it met them at the point of their healthcare needs. However, as the TC commenced its work, it met with the question of public acceptance of the reforms that had been introduced towards delivery of social health insurance. It appeared to the TC that whereas SHI was largely acceptable, communication on the reform had not been effective occasioning apprehension among a segment of the population. For instance, some felt that they would lose out on Linda Mama or that the premiums payable would be skyrocketed. The TC has dedicated Chapter Six of this report to address the identified gaps.

#### **3.9.6 Delays in Roll Out of the new IT system**

It was the anticipation of Kenyans and the TC in particular that the ICT system would be procured, designed, tested, piloted and rolled out on time so as to guarantee smooth transition.

Our initial date was July 1 2024. However, a number of issues arose during system test runs including non-readiness of the crucial components to guarantee service delivery.

In our ICT report to the CS (*Annex IV*), we observed that some modules such as contributions, empanelment, contracting and claims management were yet to be complete. Therefore, on July 1<sup>st</sup> 2024, we only commenced the initial registration process. The Parliament of Kenya had also raised concerns with respect to data safety, security as well as the status of procurement of the ICT system. Data safety concerns were to some extent addressed and the Office of the Data Protection Commissioner was involved in the Data Impact Assessment and had registered SHA as a data controller and processor.

However, at the time of the expiry of the term of the TC, it was unclear as to the period the developers would require to have the system ready in its full capability.

### 3.9.8 Petitions

There were a number of petitions and court actions by parties that informed or varied the work of the TC. In the period January 26<sup>th</sup> – July 25<sup>th</sup> 2024 about four court petitions were lodged which directly affected the work of the TC. The TC participated in engaging the parties in order to guarantee a smooth transition and sometimes as directed by the Courts. We also drafted replying affidavits and submissions on Petition E076 of 2024 and were represented in Court by Counsel from the Office Attorney General. The Table 3.1 below presents ad summary of the Applicant`s/Petitioner`s cases and their status.

**Table 3.1: Summary of Court cases and their status**

Case	Summary	Status
<b>Joseph Enock Aura Vs. Cabinet Secretary for Health and 11 Others (Constitutional Petition No. E 473 of 2023)</b>	The Petitioner challenged Judgement delivered on 12 <sup>th</sup> constitutionality of some specific of July, 2024. sections and the process of enactment of the Primary Health Care Act, 2023, the Digital Health Act, 2023 and the Social Health Insurance Act, 2023).	

**Constitutional Petition No. The Petitioners had sought an Application spent. Case to E076 of 2024** Order of injunction stopping the proceed.

transition from the National Health Insurance Fund to the Social Health Authority pending the hearing and determination of the petition and grievances of the national Health Insurance Management Staff therein.

**Fredrick Bikeri Vs. Ag. The Applicant had sought to address Filed. CEO SHA, 5 Other** perceived likelihood of service Respondents and 5 Other delivery interruptions on account of Interested Parties (case number yet to be shared) concerns regarding healthcare provider contracts.

**Kenya Union of The Applicants had claimed neglect Court ordered involvement Commercial, Food and and non-involvement in the of union staff in the Allied Workers Vs.** transition process. transition.

**National Health Insurance Fund and 2 Others ELRC No. E030 of 2023**

## CHAPTER FOUR: TRANSITION OF ASSETS AND LIABILITIES

### 4.1 Overview

Besides developing the legal and institutional framework for coordinated and smooth transition the Transitional Committee was required to develop guidelines and operational mechanisms for the audit and transfer of assets and liabilities to the SHA. This chapter presents the guidelines and operational mechanisms the TC adopted and outcomes.

### 4.2 Assets

When the TC commenced its work, it embarked to ascertain what assets the NHIF had, their availability, their location, ownership status and condition of use.

#### 4.2.1 Situation and Classification of Assets

The TC requested the NHIF to be issued with a schedule of assets that were at the headquarters, its branches, satellite offices and huduma centres as at the appointed day (*Appendix V*). These assets included land (own or leased), motor vehicles (own or leased), computers, generators, Office Equipment, Furniture & Fittings among others. NHIF also listed other intangible assets as listed in *Annex VI* on the schedule of NHIF Assets. The TC further requested NHIF for financial information and related documents that would provide the status of financial assets. Some of the documents required include audited financial reports for the last three years, asset registers, list of Financial Assets (Fixed and Current), schedule of accounts receivables & payables, cash and bank balances, procurement plans, internal audit reports and risk management framework among others. The full list of requested financial information and documents is captured in *Annex VI*.

The TC, supported by experts, embarked on a thorough review of the documents and were granted viewing rights to NHIF Financial System to corroborate what was documented vs what was captured in the system. Following this review, the experts summarized NHIF assets into Current and Non-Current Assets as indicated in the *Table 4.1* below.

**Table 4.1: NHIF Assets Classification**

NHIF Assets	
Non-Current Assets	Current Assets
Property, Plant and Equipment -Categories: Land, Buildings, Motor Vehicles, Motorcycles, Computers & Related Equipment, Office Equipment, Furniture & Fittings	Trade Receivables – Amounts owed to the & fund by entities and individuals
Intangible Assets – Software & Licenses	Other Receivables - Amounts owed to the fund by entities and individuals
Receivable-South B Estate Mortgage	Short Term Deposits – Call deposits and Treasury Bills held for less than 1 year
Long Term Deposits – Guarantee for Staff Car loans and Mortgages	Cash and Bank Balances - Cash in collection accounts to pay claims
Unquoted Investments – Consolidated Bank Shares and MTRH Loan	

#### 4.2.2 Verification of Assets

The TC reckoned that the schedule of assets as shared by NHIF to the TC and SHA Board would further require verification by an independent party for purposes of ascertaining the true picture. In this regard, with the help of experts from the National Treasury, Ministry of ICT, Office of the Data Protection Commissioner and other stakeholders defined the scope, developed and piloted verification tools and conducted a nationwide verification exercise from with the following objectives:

- (i) Review the accuracy and completeness of the asset register identifying NHIF assets (movable and immovable) in all its sites;

- (ii) Review financial documents such as audited reports, financial statements, balance sheet (asset register, schedule of accounts receivables & payables, pending claims), cash balances, and procurement plans;
- (iii) Analyze financial data and provide expert opinion on the financial status of the NHIF;
- (iv) Prepare a report following review of current financial documents and data, asset register, other relevant documents capturing gaps, areas of concern, clarifications, any other details, and recommendations; and
- (v) Develop framework for transfer and handover of assets to SHA.

#### **4.2.3 Scope and Logistics of the Asset Verification**

The developed verification and logistics plan mapped the seventy branches of NHIF, fifty-three Huduma Centres and thirty-seven satellites. A verification team of sixty people was assembled drawn from TNT, MOH, Ministry of ICT, ICT Authority, NHIF, TC and TC Secretariat. The verification exercise was officially flagged off on 13<sup>th</sup> May 2024 by the then Cabinet Secretary for Health, Nakhumicha S. Wafula, at a function that also served as briefing to the media on progress of the transition. The exercise, which took six weeks, kicked off in Nairobi region and thereafter rolled out to other regions.

#### **4.2.4 Key Observations During Assets Verification**

- i. There were high levels of anxiety and tension among staff in most of the sites, with most of the staff citing lack of communication on their fate in the face of impending change. Despite this the staff were supportive and fully cooperated with the verification team. The Regional Managers played a pivotal role in ensuring all branches and sites were ready for the exercise.
- ii. During verification it was found that certain parcels of land and buildings which were not in the financial statements were being valued as one whereas these assets should be valued separately because land appreciates while buildings depreciate.
- iii. Discrepancies were noted between the total assets in the ERP registers and those in the financial statements. In addition, some assets were found to be located in different places than those recorded in the registers, particularly vehicles and ICT equipment.
- iv. NHIF offices do not have their own asset registers.

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- v. Most vehicles procured or leased are high-end double cabins with over 2500 cc engine capacity.
- vi. Furniture was found to have been over-procured and underutilized, and some was kept in storage. Further, there is poor maintenance of furniture, especially office seats.
- vii. There was excess computer hardware and parts, most them new and had remained in boxes for over three years. This was noted in the headquarters and a number of branches.
- viii. There were cases of branches operating without valid leases for the premises they occupy (expired lease in Mtwapa branch or no lease at all while others like Kitui branch were operating with two leases).
- ix. In Mbita branch the offices were locked due to non-payment of rent and NHIF assets were locked in a container within the compound thus making verification a daunting task.
- x. It was noted that some NHIF offices lacked appropriate access for persons with disabilities thus making it difficult to access the offices with wheelchairs. This was cited in Mombasa Branch.
- xi. Dadaab office could not be accessed due to security concerns forcing the team to verify the assets via video conferencing.

### 4.2.5 Findings of Asset Verification

Below is a summary of the outcome (*Annex VI is detailed report of the asset verification exercise*).

- (i) The verification team verified NHIF assets totalling **37,860**. This consist of 4 parcels of land, 7 buildings, 166 motor vehicles consisting of 112 owned and 54 leased motor vehicles, 9153 pieces of furniture, 5934 office equipment, 1082 portable and attractive and 5032 loose tools. The Physical assets have no value attached with last valuation done in 2018 on some assets which have since fully depreciated. *It is recommended that SHA initiate the process of valuation of all these assets and to prepare complete asset register.*
- (ii) The Transition verification team received current assets of **Kshs 29.70 billion** from Trade receivables, other receivables, short term deposits and cash and bank balances out of which **Kshs 13.1 billion** were verified. However, **Kshs 16.6 billion** were not verified due to lack of complete and collaborating information which was not provided and therefore actual position not confirmed. It is worth noting that three (3) bank accounts balances provided by the bank had variances which NHIF could not explain.

*It is recommended that, in order to comply with the SHA Act on transition provisions, bank accounts are opened so as to start with a clear position.*

### **4.3 Liabilities**

The TC also sought to ascertain the status of liabilities as the at the appointed date. However, in concurrence with NHIF it was agreed that 31<sup>st</sup> of December 2023 be adopted as the review date owing to it being half-way into the financial year 2023-2024.

#### **4.3.1 Situation and Classification of NHIF Liabilities**

The TC worked with experts and identified and classified NHIF Liabilities as shown in *Table 4.2* below.

**Table 4.2: Classification of NHIF Liabilities**

#### **NHIF Liabilities**

- 
- i. Deferred Income -Incomes for contractual engagements for subsequent period to be recognized as income in the years they relate to.
  - ii. Trade Payables – Hospital and WIBA Claims
  - iii. Other Payables -Various
  - iv. Tax Payables
  - v. Provision for Liabilities -Various

#### **4.3.2 Verification of Liabilities**

The TC sought to ascertain the list of liabilities as shared by NHIF to the TC and SHA Board. In this regard, with the help of experts, the TC and other stakeholders defined the scope, developed guidelines for liabilities identification and listing and conducted an in-depth review of financial information with the following objectives:

- (i) Review for accuracy and completeness of the register identifying NHIF liabilities including pending claims;
- (ii) Review financial documents such as audited reports, financial statements, balance sheet (asset register, schedule of accounts receivables & payables, pending claims), cash balances, and procurement plans;

- (iii) Analyze financial data and provide expert opinion on the financial status of the NHIF;
- (iv) Prepare a report following review of current financial documents, other relevant documents capturing gaps, areas of concern, clarifications, any other details, and recommendations; and
- (v) Develop framework for transfer and handover of liabilities to SHA.

#### 4.3.3 Approach to the Review of Liabilities

Table 4.3: Detailed Approach to desk review of NHIF Liabilities

Area	Financial statements analysis and review of outstanding audit queries
<b>Documents required</b>	Financial statements
	Schedules
	Extracts from ERP (QV Term) /Access to system
	Reconciliations
	Agreements
	Comparison templates

<b>Approach</b>	<p>Financial statement review****</p> <p>Identify the Financial Position statement balances in a various class of asset and liability</p> <p>Compare the figures in financial statement and certified copy of schedule</p> <p>Analyse the schedule and compare the figures with source documents by inserting corresponding confirmed figure on statement and schedules in the working template</p> <p>Request for composition of figures in the schedule from source documents</p> <p>Extracts from ERP (QV Term) and compare with schedules availed</p> <p>Analyse the reconciliation availed</p> <p>Fill the comparison template</p> <p>Provide the assessment in terms of accuracy, completeness and clarity</p> <p>Provide short term and long-term recommendations in a summarised action plan</p> <p>Audit reports Review</p> <p>Identify all audit issues highlighted by OAG</p>
	<p>Assess the status (if cleared or still outstanding)</p> <p>Record the outstanding and provide analytic impact of SHIF future operation</p> <p>Financial health of NHIF</p> <p>Assess the various comparisons/ratios and provide the assessment of the NHIF</p> <p>Assess the level of compliance with various laws and standards in preparation of financial statements</p> <p>Assess the contingent liabilities and level of disclosure</p> <p>Categorise various liabilities and undertake aging analysis</p>
<b>Output</b>	<p>Financial Analysis Chapter</p> <p>Financial statement status</p> <p>Audit reports highlights</p> <p>Financial health of SHA</p>

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<b>Area</b>	<p>Consolidation of claims Register and Guidelines for handling outstanding NHIF claims</p> <p>Insurance claims</p> <p>Court processes claims</p> <p>Oversees claims</p> <p>Hospital Claims</p>
<b>Document required</b>	<p>Financial statements</p> <p>Schedules of claims as at 31<sup>st</sup> Dec 2023 &amp; 15<sup>th</sup> June 2024</p> <p>Extracts from ERP (QV Term)</p> <p>IBNR certificates from Actuarial</p> <p>Manual claims register/old e-Claims system and Current E-Claim (Biomet)</p> <p>Access to E-Claim systems</p> <p>Reconciliations</p> <p>Agreements</p> <p>Comparison templates</p>
<b>Approach</b>	<p>Compile the list submitted</p> <p>Prepare a consolidated claim register with four sub-heading and with comparative figures of as at 31<sup>st</sup> Dec 2023 and current status as at 15<sup>th</sup> June 2024</p> <p>Extract from various system and compare with list provided</p> <p>Sample claims and review the supporting documents in the system or manual</p> <p>Request the various reports done for claims and identify key issues</p> <p>Analyse the reconciliation if any</p> <p>Fill the comparison template</p> <p>Provide the assessment in terms of accuracy, completeness and clarity</p> <p>Provide recommendations including liquidation options</p> <p>Liaise with TC team preparing guidelines on liquidation for harmonisation</p>
<b>Output</b>	<p>Claims chapter with various categorization/aging</p> <p>Claims registers as annex</p> <p>Harmonized liquidation guidelines to handle claims</p>

#### 4.3.4 Findings of the Liabilities Verification

The Transition verification team received a listing of NHIF liabilities, which as at 31<sup>st</sup> December 2023 was totalling **Kshs 25.8 Billion** as shown in *Table 4.4* below:

**Table 4.4: NHIF Liabilities**

Liability Source	Class	Amount (Billions)
<b>Trade payables</b>	Local Hospital Claims from claims department	15,875,450,731.77
	Oversees Hospital claims (Submitted)	139,630,842.00
	Insurance claims/ Premiums owed to Insurance Companies (WIBA, Group Life, Last Expense & Group Personal Accident)	5,609,282,075.00
	Deferred Income	3,606,428,450.00
<b>Other Payables</b>	Trade creditors, rent deposits among others	568,910,741.00
	Tax Payables (Rent & Investments)	6,388,547.00
<b>Total Liabilities</b>		<b>25,806,091,386.77</b>

Trade payables (Hospital related claims) had a high number (2.7M) and therefore not verified, Also noted High unreconciled NHIF claims indicating that NHIF cannot clearly state their current outstanding claims. *It is recommended that SHA establishes mechanism of subjecting the claims for legibility*

- i. The Transition verification team received listing of NHIF contingent liabilities totalling to **Kshs 16.1 billion** emanating from court cases, legal charges, default assessment and oversees guarantees of payments as shown in *Table 4.5* below. SHA financial operations may be affected massively if the contingent liabilities crystalize.

Table 4.5: NHIF Contingent Liabilities

No.	Contingent Liabilities source	Amount (Billions)
1.	Total claims on all court cases filed against the Fund	14,918,238,474.00
2.	Total legal fees on all court cases filed against the Fund	765,098,502.00
3.	KRA Default Assessment	373,887,520.00
4.	Oversees Guarantees of Payments	52,491,547.50
		<b>16,109,716,043.50</b>

***It is recommended that SHA need to closely monitor and take appropriate actions to mitigate some liabilities crystalizing where possible.***

#### **4.4 Observations and Recommendations for the Entire Verification**

- i. NHIF does not maintain assets register but prepares financial statements using general ledger which lists the transactions. Therefore, the specific assets in the financial statements could not be identified with a specific asset. NHIF prepared depreciation using general ledger balance instead of an asset register which is contrary to IAS 16: Property, Plant and Equipment and NHIF Financial Policy and Regulations (2017).

***It is recommended that SHA prepares an asset register which will be the basis of preparing financial statements.***

- ii. High number of unverified assets and liabilities in financial statements reflects unreliable figures in the financial statements. ***With high unverifiable assets and liabilities, it is recommended that SHA should establish strong accounting systems and avoid carrying unexplained figures in their financial statements.***
- iii. The Receivables due from GOK entities to total receivables ratio indicates the proportion of NHIF total receivables that are owed by Government Institutions. The ratio has significantly increased from 36% in 2020/2021 FY to 74% in the second quarter of 2023/2024 FY. A high and increasing proportion of

receivables from a single source (GOK) exposes NHIF to significant risks. Delays or defaults in Government payments could severely impact cash flow and financial stability of NHIF. The financial health of NHIF is increasingly tied to the Government's payment behavior. ***It is recommended that the SHA to have strategies with the aim of reducing reliance on GOK institutions by diversifying its customer base and spreading the risk.***

- iv. NHIF have adverse opinion in their financial statements in the last two years indicating unreliable financial statements and by extension financial records. ***It is recommended that SHA addresses all the control weaknesses to avoid similar status happening.***
- v. In accordance with SHA Act 2023 Transition clauses , (1) *“On the appointed day, all the funds, assets and other property movable and immovable which immediately before that day, were held for and on behalf of the Fund in the name of the National Health Insurance Fund Board shall, by virtue of this paragraph and without further assurance, vest in the Authority and Clause (6), “the National Health Insurance Fund Board shall wind up the Fund within one year from the appointed day and the cash balances and all other assets shall be transferred to the Authority”.*

***It is recommended that in the process of winding up, unverified Assets especially financial assets and liabilities are fully supported with complete information.***

#### **4.5 Overall Challenges for the Verification Exercise**

##### **4.5.1 Inadequate Personnel**

The TC did not have own staff and heavily relied on the goodwill and support of staff from other public agencies. As would be expected, the staff also were to have competing tasks with their employers. The TC had to often do some of the work by themselves.

##### **4.5.2 Inadequate Technical Expertise**

Verification of assets and liabilities is often a complex exercise. This in our case required financial experts, auditors, ICT experts, land surveyors, land valuers, accountants, auditors among other professionals. The TC had only to work with IT, accountants and finance experts. It would have

been helpful if it had got the support of land valuers and surveyors and we have made succinct recommendations on what ought to be done for further audits.

#### **4.5.3 Poor Weather in Some Areas**

The roll out of the TC's work was delayed or affected by heavy rains, floods which affected movement in some areas.

#### **4.5.4 Lack of Requested Information in Some Cases**

The TC has documented instances where requested information from NHIF was never availed or delayed or presented in formats that were incoherent and in other cases information that did not match. This certainly compromised and or delayed the verification process.

#### **4.5.5 Inadequate Legal Mandate to Audit**

The TC was required to prepare guidelines for audit NHIF Assets and Liabilities. However, upon further consultation with several stakeholders it emerged that the Transition Committee had no mandate to request or carry out an audit. This role is the preserve of the Internal Audit function within the National Treasury and Planning or the Office of the Auditor General if requested by the National Assembly. The Transition Committee was therefore advised to carry out verification of NHIF Assets and Liabilities and not audit.

#### **4.5.6 Delays in Budget Approvals**

The challenge of delays in budget approvals for NHIF further affected the starting of the verification exercise since funds had to be availed to the verification team.

#### **4.5.7 Short Timelines**

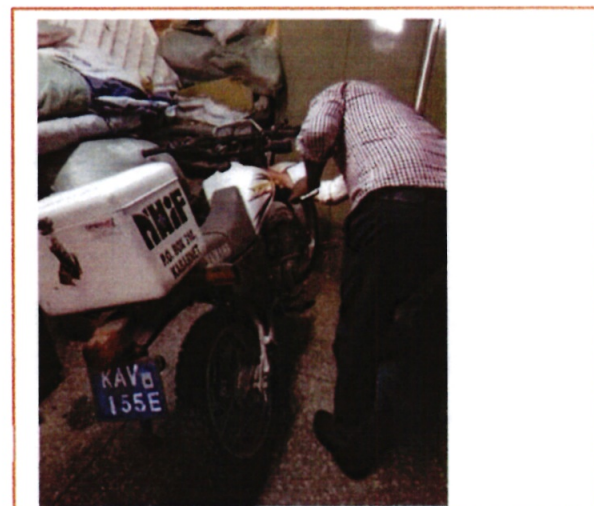
NHIF liabilities and specifically health care provider claims, as at 31<sup>st</sup> December 2023, were at 2.7 million claims. These required ample time to review and verify, which unfortunately could not be fully verified within the time provided. In hindsight, the timelines provided for this mammoth exercise of verification were not adequate. It is recommended that in future, comprehensive project timelines are developed to enable smooth execution of such critical exercises. As a result of the time constraints, the Transition Committee acknowledges that some activities were incomplete at the lapse of the term of the TC and hopes that the SHA board will pursue their completion. Key among them being transfer and handover of the assets and liabilities and valuation of NHIF assets as detailed in the next section.

#### 4.6 Transfer and Handover Plan

Transfer of assets and liabilities to SHA was part of the mandate for the TC. It was the plan of the TC that once the assets and liabilities had been verified, these could be transferred to the SHA. We had also intended to list ready assets for immediate transfer and develop a framework for transfer of assets and liabilities that required further valuation and audit before transfer. However, this was not to be realized at the TC mandate come to an end while it was still reviewing the verification report from National Treasury. This aspect therefore is listed as one of the pending tasks to be undertaken by both boards and the Ministry of Health.



*Verification teams make observations during the asset verification exercise.*



### CHAPTER FIVE: HUMAN RESOURCES TRANSITION

#### 5.1 Overview

This chapter presents guidelines and operational mechanisms and other aspects of human resource transition that the TC was mandated to undertake.

#### 5.2 Transitional Provisions on HR

Staff transition provisions have been provided under the first schedule of the Social Health Insurance Act, 2023 as follows: -

- a. The First Schedule on Transitional Provisions Paragraph 2. (1) of Act, provides that on the appointed day, all the Fund's assets and other property movable and immovable which immediately before that day, were held for and on behalf of the Fund in the name of the National Health Insurance Fund Board shall, by virtue of this paragraph and without further assurance, vest in the Authority.

## Report of the Transition Committee to the Social Health Authority

- a. Paragraph 6 (1) further indicates that notwithstanding the provisions of paragraph (2), the National Health Insurance Fund Board shall wind up the Fund within one year from the appointed day and the cash balances and all other assets shall be transferred to the Authority.
- b. Despite subparagraph (1), the Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff under section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board.
- c. Notwithstanding the provisions of subparagraph (1), the staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised.
- d. A staff of the Fund not appointed by the Authority under subparagraph (2) may exercise his or her option to either;
  - i. retire from public service; or
  - ii. be redeployed within the public service.
- e. The Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff under section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board.
- f. The staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised.
- g. The Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment.

The status of the activities undertaken by the TC is enumerated here below:

### **5.3 Transfer of Key HR Documents and reports from NHIF**

The Transition Committee wrote a letter to NHIF requesting for documents for review and/or onwards transmission to SHA. Some of the HR related documents and reports received include:

- i. Report of all employees detailing their employment status, designations, qualifications, roles, benefits and entitlements, duty stations, immediately before the appointed day;
- ii. Report on staff payables and receivables; and
- iii. Staff Performance Management for the FY 2022/23.

The above and other documents relating to other TC workstreams were received and handed over to the SHA Board of Directors on 29<sup>th</sup> February 2024 at the 7<sup>th</sup> floor of the NHIF Building.

### **5.4 Guidelines for Transition from NHIF to SHA**

The TC submitted its part of the initial guidelines and operational mechanisms to the Transition Committee for consolidation and submission to NHIF and SHA. The Guidelines were submitted to the SHA and NHIF Boards.

#### **5.4.1 Classification of SHA**

On the advice of the TC, the SHA caused a request for Classification of the Authority. The letter requesting from the SHA Board through the Ministry of Health was done. The classification of the Authority was done and communicated by the SCAC.

#### **5.4.2 Review of the Qualifications of the NHIF Staff**

The Staff transition provisions have been provided under the first schedule of the Act. Paragraph 4 of the 1<sup>st</sup> Schedule provides *inter alia* that the Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment. In view of the foregoing, the Subcommittee through the TC submitted an advisory to the SHA Board to undertake a review of the qualifications of all staff of NHIF.

#### **5.4.3 Formation of a Tripartite Committee**

The provisions of the 1<sup>st</sup> Schedule (Transitional Provisions) to the Social Health Insurance Act, 2023 (SHI Act), provides that staff of the of the NHIF who may not competitively be recruited by SHA may elect to either;

- (i) retire from public service; or

- (ii) be redeployed within the public service.

In view of the foregoing provisions and arising from feedback received during stakeholders' engagement on the Employee Transition Plan, it emerged that best practice necessitates the formation of a Tripartite Committee to specifically handle residual staff redeployment and the exit package. The Tripartite Committee is usually constituted by the Chief of Staff and Head of Public Service (HOPS) and comprises of other relevant public agencies. Consequently, the TC advised the Chairperson, NHIF to engage with the Chief of Staff and Head of Public Service for purposes of the constitution of the Tripartite Committee to ensure seamless transition.

#### **5.4.4 Development and Approval of the SHA HR Instruments**

One of the responsibilities of the Transition Committee was to develop, in accordance with the transitional provisions of the Social Health Insurance Act, 2023, the guidelines and operational mechanisms during the transition period for audit, verification and transfer to the Social Health Authority of inter alia, Human Resources.

In this regard, the TC convened a workshop to develop the requisite Human Resource Instruments for the Social Health Authority (SHA). Participants of the workshop comprised a multi-agency team drawn from the Transition Committee, the SHA Board, Presidential Council of Economic Advisors and subject experts (resource persons) from the Public Service Commission, State Corporations Advisory Committee (SCAC), The State Department for Public Service, The Ministry of Health (MOH), and The State Department for Labour and Skills Development.

To develop the instruments, the multi-agency team reviewed a wide spectrum of reference materials (see *Appendix II*). The TC formally submitted the draft HR Instruments to the SHA Board which have since been reviewed and submitted to the MOH and the relevant agencies for approval. The following are the HR instruments that were developed (see *details in Annex VIII*). i.

Organizational Structure;

ii. Grading Structure;

iii. Staff Establishment;

iv. Human Resource Policies and Procedures Manual; and

v. Career Progression Guidelines.

#### 5.4.5 Development and Submission of a Detailed HR Transition Advisory to SHA and NHIF

To ensure seamless staff transition, the TC developed a detailed Human Resource Transition Advisory to SHA and NHIF Boards. The objective of the Advisory was to ensure a seamless employee transition from the National Health Insurance Fund (NHIF) to the Social Health Authority (SHA) while adhering strictly to the dictates of the law, specifically the transition provisions of the Social Health Insurance Act, 2023.

#### 5.4.6 Development of SHA Job Description Manual and Job Evaluation by the SRC

To advise on the salary structure payable to staff of any public service entity, the TC had observed that a job description manual was required to be developed and submitted to SRC.<sup>15</sup> SRC would thereafter develop the pre-requisite Job Evaluation. In view of the foregoing, the TC provided support in the development of the SHA Job Description Manual.

The TC benefitted from the expertise drawn from a number of entities identified in section 2.5.4 of this Report. The TC formally submitted the Job Description Manual to SHA for further review, validation and approval. The SHA Board will now submit the Manual alongside the approved HR Instruments to SRC for use in the Job Evaluation, Grading and Salary Advise.

### 5.5 Proposed Staff Establishment

The Transition Committee considered three possible scenarios regarding the staff establishment for SHA. The scenarios are highlighted in *Table 5.1* below:

**Table 5.1: Scenario of staff establishment**

No.	Scenario	Assumption	Proposed SE
1.	Scenario one (1)	The ICT system is deployed, capable and available at 100%	769
2.	Scenario two (2)	The ICT system is deployed and capable but some aspects/modules not available at 100% (need more time for piloting, testing & further development)	1002

<sup>15</sup> *Guidelines on conducting job evaluation for the 2021/22 – 2024/25 remuneration review cycle for the public sector.*

3.	Scenario three (3)	The ICT system is not deployed in time and would take 1685 indefinite time to deploy
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### 5.6 Suitability Assessment

Prior to the commencement of the staff recruitment, the SHA Board is required to undertake suitability assessment of all staff of the Fund using criteria determined by the Board and thereafter, give feedback to all staff. To this end, the TC brought to the attention of the SHA Board, the provision of sub-paragraph 6 (4) of the 1<sup>st</sup> Schedule to the Social Health Insurance Act, 2023 (the Act) which obligates the Authority to: (i) review the **qualifications of all the staff of the Fund** and (ii) in the appointment of its staff, **give priority to the staff of the Fund** who are found to be suitably qualified for the positions in the approved staff establishment.

In its advisory to the SHA Board, the TC requested that the following actions be undertaken:

- a) **THAT** the SHA Board **immediately** obtains and secures the relevant documentation and certification which contains the qualifications (academic, professional, experiential or other) of all staff of the Fund; and
- b) **THAT** upon approval of its staff establishment; the Authority to review the qualifications of the staff of the Fund for purposes of assessing their suitability to serve.

### 5.7 Staff Recruitment

To ensure timely recruitment of the Authority's staff the TC advised the SHA Board as follows:

- a. That upon the approval of its HR Instruments, the Authority should immediately commence competitive recruitment of its staff giving priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment;
- b. To review and approve a fast-tracked recruitment process considering the timelines provided under the transitional provisions in the SHI Act; and
- c. In this regard, the TC recommended that the Board may procure the services of a recruitment agency (if applicable from the public or private sector) to assist in the process.

### 5.8 Voluntary Retirement and Deployment of staff not absorbed by SHA

The TC observed that the staff of the Fund not appointed by the Authority may exercise the option to either retire from public service or be deployed within the public service. This means

that a number of staff could choose the option of retiring and will therefore, need to be paid an exit package. The advisory on Voluntary Separation Incentive (VSI) package for staff who will not be transitioned or redeployed is premised on two grounds namely:

- (i) The 2017 Voluntary Early Retirement (VER) and Voluntary Separation Incentive precedence set by NHIF;
- (ii) Provisions of the 2021-2023 Collective Bargaining Agreement (CBA); and (iii) Provision of Section 40 (1) (g) of the Employment Act, 2007.

The Transition Committee developed exit package scenarios based on the above guidelines and submitted them to the SHA Board to conclude the review of the various Voluntary Separation Incentive (VSI) scenarios submitted by the TC and approve one of the recommendations, amend or adopt a better option as deemed appropriate. With the resultant cost estimates established, the Board should initiate the inclusion of the VSI budget in the supplementary estimates for FY 2024/25 in line with procedure.

### **5.9 Pension and Other Staff Benefits**

The National Hospital Insurance Fund Staff Retirement Benefits was established on 1st January 2008 to provide retirement benefits to staff upon retirement and to also cater for the dependants of members of the Scheme who passed away. As part of its Terms of Reference, the Transition Committee has had extensive consultations with the Pension Trustees and referred to the guidance provided by the Retirement Benefits Authority (RBA) as well as the Trust deed and rules of the scheme.

#### **5.9.1 Registration & Administration of the Scheme**

The Scheme is registered with the Retirement Benefits Authority and the Kenya Revenue Authority. It is managed by an eight-member board of trustees that comprises individuals appointed by the Board of Management of the Fund and individuals elected by members.

#### **5.9.2 Service Providers**

A Board of Trustees is required to appoint service providers and advisors to the scheme to perform specific tasks on behalf of the board and provide advice to the board. This is in line with

the Good Governance Guidelines 2018 clause 36 (1). The following are the scheme service providers (Table 5.2):

**Table 5.2: Pension Scheme Service Providers**

<b>Service Provider</b>	<b>Role</b>	<b>Date of Appointment</b>
Zamara Actuaries Administrators and Consultants Limited	Administrator	1 <sup>st</sup> January 2022
Coop Trust Investment Services Limited	Investment Managers	1 <sup>st</sup> January 2022
African Alliance Asset Managers Limited		1 October 2022

### 5.9.3 Pension Scheme Design

The Scheme operates on a defined contribution basis whereby members contribute 7.5% of their basic pay and the Sponsor contributes 12.5% of basic pay. These contributions are invested and generate returns which are credited to members.

### 5.9.4 Membership Status

As at 31 March 2024 the Scheme's membership was **1,919** comprising **1,738** active members, **62** dormant members (members who have stopped contributing to the Scheme and are yet to advise their wishes regarding their benefits), **111** deferred members (members who have withdrawn from the employment of the Fund and have opted to retain a portion of or their full benefit in the retirement benefits scheme) and **8** pensioners (members who had retired when the Scheme operated as a defined benefit scheme and were transferred to the Scheme at conversion).

### 5.9.5. TC Recommendations

TC recommends that:

- i) The Social Health Authority takes over the Scheme as the new Sponsor and continues to manage the Scheme. This ensures that members who are absorbed by the Authority when it completes its staff recruitment exercise can continue to save up for retirement.
- ii) The Current sponsor, NHIF engages the Scheme's Board of Trustees and the current administrator to consider the options available in greater detail in order to take appropriate decisions on the scheme.

Detailed report on the Scheme, the Trust Deed & Rules and the letter from RBA on transition guidelines are attached herein in *Annex IX*.

## **5.10 Challenges**

### **5.10.1 Long lead times by Approving Authorities**

- a. Although the TC submitted the first draft of HR Instruments to the SHA Board in April 2024, the Instruments, the same were forwarded to SCAC and PSC on 5<sup>th</sup> July 2024.
- b. As of the time of compiling this report, the HR Instruments were yet to be approved by the relevant government Agencies. This will have a bearing on staff recruitment ahead of the transitional timelines of one year from the effective date of the Implementation of the SHI Act.

### **5.10.2 Litigation**

The TC was enjoined in the following lawsuits which consumed substantial amount time of its calendar:

- c. Nairobi ELRC petition No. E076 of 2024
- d. Nairobi ELRC Cause E1030 of 2023

### **5.10.3 Likely Budget Constraints (*for staff exit packages*)**

The advisory on Voluntary Separation Incentive (VSI) package for staff who will not be transitioned or redeployed is premised on three alternatives namely; the 2017 Voluntary Early Retirement (VER) and Voluntary Separation Incentive precedence set by NHIF, provisions of the 2021-2023 Collective Bargaining Agreement (CBA), and provision of Section 40 (1) (g) of the Employment Act, 2007 on redundancy. However, the cost of the exit package is not included in the Authority's printed estimates for FY 2024/25, which could potentially impact smooth staff transition.

### 5.11 Recommendations

- i. The SHA Board should expedite the recruitment of staff of the Authority in line with approved establishment by undertaking the following:
  - a. The SHA Board should follow up with the Public Service Commission and SCAC to fast-track the approval of the HR Instruments.
  - b. Meanwhile, the SHA Board should prioritize the review and approval of the Job Description Manual for onwards submission to SRC for job evaluation, grading and salary structure.
  - c. The Authority should immediately thereafter, commence competitive recruitment of its staff, giving priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment by November 2024.
- ii. In the event that the Authority does not conclude the recruitment process by the Transition period provided for in the Act, the Board should seek legal advice from the office of the Attorney General on how the staff of the Fund will be treated pending the conclusion of the recruitment process.
- iii. The SHA Board should continue providing all the necessary support to the defence council with regard to the pending court cases to ensure a seamless transition.
- iv. The SHA Board should embark on the development of the Authority's strategic plan and once approved, align the staff establishment accordingly.
- v. The SHA Board should include the exit package in the supplementary budget for FY 2024/25.

## **CHAPTER SIX: COMMUNICATION, OUTREACH AND TRAINING**

### **6.1 Overview**

This chapter is on communication, outreach and training to facilitate a smooth transition.

### **6.2 Objectives**

The TC communication objectives were to (1) develop, in accordance with the transitional provisions of the Social Health Insurance Act, 2023, the guidelines and operational mechanisms for communication during the transition period, (2) to create a roadmap to guide communication during this time, (3) and identify, train, and work jointly with key stakeholders and communication experts in developing (1) and (2).

### **6.3 Scope and Guidance on Internal/External**

#### **6.3.1 Ministry of Health and Other Government Agencies**

To provide comprehensive guidance on communication activities with the Ministry of Health (MoH) and other government departments, ensuring alignment with the operations of the SHA. This includes strategies to maintain effective and consistent communication, facilitating smooth cooperation and coordination.

#### **6.3.2 Healthcare Providers**

To develop detailed information for healthcare providers regarding anticipated changes with the full rollout of the SHA. This includes new protocols, tariffs, quality assurance measures, reimbursement processes, documentation requirements, and modifications in service delivery. These updates aim to prepare providers for the transition and ensure they are well-equipped to adapt to the new system.

#### **6.3.3 Beneficiaries**

To issue guidelines emphasizing the importance of continuous communication with NHIF members and other potential beneficiaries during the transition. This includes information on benefits, registration processes, premiums, and other relevant aspects to keep beneficiaries informed and engaged.

#### **6.3.4 County Health Department Staff and other Health Sector Stakeholders**

Collaborate with other stakeholders to create materials designed for sensitization and training of all the health sector stakeholders, including Community Health Promoters.

These training resources will be used to cascade training to various levels of county health department staff and other health sector stakeholders effectively disseminating accurate information to community members during the transition.

### **6.3.5 Communication with NHIF staff**

Provide guidance to NHIF management to regularly communicate with staff, at least once a month. Specifically, prepare staff regarding human resource options available as per SHI Act 2023, updates on anticipated timelines, how the new organization, SHA, is envisioned to work, the new ICT system including operational procedures, and customer service protocols. Communication with staff will be through internal memos, meetings, and newsletters.

### **6.3.6 Public Communication Campaign**

Prepare information materials and comprehensive frequently asked questions that provide accurate knowledge for the public. These materials will be used across various media channels (TV, radio, social media, print). The highlights should include planned benefits and instructions on how to register/navigate into the new ICT system.

### **6.3.7 Community Outreach**

Prepare communication materials and sensitization tools for use in reaching communities directly particularly through Community Health Promoters (CHPs) and National Government Administration Officers (NGAO). These tools will engage beneficiaries directly and address their concerns promptly.

### **6.3.8 Technical Communication**

Provide clear guidelines, training, and support for healthcare providers and beneficiaries on using new digital platforms and tools.

## **6.4 Outreach Approach**

The methodologies below include both the approaches we adopted to define the extent to which the committee's guidelines would be informed and in addition recommend methodologies to ensure a smooth transition, as we had not completed the transition by the time our term ended.

#### **6.4.1 Stakeholder Engagement**

We utilized a participatory approach, involving key communication stakeholders in the decision-making process and seeking their input and feedback. This involved conducting one workshop and several in-person and virtual meetings.

#### **6.4.2 Communication Planning**

We collaborated with multiple stakeholders to develop a comprehensive communication plan that outlines the objectives, target audience, key messages, communication channels, and timeline for the transition period. The plan is aligned with the overall goals and objectives of the Social Health Authority (SHA).

#### **6.4.3 Audience Segmentation**

Our guidance is based on previous health communication experiences in Kenya and the characterization of potential beneficiaries (target audience). As health insurance involves pooling risks and finances, populations across all demographics will be included. The key strategy is to effectively reach all populations by prioritizing healthcare workers across public, private, and NHIF sectors; Community Health Promoters as community mobilizers; and national and local leaders as messengers of accurate information. Other strategies such as print, electronic, and social media will complement those disseminated through healthcare workers and leaders. Current NHIF beneficiaries are considered a captive audience who need regular information during the different stages of the transition including timelines, planned benefits, and financial implications.

#### **6.4.3 Engaging Communication Experts for Clear and Consistent Messaging**

We collaborated with communication experts to develop clear and concise messages that convey the reasons for transitioning, benefits, and impact of SHA in alignment with health sector reform and Universal Health Coverage (UHC) objectives. These experts ensured consistency in messaging across all communication channels to avoid confusion or misinformation.

#### **6.4.4 Multi-channel Approach**

To effectively reach all populations, we advocate for a mix of communication channels such as traditional media (press releases, newspapers), posters, digital platforms (websites, social

media), Short Mail Service (SMS), public barazas, political events, or forums to effectively reach different stakeholder groups.

#### **6.4.5 Training and Capacity Building**

We emphasize training and sensitization for individuals involved in communicating the transition of NHIF to SHA to ensure they have a thorough understanding of the new system and its benefits. In-person sessions are recommended for national, local, and opinion leaders due to the complexity of these populations. Webinars will be used as the main training method for health sector staff supplemented with web-based or WhatsApp supported videos to demonstrate technical tasks. The objective is to equip them with effective communication skills to address questions or concerns from stakeholders.

#### **6.4.6 Monitoring and Evaluation**

We advocate for the following monitoring and evaluation methods to be used throughout the transition period. Key indicators include the number of people registered and those who have paid their premiums. Other indicators will encompass the number of trainings conducted, sensitization efforts, monitoring of feedback from all media platforms, and timely responses. The objective of monitoring and evaluation is to assess comprehension levels and make necessary adjustments to improve communication strategies.

#### **6.4.7 Ethical Considerations**

Health is a sensitive matter that requires trust. All communication should be carried out transparently and accurately while respecting privacy laws and regulations related to personal health data.

### **6.5 Communication Product Overview**

In total, nine guidance were developed (see Annex 10). Except for TC members talking points when visiting NHIF field offices, all this guidance was communicated to the SHA board by email. The TC Internal Communication Matrix provided guidance to the Cabinet Secretary for Health, the SHA board, and its own role during the initial stages of SHA rollout planning. Its purpose was to prepare NHIF staff, healthcare providers, employers, and NHIF members in advance, as well as to regularly inform the public.

This document outlines the roadmap for achieving 85% registration. It includes goals and objectives, key messages, external and internal communication strategies, as well as steps leading up to the launch of SHA. The purpose is to assist SHA in developing a comprehensive communication plan for the transition from NHIF.

A sample “mass SMS message” was created in English and Kiswahili to be sent to all NHIF members. These short communications should be sent at the beginning of each milestone throughout the transition period.

This annex provides a list of 57 frequently asked questions (FAQs) and answers organized into 10 broad categories. It is intended for a wide audience and can also be used alongside training materials.

The Transition Committee (TC) members prepared talking points during their visits to NHIF offices to help ease anxiety among the staff. Supporting the staff during the transition was a key priority for the TC members.

In response to a request from the Cabinet Secretary for Health, the Transition Committee organized a stakeholder forum and assigned activities related to coordinating messaging strategies among stakeholders.

To provide a detailed understanding of SHA benefits, the TC collaborated with stakeholders to develop comprehensive descriptions of how these new benefits would be implemented. The target audience are SHA beneficiaries.

To clarify messaging for current NHIF beneficiaries, the TC worked with stakeholders to create a detailed comparison between NHIF benefits and upgraded SHA benefits.

This specific annex was developed for members of parliament to ensure they have a clear understanding of the benefits, address potential criticisms in advance, and provide cost estimates based on current design.

Impact and Effectiveness:

## Report of the Transition Committee to the Social Health Authority

**Internal Communication Matrix:** Effectiveness is measured using the timelines and feedback mechanisms contained in the document. Impact is measured by the knowledge among stakeholders.

**Roadmap for achieving 85% registration:** Using the timelines and deliverables in the internal communication tab and next steps SHA tab, Kenyans will be well-informed with registration uptake of over 85% within the first three months.

**Sample Mass SMS Message:** The guidance is to update NHIF members, a captive audience, in each phase of the transition. The SHA board will develop a tool to measure the impact and effectiveness of the SMS messaging.

**Frequently Asked Questions:** The objective of the categorized FAQs and answers is to provide quick answers to different stakeholders without necessarily reading through all the questions. The SHA board will develop a tool or tools depending on the media(s) selected to measure the messaging impact and effectiveness.

**Talking points during visits to NHIF branches:** The purpose of these talking points was to be used during TC visits to NHIF offices in order to alleviate staff anxiety and foster good faith and cooperation. The TC committee worked collaboratively with the staff, resulting in improved confidence.

**Stakeholder messaging strategies, Benefits communication approach and a comparison between NHIF and SHA benefits:** These are all informational materials targeted at NHIF beneficiaries, healthcare providers, and the public. The SHA board will develop a tool to collectively measure the messaging impact and effectiveness.

**Parliamentary Leadership Communications Package:** This guideline provides parliamentarians with an accurate understanding of SHA operations. Effectiveness will be measured by the frequency with which parliamentarians encourage constituents to register within the first three months. Impact will be measured by the number of constituents who actually register during this period.

### **6.6 Lessons Learned**

The transition committee overarching task was to ensure the smooth transition of NHIF to SHA. This objective was not met primarily because the ICT system was incomplete by the end of its

six-month term. The decision on the change of ICT system had been made before the TC was formed because the option of continuing to use the NHIF system would not meet SHA's mandate. Furthermore, there were several preparatory and policy work to be done following the passage of the four UHC laws, albeit several litigations attempts. The key take aways are as follows:

Since the enactment of the four UHC laws, there has been a need to develop a plan for effectively communicating their implications in a sustained manner. This would have facilitated public buy-in and ensured continued support throughout the transition period. However, our experience revealed significant public resistance towards accepting the health reforms due to poor understanding of their implications. This resentment gradually intensified over time, especially as the country underwent political perception changes, while legal challenges further complicated the situation. The lack of understanding of these laws was a serious problem, as even within the Ministry of Health and NHIF staff, only those involved in crafting policies for the health reform agenda truly comprehended their implications.

As the transition committee commenced its work, communication was not immediately prioritized, although its necessity gradually became increasingly apparent. This was further compounded by the incomplete operational mechanisms that were essential for SHA to function as intended, and therefore challenging to package appropriate communication messages. While part of the TC's mandate was to address these operational mechanisms, it required collaborative efforts with other teams. Following the establishment of these operational mechanisms, effective communication to all stakeholders would be crucial. In hindsight, it would have been necessary to provide guidance to the NHIF and SHA boards, as well as the Ministry of Health leadership, in developing a joint communication plan at the earliest opportunity. This communication plan could then be adjusted as operational mechanisms were finalized and put into place. However, it is important to acknowledge that the SHA Chair and the Cabinet Secretary for Health made numerous efforts to communicate with the public throughout the transition period.

The TC aimed to provide guidance based on SHA's strategic plan. However, it was unclear whether SHA had a draft strategic plan despite the TC's request. Having at least a draft strategic plan would have been beneficial in providing clearer communication guidance and establishing effective operational mechanisms.

The TC commends the SHA board for allocating resources for communication purposes. Unfortunately, these resources remained unused as the financial year elapsed. It is understandable that SHA may have been waiting for the completion of critical operational mechanisms before preparing its communication packages. However, as previously mentioned, there was a lack of basic knowledge regarding the UHC laws among all stakeholders. As part of the preparation process, targeted communication efforts aimed at the health sector and subsequently the public would have greatly improved understanding of the UHC laws.

Ownership of the communication portfolio within SHA posed a challenge. While there were individuals from various backgrounds who contributed to this effort, there was no lead entity that had a comprehensive understanding of the progress made in different operational mechanisms and had the authority to make decisive decisions. This can be attributed to SHA not having recruited communication staff. Although NHIF staff were supportive and engaged, there was palpable apprehension and uncertainty among them. As a result, the Cabinet Secretary for Health requested the TC's assistance in coordinating the communication function towards the end of the TC's term. While this might have alleviated the situation to some degree, it proved inadequate.

### **6.7 Recommendations**

We make the following recommendations to ensure communication is effective based on the accomplishments of the TC (communication products), continuity of communication activities, and lessons learnt.

1. **Prioritizing communication:** The implementation of health reforms in Kenya is facing a double whammy situation. On one hand, as mentioned in the introduction, it is a complex process that could be poorly understood if not systematically communicated. On the other hand, opposition politics, utilizing public fora platforms and Kenya's legal system, continue to intensify with the objective of hindering government progress. This has resulted in skepticism and a loss of public trust. Therefore, for the health reform agenda to succeed, communication needs to be prioritized and adequately resourced.
2. **Forming a communication core team:** Having ownership of the communication portfolio, complete with a spokesperson, is critical. The team would consist of a communication expert

and experts with deep knowledge of SHA's operational areas. Using the above-mentioned communication products, this team would engage other stakeholders in the implementation. Although the CS Health, senior leadership for the Ministry of Health, and other government officials will be briefed continuously by this team, we opine that the chairperson of SHA should be the official spokesperson. This move will enable the core team to have a decisive, hands-on leader, and because this person is not a politician, it will deflate politically intense attempts to derail the reform agenda. Providing leadership in communication would be the core team's primary role. Other roles would include preparing technical considerations for the board in hiring SHA's communication staff, as well as handholding and mentoring the newly recruited SHA staff for three months when it is expected that they will be able to fully take charge of communication operations.

3. Hiring SHA communication staff: We recommend that all SHA communication staff should be high on the list in the order of recruitment, starting immediately as the process begins. As such, SHA communication staff will not only engage with expediting the full implementation of communication but will also be the face of SHA. Recruiting the right staff with the right commitment, aptitude, and broad technical knowledge will be key. As recommended above, the communication core team should support the SHA board in providing technical guidance.
4. Re-engaging the public for a clearer understanding of UHC: Public knowledge of UHC is low. Although the UHC concept encompasses coverage of all essential medical services, quality improvement, and the removal of financial hardships in accessing healthcare, the public has not fully grasped how these reforms provide entitlements to a wide range of essential medical services, how quality issues are being addressed to create a more competent system, and how financial hardships that have affected a least one million Kenyans each year are being tackled. The public is unable to make real-life connections between their own lives and how these reforms can alleviate their situations. Therefore, re-messaging the UHC concept will be crucial.
5. Priority communication strategies: The health sector has traditionally engaged with the public through health program campaigns, whether it be on vaccination, raising awareness about disease transmission, or improving treatment targets. In all these campaigns, the public has responded well and understood them to be well-intentioned. It is important for SHA to continue using these traditional strategies as the primary messaging methods and then

complement these efforts with newer platforms such as social media, mass SMS, mass media, etc.

6. Training and sensitization: The level of information on UHC laws and the anticipated operations and systems under SHA is currently quite low, even among key health sector stakeholders. Considering that healthcare workers and community health promoters will be critical messengers in reaching out to the public, it is important to provide them with training. Furthermore, national, local, and opinion leaders should also be sensitized on UHC laws and the operations/systems of SHA.
7. Independent resourcing of communication: During our term, we learned that if Safaricom is contracted under the digital platform, they may also have a role in communication. We believe that any such role should be authorized by the core team and Safaricom concentrates on its areas of strength. However, SHA should have independent resources to execute the primary communication approaches.

## **CHAPTER SEVEN: CHALLENGES, RECOMMENDATIONS AND WAY FORWARD**

### **7.1 Overview**

This chapter presents challenges the transition faced, how they were navigated and recommendations for the ongoing and future transition processes. These are grouped into three key areas namely: legal and policy, operational and general challenges. The chapter also captured pending tasks and way forward for the seamless transition process.

### **7.2 Legal and Policy**

Transition from NHIF to SHA is premised on the Social Health Insurance Act, 2023 and specifically the 1<sup>st</sup> Schedule on transitional provisions. However, as the TC commenced the process of transition, it also had to rely on other pieces of legislation including the constitution and as a result a number of challenges arose as follows:

#### **7.2.1 Unconventional and Unclear Definition of Winding Up**

The conventional winding up ordinarily requires the winding up entity to realize its assets, settle its obligations and hand over the residual to the successor entity. However, under the SHI Act, on the appointed day, in our case the November 22, 2023 (as gazetted by the CS), the NHIF Act and the Fund were effectively repealed, and all assets, liabilities and obligations transferred to the Social Health Authority. We were therefore confronted with an already wound-up entity, technically with no budget, assets, liabilities nor obligations except winding up. The advisory from the AG also noted that there was no clear definition of winding up.

#### **Solution:**

We adopted a hybrid winding up process where SHA (the successor entity) would realize its assets and liabilities with the support of NHIF (was now to act as a trustee of SHA), to enable realization of the winding up process.

#### **Recommendation:**

***To arrest this scenario in future, the conventional winding up definition known in law should be adopted such that winding up entity meets its obligations and the successor entity receives the residual and therefore commences its operations afresh devoid of liabilities and obligations of the previous entity.***

### **7.2.2 Coexistence of two Boards**

The co-existence of two Boards served by one Chief Executive Officer reporting to both created a unique and unwieldy situation. Even with the Attorney General's opinion, which was sought, the situation remained discordant. Indeed, it was the desire of the NHIF Board to exit from the scene to allow SHA to take over.

#### **Solution:**

Both boards were requested to coexist and the NHIF Board undertaking winding up activities and SHA Board undertaking policy and operational activities of NHIF until it commenced off its own officially.

#### **Recommendation:**

***Future transitions should be designed to allow and winding up entity to be managed either by the exiting Board, or a Transition Committee before the new Board is set up. This will enhance accountability on the exiting entity.***

### **7.2.3 Transition of Budgets**

Funds to public entities are often appropriated by Parliament for a given financial year. In our case, on the appointed day, the SHA automatically inherited the NHIF Budget and to some extent, this crippled any operations of the NHIF Board including winding up. The NHIF Board had to rely on the SHA Board. Further, we note that the successor entity may have completely new priorities or needs which may not be adequately be supported by the old budgets. In this regard, the SHA Board was unable to utilize some of the assigned budget owing to delays in the approval processes.

#### **Solution:**

SHA Board were to utilize the NHIF Budget subject to the approval of the Cabinet Secretary and the National Treasury.

#### **Recommendation:**

Future winding up should be mirrored on the financial year such that the successor entity commences with its own budget.

#### **7.2.4 Status of Staff**

Whereas all assets and liabilities were effectively transferred to the SHA on the appointed day. The same did not automatically happen for the staff although they were to continue offering services while at the same time receiving their remuneration and other benefits. The SHI Act envisages a competitive recruitment of the SHA staff while giving priority to the staff of the Fund. This effectively meant the employees were to be on stand-by for a period of one year or within the transition period. The SHI Act is also silent as to what happens should the transition period extend outside the one-year period. This often led to anxiety, low morale and efforts to address these through constant communication and psychosocial support may not have fully allayed the fears until they would fully know their status. There were also a number of court petitions by staff of the Fund.

#### **Solution:**

In the TC Guidelines for Reference During the Transition Period the TC recommended that Staff of the Fund are to support NHIF in winding up and SHA Board in operations until the transition period ends and staff fully transitioned in accordance with the SHI Act.

#### **Recommendation:**

***Future transition may be in future be designed with the human capital issues being addressed first.***

#### **7.2.5 Short Timelines for the Transition Committee**

The SHI Act envisages that the winding up period would be for a period of one year after the appointed day which was the 22<sup>nd</sup> of November 2023. However, the Transition Committee was appointed on the 26<sup>th</sup> of January 2024 to transition from NHIF to SHA for a period of 6 months. Owing to the complexity and multiplicity of the transition process, by the end of the tenure of the TC, full transition had not occurred and there was still pending transition work and highlighted in the previous chapter.

#### **Solution:**

The TC worked even after the working hours and weekends to enable it to complete its identified tasks. Those that remain unaccomplished, the TC has packaged them to inform the SHA Board and the Ministry of Health. The TC members would also be available for consultation whenever need arises.

**Recommendation:**

A one-year transition period may have been issued to the TC to fully account for transition activities and ensure seamless transition.

**7.2.6 Court Petitions**

There were a number of petitions as detailed in chapter three which while well intentioned, they occasioned delays in the transition process. In particular the decision of the High Court (E473 of 2024) declaring three UHC Acts as unconstitutional, null and void could be a serious setback if not appealed successfully. We have noted that this may have apparently occasioned apathy in the registration exercise which commenced in July 1<sup>st</sup> 2024.

**Solutions:**

1. Grant of 45 days stay of execution was a positive gesture by the Courts signaling the significance of the reforms;
2. Issuance of Parliament with 120 days to address the anomaly of public participation was equally a progressive window which if adhered to would allow the full roll out of the reform agenda; and
3. The parties have the option of appeal.

**Recommendations:**

*The Court in this decision has set out guidelines on what ought to be done while conducting public participation. Such is observed in developing future statutes. The bar set by the court for public sensitization and participation did not however define the threshold and may be difficult and very expensive to achieve in future registration. Appeal for the same will provided more clarity.*

**7.3 Operational**

During the term of the TC, the following institutional and administrative issues were encountered.

**7.3.1 A Board without own Staff**

While the SHA Board was in place as at January/February 2024, it did not have own staff to carry out its own activities. This meant that it had to rely on staff from NHIF and the Ministry of Health to conduct its operational work (this followed the TC guidelines for reference during the

transition period). Whereas this arrangement worked, it may have had the effect of delaying the optimal functionality of the SHA Board, at-least during that period.

**Solution:**

As already pointed out, the SHA Board were to rely on both MoH and NHIF Staff.

**Recommendation:**

***Future transition should be clear on the staff matrix so that a new entity is effective.***

**7.3.2 Inadequate Internal Transition Policy**

As transition commenced, it still remained unclear on whether the SHA Board would utilize the NHIF policies to execute its operations such as procurement, ICT system maintenance or were it to develop and approve its own. This was compounded by the apprehension that there was ongoing audit processes which may have occasioned a bearing on these policies and processes and including their executors.

**Solution:**

SHA Board were to rely on existing NHIF policies unless they were inconsistent with the SHI Act or other law of Kenya.

**Recommendation:**

***That future transitions would facilitate the interrogation of internal processes and mechanisms before commencement of operations of the new entity.***

**7.3.3 ICT System Readiness**

The SHI Act envisages that the services of the SHA shall be largely technology based. Hence its roll out was to some extent delayed on system readiness including its design, pilot and full deployment.

**Solution:**

Deployment and use of ready modules and a phased-out approach to the services and contributions were preferred.

**Recommendation:**

***Future transition ought to be preceded by adequate preparation, procurement and design of relevant systems and processes.***

#### **7.4 General**

The following general challenges were encountered.

##### **7.4.1 Delays**

The TC faced delays both in release of its allocated funds. Whereas the TC had the winding up roadmap ready by mid of February 2024, it was not until April/May 2024 that its field activities started on account of these delays.

##### **Solution:**

The TC engaged and received support from development partners who were willing to support some of the administrative and operational issues of the TC.

##### **Recommendation:**

Future transition organs should have a dedicated and available budget for commencement of their tasks upon appointment and inauguration.

##### **7.4.2 Inadequate Technical Support**

The TC was comprised of technical experts in various fields. Its ToRs required it to co-opt experts in its operations. Whereas the requests were made and granted, the technical experts were also employees of other entities who needed to balance between transition work and their employers' tasks. IN some areas, there was delays in the release of the technical expertise. Consequently, the intermittent support may have occasioned delays in the execution of the winding up roadmap.

##### **7.4.3 Mixed Messaging**

As already highlighted in Chapter Six, communication was never given a priority. Consequently, there was disinformation within the public. On another SHIF was seen as another "cash cow" and the well-intended reform was not well packaged for public by-in.

##### **Solution:**

The TC intervened by developing a number of communication products which were equally never released on time.

##### **Recommendations:**

The TC adopts the recommendations in chapter six of this report which include public sensitization and training.

## **7.5 Conclusion and way Forward**

### **7.5.1 Synopsis**

Reforms, understood as a series of initiatives intended to address a social problem and bring about a desired change, have defined the social, economic and political journey that Kenya has travelled since independence in 1963. Healthcare reforms during the last 60 years (1963-2023) focused on building adequate healthcare infrastructure and capacity, improving equitable and affordable access, sustainable financing, and a cost-efficient and effective delivery of high-quality healthcare. These reforms have led to incremental improvement in the health sector in general and healthcare outcomes in particular. However, formidable challenges remain.

Ongoing reform initiatives, represented by the enactment of the Social Health Insurance Act (SHIA) 2023; the Primary Health Care Act, 2023; the Digital Health Act, 2023, and the Facilities Improvement Financing Act, 2023, aim to not only close the quality, financing and cost-efficiency gaps, but to universalize and socialize health coverage in Kenya.

In guiding the change from the National Health Insurance Fund (NHIF) to Social Health Authority (SHA), the Transition Committee was keenly aware of the context within which healthcare reforms are being undertaken in the country; a new government attempting transformational reforms at a time of difficult economic adjustment globally and domestically – specifically, fiscal austerity. The goal of the TC was to ensure a seamless transition, nonetheless.

### **7.5.2 Milestones and Successes**

Amid the attendant challenges, the TC realized a number of milestones among them: the set-up of an institutional framework for coordinated transition, maintenance of IT systems, development of HR instruments, verification of assets, listing of liabilities and overall continued delivery of healthcare services under the NHIF. Other successes and milestones are listed under the previous chapters.

### **7.5.3 Pending Tasks**

In each of the preceding chapters 3, 4, 5 and 6, we have captured the pending tasks which the NHIF, SHA and the Ministry of Health alongside other stakeholders could conclude for purposes

of a smooth transition. Here below we have opted to reproduce the list of pending tasks for emphasis.

**a. Legal, Administrative and Institutional Tasks**

1. Review and validation of the benefit package;
2. Finalization of the empanelment and contracting process for the healthcare providers/facilities;
3. Design and development of the strategic plan for the SHA;
4. Design and development of key operational policies to support the SHA Board as detailed in our report annex MM;
5. Comprehensive rebranding of the SHA;
6. Continued appraisal and audit of entire records and information before handover to the SHA, this was being done by the Archives and Documentation team;
7. Development, design and roll out of all the required modules of the ICT system;
8. Sensitization and registration of beneficiaries to the SHA;
9. Resolution of the SHA Board on the number of branches needed for their work;
10. Proper verification and transfer of records and information.

**b. Human Resources Transition**

10. Follow up with the approval of the human resources instruments; 11. Recruitment, redeployment and benefit package to exiting staff;

**c. Assets and Liabilities**

12. Audit of the assets and liabilities where applicable;
13. Verification and reconciliation of liabilities;
14. Settlement of claims upon verification and reconciliation;
15. Transfer and handover plan;
1. Legal transfer of assets to SHA.

**APPENDIXES**

**Appendix I: Appointment of the Transition Committee vide Gazette Notice 603 of 2024**

GAZETTE NOTICE NO. 603

**TRANSITION COMMITTEE ON THE SOCIAL HEALTH AUTHORITY**

IT IS notified for the general information of the public that, the Cabinet Secretary for Health has appointed a Transition Committee on the Social Health Authority to ensure seamless transition from the National Health Insurance Fund to the Social Health Authority. The Transition Committee shall comprise of the following members:

*Kap-Kirwok R. Jason - Chairperson*

*Members*

Daniel Mwai (Dr.),  
 Kapruto Chermusoi Chesang (Dr.),  
 Jacinta N. Wasike (Dr.),  
 Gladys Wambui Mburu,  
 Stephen Kaboro Mbugua,  
 Elizabeth N. Wangsa (Dr.),  
 Christopher Leparau Tialal,  
 Jacob Otachi Orina (Dr.),  
 Stanley Bu (Dr.).

1. The Terms of Reference of the Working Committee are to:

- (a) Develop a legal and institutional framework for the co-ordinated transition to the Social Health Authority while ensuring continued service delivery.
- (b) Develop, in accordance with the transitional provisions of the Social Health Insurance Act, 2023, the guidelines and operational mechanisms during the transition period for audit, verification and transfer to the Social Health Authority of:
  - (i) Assets and Liabilities
  - (ii) Human Resources
  - (iii) Pensions and other staff benefit of employees of the National Health Insurance Fund; and
  - (iv) Any other connected matters
- (c) Develop a clear roadmap for winding up of the National Health Insurance Fund to the Social Health Authority.
- (d) Develop a roadmap for winding up of the National Health Insurance Fund, and
- (e) Consider, perform, or advise on any other matter or subject ancillary to the above

2. In the discharge of its functions, the Transition Committee shall have power to—

- (a) Regulate its own procedure.
- (b) Hold meetings or consultations as it shall deem necessary in such places and at such times as the Committee shall consider necessary for the proper discharge of its mandate.
- (c) Review official reports, policy, legislation or any other document related to the Committee mandate.
- (d) Co-opt experts, in particular areas of need as may be necessary for the execution of its mandate
- (e) Create sub-committees for the efficient and expedited discharge of its mandate.
- (f) Perform any other function or tasks as the Committee may find necessary in order to fully discharge its mandate

3. The Committee shall have a matrix reporting relationship with the Cabinet Secretary for Health, the Chairperson of the Social Health Authority Board and the Chairperson of the National health Insurance Fund Board.

4. The terms of the Committee shall be for a period of six (6) months with effect from the date hereof, or for such a period as may be specified by notice in the Kenya Gazette.

5. The Secretariat shall be domiciled at the Social Health Authority offices and shall be responsible for:

- (a) Providing appropriate background briefing to the Transition Committee;
- (b) Policy interpretation, developing and implementing the programmes and activities of the Transition Committee;
- (c) Preparing the reports of the Transition Committee and disseminating any information deemed relevant, and.
- (d) Undertaking in liaison with other relevant Government departments and any other institution or stakeholders to gather relevant information necessary for informing the Transition Committee.

Dated the 25th January, 2024

SUSAN WAFULA NAKHUMICHA,  
*Cabinet Secretary for Health.*

## **Appendix II: List of References**

### **List of Statutes**

- The Access to Information Act, Cap. 7M.
- The Anti-Corruption and Economic Crimes Act, Cap. 65.
- The Constitution of Kenya, 2010.
- The Commission on Administrative Justice Act, 2011.
- The County Governments Act, 2012.
- The Digital Health Act, 2023.
- The Employment Act, 2007.
- The Ethics and Anti-Corruption Commission Act, 2011.
- The Fair Administrative Action Act, 2015.
- The Facility Improvement Financing Act, 2023.
- The Health Act, Cap. 241.
- The Labour Relations Act, Cap. 233.
- The Law Reform Act, Cap. 26.
- The Leadership and Integrity Act, 2012.
- The National Health Insurance Fund Act, Cap. 255.
- The Primary Health Care Act, 2023
- The Proceeds of Crime and Anti-Money Laundering Act, 2009.
- The Public Officer Ethics Act, Cap. 183.
- The Public Service Commission Act, Cap. 185.
- The Social Health Insurance Act, 2023.
- The State Corporations Act, Cap. 446.

### **Policies and Guidelines (i) Public Service Commission**

- Guidelines on Secondment in the Public Service October 2016
- Guidelines on Establishment and Abolition of Offices in the Public Service, May 2015
- Guidelines on Design of Organization Structures in the Public Service, May 2015 Human
- Resource Development Policy for the Public Service June 2015

### **(ii) NHIF Policies**

- I. Customer Experience Policy

2. Enhanced Schemes Policy
3. Informal Sector Policy
4. NHIF Service Points Policy
5. Sponsored Programs Policy
6. Voluntary Contributors Policy
7. Stakeholders Engagement Policy
8. Benefits Design and Administration Policy
9. Case Management Policy
10. Claims Management Policy
11. E-Health Policy
12. Work Injury and Life Insurance Policy
13. HCP Contract Management Policy
14. HCP Empanelment and Quality Management Policy
15. Communications Policy
16. Corporate Social Responsibility (CSR) Policy
17. Crisis Management Policy
18. Administration Policy and Property Management Policy
19. Energy Policy
20. NHIF Security, Fire & Safety Policy
21. Records Management Policy
22. Compensation & Benefits Policy
23. Disability Mainstreaming Policy
24. Employee Wellness Policy
25. Human Resource Management Policy
  - ii. Recruitment and Selection Policy
  - iii. Graduate Trainee Policy
  - iv. Performance Management Policy
  - v. Rewards and Sanction Policy

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- vi. Training Policy
- vii. Succession Management Policy
- viii. Mentorship and Coaching Policy
- ix. Industrial Attachment Policy

- 26. Mental Health Policy
- 27. Staff Post-Retirement Medical Scheme Policy
- 28. Anti-Corruption Policy
- 29. Conflict of Interest Policy
- 30. Contract Management Policy
- 31. Gifts and Entertainment Policy
- 32. Intellectual Property Rights Policy
- 33. Legal Audit Policy
- 34. Legal Services Policy
- 35. Whistle Blowing Policy
- 36. Financial Management Policy
- 37. Investment Policy
- 38. ICT Policy
- 39. ICT Security Policy
- 40. Audit policy
- 41. Data Governance & Protection Policy
- 42. Enterprise Risk Management Policy
- 43. Knowledge Management Policy
- 44. Project Development & Management and Monitoring & Evaluation Policy
- 45. NHIF Business Continuity Policy
- 46. Research & Innovation Policy
- 47. Supply Chain and Asset Disposal Policy

**List of Cases**

**(i) Kenyan Cases**

*Attorney General v Kituo Cha Sheria & 7 Others* [2017] eKLR.

*Joseph Enoch Aura v Cabinet Secretary for Health & 11 Others* [2024] eKLR, (Petition No. E 473 of 2023).

*Republic vs. Public Procurement Administrative Review Board & 2 Others Ex Parte Coast Water Services Board & Another* [2016] eKLR.

*Trusted Society of Human Rights Alliance & 13 Others v Judicial Service Commission* [2016] eKLR.

**(ii) South African Cases**

*President of the Republic of South Africa and Others v M & G Media Ltd* [2011] ZACC 32.

**Reports**

EACC 'Report into the Examination of Systems, Policies, Procedures and Practices of Work at the National Health Insurance Fund' (Ethics and Anti-Corruption Commission 2015).

NHIF, 'Annual Report 2021 2022' (National Health Insurance Fund 2022).

GoK, 'Report of the Auditor-General on National Hospital Insurance Fund for the Year Ended 30 June, 2020' (Auditor General 2020).

GoK, 'Special Audit Report of the Auditor General on NHIF (Payment Platform, Linda Mama Programme and Tender for Civil Servants, Police Officers and Prison Wardens) Ministry of Health (Office of the Auditor General 2021).

GoK, 'Performance Audit on the Implementation of Linda Mama Programme by the National Health Insurance Fund' (Office of the Auditor General 2022).

GoK, 'Performance Audit on the Provision of Maternal and Neo-Natal Healthcare' (Office of the Auditor General 2023).

GoK, 'Report of the Taskforce on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya' (NACTF 2015).

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GoK, 'Status of Compliance with the Values and Principles in Articles 10 and 232 of the Constitution for the Year 2018/2019' (Public Service Commission 2022).

GoK, 'Simplified Summary of the Auditor General's Report on the National Government, 2021/2022' (Auditor General, 2022).

World Bank, 'World Development Report: Governance and the Law' (Oxford University Press 2017b)

### Appendix III: List of Stakeholders

S/No	Stakeholder	Role
1.	The Social Health Authority (SHA) Board	<ul style="list-style-type: none"> <li>□ Acting on resolutions of the TC;</li> <li>□ Supply of crucial information and documents.</li> <li>□ Other incidental support.</li> </ul>
2.	The National Health Insurance Fund (NHIF) Board	<ul style="list-style-type: none"> <li>□ Acting on resolutions of the TC;</li> <li>□ Supply of crucial information and documents; □</li> <li>Other incidental support.</li> </ul>
3.	Contracted Healthcare Providers	<ul style="list-style-type: none"> <li>• Provide advice on continued and or better service delivery;</li> <li>• Implement resolutions of the TC;</li> <li>• Provide information and documentation required to ensure smooth transition.</li> </ul>
4.	Parliamentary Committees on Health (National Assembly and the Senate)	<ul style="list-style-type: none"> <li>• Provide guidance on effecting smooth transition;</li> <li>• Passage of crucial legislation and regulations</li> </ul>
5.	The Council of Governors (CoG) - Health Committee	<ul style="list-style-type: none"> <li>• Provide guidance and advise on transition;</li> <li>• Provide technical support and information incidental to the transition process;</li> <li>• Link between health facilities being managed by County Governments.</li> </ul>
6.	Caucus for Health CECs	<ul style="list-style-type: none"> <li>• Provide technical support and information incidental to the transition process;</li> <li>• Advise on better transition methodology especially at the County facilities.</li> </ul>
7.	Public Procurement Regulatory Authority (PPRA)	<ul style="list-style-type: none"> <li>• Advise on procurement matters relating to existing contracts between NHIF, contractors and other service providers;</li> <li>• Advise on procurement obligations and transfer of the same to SHA;</li> <li>• Provide other advice in relation to assets retrieval, management, transfer, and disposal.</li> </ul>
8.	Insurance Regulatory Authority (IRA)	<ul style="list-style-type: none"> <li>• Advise on insurance matters</li> </ul>
9.	The Law Society of Kenya (LSK)	<ul style="list-style-type: none"> <li>• Advise on legal and administrative of justice matters</li> </ul>
10.	Public Service Commission (PSC)	<ul style="list-style-type: none"> <li>• Provide advice on staff redeployment</li> </ul>

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11.	The National Treasury (TNT)	<ul style="list-style-type: none"> <li>Provide financial advice in relation to transition;</li> <li>Advise on supplementary budget if needed for the smooth transition.</li> </ul>
12.	Federation of Kenyan Employees (FKE)	<ul style="list-style-type: none"> <li>Provide advice on how to safeguard the interests of the NHIF staff and the employer;</li> <li>Provide other advice in relation to implementation of transitional provisions on staff redeployment, suitability tests and exits (if any).</li> </ul>
13.	Central Organisation of Trade Unions (COTU)	<ul style="list-style-type: none"> <li>Provide advice on how to safeguard the interests and the rights of workers, during and after the transition.</li> </ul>
14.	The Attorney General (AG)	<ul style="list-style-type: none"> <li>Provide advice on legal matters incidental to the transition.</li> </ul>
15.	Salaries and Remuneration Commission (SRC)	<ul style="list-style-type: none"> <li>Provide advice on the remuneration of staff., pensions and other benefit packages</li> </ul>
16.	Office of the Auditor General (OAG)	<ul style="list-style-type: none"> <li>Provide guidance on audit matters</li> </ul>
17.	State Corporation Advisory Committee (SCAC)	<ul style="list-style-type: none"> <li>Provide guidance on organizational structure, rating, staffing and HR instruments</li> </ul>
18.	Office of the Data Protection Commissioner (ODPC) Kenya Union of Commercial, Food and Allied Workers (KUCFAW)	<ul style="list-style-type: none"> <li>Advise on data protection especially on transfer of existing data to SHA;</li> <li>This was to update them on the work of the Transition Committee and to receive their comments, including on Committee's Roadmap;</li> </ul>
19.	Ministry of Health (MOH) Directorates, Programs	<ul style="list-style-type: none"> <li>This was to update them on the work of the Transition Committee and to receive their comments, including on Committee's Roadmap; and to Submit memoranda of issues to be addressed by the Transition Committee</li> </ul>
20.	National referral Hospitals-KNH, MTRH, Spinal Injury, Mathare, KUTRRH	<ul style="list-style-type: none"> <li>Benefits package development process</li> </ul>
21.	Kenya Association of Private Hospitals (KAPH)	<ul style="list-style-type: none"> <li>Benefits package development process</li> </ul>
22.	Kenya Health Federation (KHF)	<ul style="list-style-type: none"> <li>Benefits package development process</li> </ul>
23.	Christian Health Association of Kenya (CHAK)	<ul style="list-style-type: none"> <li>Benefits package development process</li> </ul>
24.	Kenya Conference of Catholic Bishops (KCCB)	<ul style="list-style-type: none"> <li>Benefits package development process</li> </ul>
25.	Council of Governors (COG)	<ul style="list-style-type: none"> <li>Benefits package development process</li> </ul>

Report of the Transition Committee to the Social Health Authority

26.	Rural & Urban Private Hospitals Association of Kenya (RUPHA)	• Benefits package development process
27.	Kenya Medical Research Institute- Welcome Trust	• Benefits package development process
28.	African Institute for Development Policy (AFIDEP)	• Benefits package development process
29.	United States Agency for International Development (USAID) -Propel project	• Benefits package development process
30.	United States Agency for International Development (USAID)- Hero project	• Benefits package development process
31.	African Medical and Research Foundation (AMREF)	• Benefits package development process
32.	Clinton Health Access Initiative (CHA)I	• Benefits package development process
33.	World Health Organization (WHO)	• Benefits package development process
34.	United Nations Children's Fund (UNICEF)	• Benefits package development process
35.	Surgical Society of Kenya (SSK)	• Benefits package development process
36.	Kenya Society of Haemato-Oncology (KESHO)	• Benefits package development process
37.	Kenya Medical Association (KMA)	• Benefits package development process
38.	African Institute for Development Policy (AFIDEP)	• Benefits package development process
39.	Safaricom	• Benefits package development process
40.	World Bank	• Benefits package development process
41.	National Cancer Institute (NCI)	• Benefits package development process

42.	National Syndemic Disease Control Council (NSDCC)	• Benefits package development process
43.	Emergency Medicine Kenya Foundation	• Benefits package development process
44.	US Centers for Disease Control and Prevention	• Resource person for Transition

#### Appendix IV: Technical Experts Consulted

Area of Action	TA Providers/ Resource persons	Nos.
<b>Finance</b>		
Review and verification of assets and liabilities	The National Treasury and MoH - Finance & accounting experts; Auditors	28
<b>Human Resource Management</b>		
Development of HR instruments Salary structure Job evaluation	HR experts	3
	SRC representatives	2
	SCAC representatives	2
	PSC & Min of P Service representatives	2
<b>Legal</b>		
Legal contracts management	Legal experts (Public Service)	2
<b>Operations</b>		
Claims management	Actuaries (NHIF)	3
ICT Management	ICT experts (Min of ICT)	1
	Information Communication Technology Authority (ICTA)	2
Strategic plan development	Strategic planning experts	2
Claims management	Data Scientists (Office of Data Protection Commissioner; ICT Authority, NHIF)	2
	Total	47

Report of the Transition Committee to the Social Health Authority

**Appendix V: NHIF Documents Submitted to TC on 4<sup>th</sup> March, 2024**

S/N	TRANSITION COMMITTEE REQUEST	CURRENT STATUS
1.	THAT notwithstanding the enactment of the Social Health Insurance Act, 2023 and the gazettelement of the 22 <sup>nd</sup> November 2023 as the commencement date (appointed day) pursuant to section 1 of Act, and thus the consequential repeal of the NHIF Act, the NHIF Board makes a special resolution to wind up (if the same had not been done) preferably by the <b>16<sup>th</sup> of February 2024</b> to facilitate the winding up process;	Winding up NHIF Board resolution dated 14 <sup>th</sup> February, 2024 submitted
2.	THAT the NHIF Board immediately causes the preparation and transmission to the Transition Committee of a succinct report and inventory of all assets and other property (movable and immovable), whether documented or not, detailing their current value, depreciation rate, state of repair, availability of certificates of title documents or otherwise, location and persons in charge of the transfer process preferably before the <b>29<sup>th</sup> February 2024;</b>	Report Submitted
3.	THAT the NHIF and the SHA Board immediately cause the identification, preservation and guaranteed security of all data, information and records by putting in place safeguards and mitigation measures in accordance with the existing records management policies and give the written assurance to the Transition Committee preferably before the <b>29<sup>th</sup> February 2024;</b>	Report Submitted
4.	THAT the NHIF Board immediately causes the preparation and transmission to the Transition Committee of detailed financial statements, annual estimates and cash balances (if any) as at the appointed day and which are now deemed to be vested in the Social Health Authority preferably before the <b>29<sup>th</sup> February 2024;</b>	Report Submitted
5.	THAT the NHIF Board immediately causes the preparation and submission to the Transition Committee of a succinct report and inventory of all the liabilities and pending claims including those that arose or are deemed to arise from contracts executed but were due to expire on the appointed day preferably before <b>29<sup>th</sup> February 2024;</b> Current status of all the claims.	Report Submitted
6.	THAT the NHIF Board immediately causes the preparation, approval and submission to the Transition Committee of a report containing a list, nature and status of all contracts, MoUs and all other agreements that placed obligations and rights over or upon the NHIF before the appointed day preferably before the <b>16<sup>th</sup> of February 2024;</b>	Report Submitted

Report of the Transition Committee to the Social Health Authority

7.	THAT the NHIF Board immediately causes the preparation and submission of a report to the Transition Committee containing a list of all pending cases, suits and actions in defense of or against the NHIF before the appointed day preferably before the <b>16<sup>th</sup> of February 2024;</b>	Report Submitted
8	THAT the NHIF Board causes the preparation and submission of a report to the Transition Committee containing the status of all enhanced benefit schemes being undertaken before the appointed day preferably before the <b>16<sup>th</sup> of February 2024;</b>	Report Submitted
9	THAT the NHIF Board prepares and submits a report to the Transition Committee of all employees detailing their employment status, designations, qualifications, roles, benefits and entitlements, duty stations, immediately before the appointed day preferably before the <b>23 of February 2024;</b>	Report Submitted
10	THAT the NHIF Board causes the compilation and preparation of an approved report on staff payables and receivables preferably before the <b>23<sup>rd</sup> of February 2024;</b>	Report Submitted
11	THAT the above reports notwithstanding, the NHIF Board finalizes the Staff Performance Management for 2022/23 and 2023/24 financial year preferably <b>by 29<sup>th</sup> February 2024;</b> Appraisals for 2022/2023 be availed.	Report Submitted
12	THAT the NHIF board <b>immediately</b> commences the development of a Psycho-social support programme for staff of the Fund. To avail a program of the scheduled activities.	Report Submitted

## Appendix VI: Preliminary Winding Up and Roles of NHIF/SHA/TC

### A. PRELIMINARY WINDING UP ACTIVITIES

Issue	Supporting Legal Provision	Timelines	Status
1. Gazettement of the Appointed Day	Section 1 of the Social Health Insurance Act, 2024 and Paragraph 1 of the 1 <sup>st</sup> Schedule to the SHI Act.	Not mentioned	22 <sup>nd</sup> November 2023 gazetted
2. Appointment of the SHA Board	Section 7 of the SHI Act, 2023	After the appointed day	SHA Board Constituted (Chair and Members Appointed)
3. Appointment and Gazettement of the Transition Committee	Transitional Provisions and provisions of other enabling law	Not mentioned	Transition Committee Gazetted on the 26 <sup>th</sup> of January 2024 with a mandate to ensure smooth transition.
4. Status of NHIF on the Appointed Day	Paragraphs 2, 3, 4 of the 1 <sup>st</sup> Schedule to the SHI Act, 2023.	After the appointed day	NHIF becomes defunct save for residual winding up purposes and roles.

### B. ROLE OF NHIF IN WINDING UP

1. Realization of Assets and Other Property	Paragraph 6 (1) of the 1 <sup>st</sup> Schedule to the SHI Act, 2023.	TBI	Ongoing listing of the assets and a report to be shared with the TC
2. Assessment, verification and forwarding of liabilities and claims to the to the SHA Board for settlement	Paragraph 6 (1) of the 1 <sup>st</sup> Schedule to the SHI Act, 2023.	Done	Ongoing listing and verification of the liabilities and other claims and a report to be shared with the TC
3. Transfer of Assets and Cash Balances to the SHA	Paragraphs 2(2) and 6 (1) of the 1 <sup>st</sup> Schedule to the SHI Act, 2023.	Within 6 months as per gazette notice 603 of 2024	TBI
4. Transfer of Pending Liabilities to the SHA	Paragraph 6 (1) of the 1 <sup>st</sup> Schedule to the SHI Act, 2023.	Within 6 months as per gazette notice 603 of 2024	Ongoing listing and verification of the liabilities and a report to be shared with the TC.
5. An assessment and transfer of all actions, suits or legal proceedings against the NHIF to the SHA	Paragraphs 4 of the 1 <sup>st</sup> Schedule to the SHI Act, 2023.	Within 6 months as per gazette notice 603 of 2024	Ongoing listing of the same is ongoing and a report to be shared with the TC.

## Report of the Transition Committee to the Social Health Authority

- |    |   |   |   |         |
|----|---|---|---|---------|
| 6. | Supporting smooth transition of staff to SHA, retirement, redeployment within the public service and other connected matters. | Paragraphs 6 (3), 6(4) and 6(5) of the 1 <sup>st</sup> Schedule to the SHI Act, 2023. | Within 6 months as per gazette notice 603 of 2024 | Ongoing |
|----|---|---|---|---------|

### C. OBLIGATIONS OF NHIF DURING THE WINDING UP PROCESS

- |    |  |  |                         |         |
|----|--|--|-------------------------|---------|
| 1. | Prudent use and management of resources  | PFM Act and Paragraph 6(1) of the 1 <sup>st</sup> Schedule to the SHI Act, 2023<br><br>(Transitional Provisions) | Continuous              | Ongoing |
| 2. | Halting the provision of enhanced benefit schemes and packages save for those whose contracts were yet to lapse on the appointed day | Paragraph 5 of the of 1 <sup>st</sup> Schedule to the Act (the Transitional Provisions)                          | After the appointed day | Done    |
| 3. | Supporting smooth transition   | The Social Health Insurance Act, 2023  | Continuous              | Ongoing |

### D. ROLE OF SHA DURING THE WINDING UP PROCESS

- |    |  |   |  |         |
|----|--|---|--|---------|
| 1. | Preparation and lodging of necessary instruments required in transfer of property/assets | Paragraph 2 of the of 1 <sup>st</sup> Schedule to the SHI Act, 2023 (Transitional Provisions)       | After the appointed day and or within 6 months as per gazette notice 603 of 2024 | Ongoing |
| 2. | Opening of Accounts  | Section 41 of the Act   | Within 6 months as per gazette notice 603 of 2024                                | Ongoing |
| 3. | Reviewing and settlement of verified claims and liabilities as shared by the NHIF        | Paragraph 3 of the 1 <sup>st</sup> Schedule to the SHI Act, 2023 (Transitional Provisions)          | TBI  | Ongoing |
| 4. | Development of own staff establishment   | Paragraph 6 (3) of 1 <sup>st</sup> Schedule to the SHI Act, 2023 (Transitional Provisions)          | Within one year after the appointed day  | Ongoing |
| 5. | Recruitment of own staff while giving priority to the staff of the Fund                  | Paragraph 6 (3) and 6(4) of 1 <sup>st</sup> Schedule to the SHI Act, 2023 (Transitional Provisions) | Within one year after the appointed day  | TBI     |

## Report of the Transition Committee to the Social Health Authority

6. Undertaking suitability tests for purposes of absorbing NHIF staff into the SHA	Paragraph 6 (3) and 6(4) of 1 <sup>st</sup> Schedule to the SHI Act, 2023 (Transitional Provisions)	Within one year	TBI
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### E. OBLIGATIONS OF THE SHA DURING THE WINDING UP PROCESS

1. Honoring obligations that arose before the appointed day	Transitional Provisions	TBI	TBI
2. Expedited development of own structures	Transitional Provisions	TBI	TBI
3. Giving priority to NHIF staff while undertaking competitive recruitment	Transitional Provisions	TBI	TBI
4. An undertaking to settle outstanding liabilities and meeting other obligations that arose before the appointed day	Transitional Provisions	TBI	TBI
5. Support the NHIF Board in its activities during the winding up process	Transitional Provisions	TBI	Ongoing
6. Supporting smooth transition of staff to SHA, retirement, redeployment within the public service and other connected matters.	Transitional Provisions	TBI	TBI

### F. MANDATE AND FUNCTIONS OF THE TRANSITION COMMITTEE

1. Ensure a smooth transition from the NHIF to SHA	Gazette Notice 603 of 2024, and the Social Health Insurance Act, 2023	6 months	Ongoing
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**Appendix VII: Interim Guidelines for Reference During the Transition**

REPUBLIC OF KENYA



MINISTRY OF HEALTH

**THE TRANSITION COMMITTEE (TC) ON THE SOCIAL HEALTH AUTHORITY (SHA)**

Date: 21<sup>st</sup> February 2024

**GUIDELINES FOR REFERENCE DURING THE TRANSITION PERIOD**

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## Report of the Transition Committee to the Social Health Authority

The Transition Committee (appointed *vide* Gazette Notice No. 603 of 2024) has a mandate to ensure seamless transition from the National Health Insurance Fund (NHIF) to the Social Health Authority. Pursuant to the provisions of the 1<sup>st</sup> Schedule (*Transitional Provisions*) to the Social Health Insurance Act, 2023, the Transition Committee makes the following interim *Guidelines* for reference during the transition period. The *Guidelines*, although not exhaustive, have been developed in reference to the Social Health Insurance Act, 2023, other applicable laws in Kenya and best practices. These *Guidelines* address seven crucial areas namely: (i) assets and liabilities, (ii) finance and accounts, (iii) human resources, (iv) contracts, memorandum of understandings (MoUs) and agreements generally, (v) operations and service delivery, (vi) legal proceedings, and (vii) coordination and communication as follows:

(i) **Assets (including records and information) and Liabilities**

1. All existing assets (documented or not) shall be mapped out by the National Health Insurance Fund (NHIF) Board to facilitate the development and implementation of a framework for the verification, transfer and handover of the assets to the Social Health Authority (SHA);
2. Pending handover and or transfer, all the assets, shall be secured, kept in their current state of repair and protected against fire(s), theft, vandalism, mutation, wear and tear as well as other vulnerabilities, by relevant offices and officers accountable for the time being;
3. Paper and digital records as well as information in other formats shall be secured and stored pending verification and handover to the SHA;
4. A schedule of all other inventories shall be prepared by the NHIF Board and verified by the Transition Committee before transfer and or handover to the Social Health Authority;
5. Schedules of all outstanding claims and liabilities shall be prepared and compiled by the NHIF Board and thereafter verified by the Transition Committee in readiness for handover or transfer to the Social Health Authority;
6. All assets shall be ascertained and verified by the Transition Committee before transfer and or handover to the Social Health Authority;



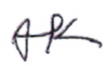
7. The relevant organs and the Transition Committee may seek the support of relevant agencies and other experts in undertaking the verification of the assets and liabilities;
8. There shall be no payment of unverified liabilities and claims that arose before the appointed day unless with the express approval of the SHA Board; and
9. There shall be no sale of assets during the transition period.

(ii) **Finance and Accounts**

10. There shall be prudent use of resources and funds during the transition period;
11. The SHA Board shall adopt or vary the existing NHIF budget (based on their current needs) and seek the approval of the Cabinet Secretary as provided for under paragraph 7 of the 1<sup>st</sup> Schedule to the SHI Act;
12. The NHIF Board may develop and submit their winding up budget to the SHA Board for approval in line with guideline 11;
13. The SHA Board shall open its OWN bank accounts in accordance with the existing banking and financial laws in Kenya;
14. For avoidance of doubt, the SHA Board shall not rename the existing NHIF bank accounts and that the cash balances in the NHIF bank accounts shall be transferred to the SHA bank accounts after verification of the statements of account; and
15. An AIE holder (for the SHA Board) shall be appointed before any expenditures are expended from the SHA accounts in accordance with existing public finance laws in Kenya.

(iii) **Human Resources**

16. No staff of the Fund is deprived of their employment status on account of the winding up of the NHIF;
17. For avoidance of doubt, staff of the Fund shall continue in service under their current terms until the NHIF has concluded the winding up process as per the transitional provisions;
18. Salaries and other benefits of the staff of Fund shall continue to be paid and or met using the existing NHIF budget (which now shifted to SHA after the appointed day in the current financial year 2023/2024) and under the SHA budget (for the incoming financial year 2024/2025) as appropriated by Parliament until the winding up process has been concluded as provided for in the transitional provisions;



## Report of the Transition Committee to the Social Health Authority

19. Human resource matters and issues arising during the transition period shall be handled by the SHA Board in accordance with existing NHIF and Public Service Commission guidelines, policies and directives;
  20. Staff of the Fund shall support the NHIF Board in executing the winding up roles and the SHA Board for continued service delivery until the SHA Board has competitively recruited its own staff as provided for in the transitional provisions;
  21. The SHA Board may request, if need be, critical staff from the Ministry of Health in undertaking any of its functions pending development and approval of HR instruments to facilitate competitive recruitment as provided for in the transitional provisions;
  22. The relevant organs of Government and or the SHA Board shall actively pursue categorization of the Social Health Authority to facilitate the completion of the HR instruments;
  23. Upon approval of the HR Instruments by the relevant agencies, the SHA Board shall cause the undertaking of job evaluation and receive advice from the Salaries and Remuneration Commission on salaries and remuneration of all positions in the approved SHA staff establishment;
  24. Prior to competitive recruitment, the SHA Board shall undertake an audit (physical head count) and documents verification for all staff of the Fund;
  25. Staff of the Fund shall undergo a suitability test as set by the SHA Board and be given priority during the competitive recruitment of the SHA staff;
  26. A staff of the Fund who will not be employed by the SHA may opt for retirement or be redeployed within the public service as provided for in the transitional provisions; and
  27. The SHA Board has the obligation to honour other contractual obligations to the employees of the Fund that were in existence and active immediately before the appointed day.
- (iv) Contracts, MoUs and Agreements**
28. No new contracts, MoUs and agreements shall be executed or entered into by the NHIF Board during the transition period; and
  29. Contracts, MoUs and agreements and other instruments that are crucial for continued service delivery may be executed only with the written approval of the SHA Board.

(v) **Operations and Service Delivery**

- 30. To guarantee continued service delivery, The Social Health Authority may continue to utilize the verified existing NHIF infrastructure pending transfer and handover; and
- 31. Services shall not be halted, varied, delayed or declined on account of the transition.

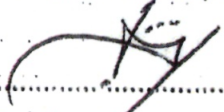
(vi) **Legal Proceedings**

- 32. All actions, suits or legal proceedings pending by or against the Government for and on behalf of the Fund shall be carried on or prosecuted by or against the Authority as provided for in the transitional provisions; and
- 33. The SHA may seek the leave of the Court(s) for additional time to enter proper appearance or defense in ongoing or pending court cases.

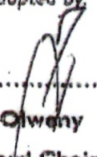
(vii) **Coordination and Communication**

- 34. The Cabinet Secretary responsible for Health is mandated to be the spokesperson on transition matters;
- 35. Communication to the public on matters pertaining to the transition shall be cleared by the CS's office for coherence and uniformity; and
- 36. There shall be particularized messaging to the public and other stakeholders on matters pertaining to the transition from NHIF to the SHA.

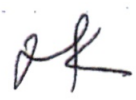
Made and executed this 21<sup>st</sup> Day of February, 2024

  
.....  
**Kap Kirwok Jason**  
**Transition Committee Chairperson**

Reviewed and Adopted by:

  
.....  
**Dr. Timothy Oigweny**  
**The SHA Board Chairperson**

  
.....  
**Eng. Michael Kamau**  
**NHIF Board Chairperson**



**Appendix VIII: Actions and Responsibilities for the SHA Communication Plan**

	<b>Prelaunch Activity</b>	<b>Detailed actions</b>	<b>Proposed Date</b>	<b>Responsibility</b>
1.	Jumpstart the SHA roll out debate	a) Live TV interview on Citizen Tv  b) Questions and responses	09.06.2024	CS Health  Peter & Dr Jacob Otachi
2.	Engage CECs	Sensitization during their scheduled meeting	10.06.2024	Dr Thurania Terry Rotich Dr Elizabeth Wangia Mr Alio Ibrahim
3.	Intergovernmental meeting	Meeting with the Governors during their meeting to sensitize on SHA and get their buy in	*date to be confirmed	CS Terry Rotich Chairman SHA SHA CEO Dr Thurania Comms team
4.	National Assembly Health Committee	Sensitisation	13.06.2024	CS Terry Rotich Chairman SHA SHA CEO Dr Thurania
5.	World blood donor day/ Digitization event in Marsabit	Sensitization	14.06.2024	CS Terry Rotich Chairman SHA SHA CEO

## Report of the Transition Committee to the Social Health Authority

				Dr Thurania Comms team
6.	Media Engagement	Engage editors and health reporters.  -Hotel Booking  -Invitations  - Drafting of Presentations	17.06.2024  18.06.2024	Safaricom/SHA  To be attended by (CS, and the leadership- Ministry and SHA team)
7.	Recording Explainer videos	On sidelines of Media meeting	17.06.2024  18.06.2024	Safaricom/SHA comm team
8.	Messaging	Preparation of standard sensitization Powerpoint presentation	From 10.06.2024	Safaricom/SHA comm team
9.	Packaging a leadership information pack/ tool kit	Standard information package	From 10.06.2024	Dr Jacob Otachi  Dr Kipruto Chesang  Dr Elizabeth Wangia
10.	Preparation of appropriate Merchandise	In preparation for on-ground activation	From 10.06.2024	Safaricom
11.	Branding registration points	Ahead of registration kick off	Start Week of 17.06.2024	SHA
12.	Engage CS Public Service on Use of Huduma Centres as registration points	On Huduma Centres and cabinet memo	Week of 10.06.2024	CS  Terry Rotich
13.	MoH Staff sensitization	To enable them properly champion the reform course	Week of 10.06.2024	Dr Elizabeth Wangia

Report of the Transition Committee to the Social Health Authority

14.	Packaging specific messages per stakeholder	Obtain benefit package,  registration details etc	From 10.06.2024	Safaricom and SHA  Technical team
15.	Develop posters to be used for phase I	Both for FAQs and For branding the registration locations	Week of 17.06.2024	Safaricom /SHA
16.	Send SMS messages to existing members of NHIF to inform them of changes and what to do next	Identify the numbers, draft messages and send	Week of 17.06.2024	Safaricom/SHA
17.	Branding of the launch venue	Proposed venue to be  a) confirmed  b)branded  c) Invitation of CHPs for the launch	Week of 10.06.2024	Office of CS    Safaricom
18.	National launch of registration	By the HE the President	21.06.2024	All to take part
19.	Run teaser media campaign on Radio and Social media	To Climax from the launch date	From week of 10.06.2024	Safaricom/SHA
20.	Handling negative press coverage	Carry out media monitoring and provide appropriate responses and advisory to the communication team	From 10.06.2024	-MOH Communication staff  -MOH media consultants

**ANNEXES**

*NB. These annexes listed here and are prepared and submitted separately owing to their huge volume.*

**Annex I:** Report on Obligations arising from NHIF Contracts, MoUs, Agreements and Advisories on: Claims Handling, Empanelment and Contracting

**Annex II:** Internal Report on the Integrity and Security of the NHIF IT System

**Annex III:** Report of Independent IT Experts on the NHIF ICT Systems

**Annex IV:** TC Report on status of ICT Transition from NHIF to SHA

**Annex V:** Report on Court Cases and Other Legal Actions

**Annex VI:** NHIF Assets and Liabilities Verification Report

**Annex VII:** Roadmap for Transition of Digital Assets to SHA

**Annex VIII:** Human Resource Instruments

**Annex IX:** Report on Pension Scheme, the Trust Deed & Rules and Letter from RAB on Transition Guidelines

**Annex X:** Communication and Outreach Strategy, IEC Materials and Recommendations