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REPUBLIC OF KENYA



TWELFTH PARLIAMENT – SIXTH SESSION

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THE NATIONAL ASSEMBLY

SELECT COMMITTEE ON IMPLEMENTATION

SIXTH REPORT ON
SUBMISSIONS FROM STAKEHOLDERS REGARDING THE
IMPLEMENTATION STATUS OF INQUIRIES, PETITIONS, AND
RESOLUTIONS PASSED BY THE HOUSE

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

THE NATIONAL ASSEMBLY	
June, 2022	
DATE:	08 JUN 2022
TABLED BY:	Hon. Javed Sheikh, MP Member, Comm on Implementation
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ABBREVIATIONS

EPRA	- Energy and Petroleum Regulatory Authority
KCIA	- Kenya Citizenship and Immigration Act
KeRRA	- Kenya Rural Roads Authority
(KOSAP)	- Kenya Off-grid Solar Access Project
KPLC	- Kenya Power and Lighting Company

CHAIRPERSON'S FOREWORD

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), petitions, and the undertakings given by the National Executive. It examines whether such decisions and undertakings have been implemented within sixty (60) days provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary and satisfactory explanation for the delay in full implementation provided.

The Committee wrote to the various Ministries requesting for implementation status of resolutions, petitions, and adopted committee reports passed by the House. The status of implementation included in the report contains submissions provided by various Ministries and Government Agencies. The report entails a compilation of the responses received and their status of implementation at the time of adoption of the report.

The Committee registers its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for facilitating the achievement of its mandate and the production of this report.

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

Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), Petitions, and the undertakings given by the National Executive. It examines whether such decisions and undertakings have been implemented within sixty (60) days as provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary.

The Committee wrote to various Ministries and Government Agencies forwarding a list of House resolutions pending before them seeking the status of implementation, including challenges faced while implementing them. The Committee during its various sittings considered the oral submissions and scrutinized the written submissions received from the stakeholders. The records of evidence submitted to the Committee form the basis of the committee's report on the implementation status as outlined in the report.

In its deliberations, the Committee observed that some of the House resolutions are not accompanied by the requisite budget hence making it difficult for MDAs to implement them. The Committee also observed that some Agencies were not able to follow up and implement some recommendations of the House due to the outbreak of the Covid-19 pandemic.

The Committee recommends that the respective committees and the House should consider the financial implications of resolutions before committing them for implementation, and should allocate adequate funds to the implementing agencies.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

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

1.2 Committee Membership

5. The Committee membership comprises -

Chairperson

Hon. Moitalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Movement

Vice-Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

Hon. Joash Nyamache Nyamoko, MP
North Mugirang'o Constituency

Jubilee Party

Hon. Alois Lentoimaga, MP
Samburu North Constituency

Jubilee Party

Hon. (Dr.) James Murgor, MP
Keiyo North Constituency

Jubilee Party

Hon. John Muchiri Nyagah, MP
Manyatta Constituency

Jubilee Party

Hon. Feisal Abdalla, MP
Msambweni Constituency

Independent

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Movement

Hon. Benjamin Tayari, MP
Kinango Constituency

Orange Democratic Movement

Hon. Johnson Naicca, MP
Mumias West Constituency

Orange Democratic Party

Hon. Moses Kuria, M.P
Gatundu South Constituency

Jubilee Party

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. Paul Odalo Abuor, MP

Rongo Constituency

Orange Democratic Movement

Hon. Hassan Oda Hulufu, MP

Isiolo North Constituency

Kenya Patriots Party

Hon. Nelson Koech, MP

Belgut Constituency

Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP

Masinga Constituency

Wiper Democratic Movement-Kenya

Hon. Mukuha Gabriel Kago, M.P

Githunguri Constituency

Jubilee Party

Hon. Silvanus Onyiego Osoro, MP

South Mugirang'o Constituency

Kenya National Congress

Hon. John Wanjiku, MP

Kiambaa Constituency

United Democratic Alliance

Hon. Michael Thoya Kingi, MP

Magarini Constituency

Orange Democratic Movement

Hon. Kihara Peter Kimari, MP

Mathioya Constituency

Jubilee Party

Hon. Charles Ngusya Nguna, MP

Mwingi West Constituency

Wiper Democratic Movement

Hon. Jared Okello, MP

Nyando Constituency

Orange Democratic Movement

1.3 Committee Secretariat

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

Ms. Tracy Chebet Koskei
Senior Clerk Assistant/Team Leader

Mr. Abdirahman Hassan
Clerk Assistant II

Dr. Donald Manyala
Research Officer II

Ms. Mercy Wanyonyi
Legal Counsel I

Ms. Winnie Kizia
Media Relations Officer

2.0 INTRODUCTION

7. The Select Committee on Implementation commenced to appraise itself on the implementation status of House resolutions according to Standing Order 209 (2) which requires the Committee to scrutinize resolutions of the House (*including adopted Committee Reports*), petitions, and the undertakings given by the National Executive.
8. The report contains the status of implementation of various House resolutions as submitted by various Ministries, Departments and Agencies, as follows: -
 1. *The report of the Departmental Committee on Lands on its consideration of the Public Petition by East Mau Forest Evictees regarding settlement of East Mau Forest Evictees;*
 2. *The report of the Departmental Committee on Administration and National Security on its consideration of the Public Petition No. 41 of 2021 regarding recognition of the Pemba people of Kenya as citizens of the Republic of Kenya;*
 3. *The report of the Departmental Committee on Energy on its consideration of the Petition regarding water supply constraints caused by Kenya Power Tariffs in Kilifi County;*
 4. *The report of the Departmental Committee on Lands on its consideration of the Petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of a public road (Konza-Katamani Road);*
 5. *The report of the Departmental Committee on Lands on its consideration of the Petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala-Musoli-Bukura Butere Road;*
 6. *The report of the Departmental Committee on Labour & Social Welfare regarding the Petition by the Kenya Association of Retired Officers on improved terms for pensioners in Kenya;*
 7. *The report of the Departmental Committee on Finance and National Planning (11th Parliament) on its consideration of the Petition on payment of terminal dues to the former employees of Pan Paper Mills Company; and*
 8. *The Report of the Special Funds Accounts Committee on the Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi City County Financial Years 2013/14, 2014/15, and 2015/16.*

IMPLEMENTATION STATUS OF VARIOUS HOUSE RESOLUTIONS

3.0 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON ITS CONSIDERATION OF THE PUBLIC PETITION BY EAST MAU FOREST EVICTEES REGARDING SETTLEMENT OF EAST MAU FOREST EVICTEES

3.1 Background

9. The Public Petition No. 003 of 2021 by East Mau evictees regarding the resettlement of East Mau Forest evictees was conveyed to the House by the Honorable Speaker on 1st March 2021 on behalf of the Petitioners.

3.2 Prayers of the petitioners

10. The Petitioners sought to draw the attention of the House to the following:
- (i) They constitute a community of 4350 persons that lived in the then East Mau Forest in the larger Nakuru County for 70 years as caretakers during the colonials period until they were evicted from the said forests in 1988;
 - (ii) While other persons hailing from counties outside Nakuru were resettled in the same area, the petitioners were not resettled, leaving the Petitioners landless;
 - (iii) In their pursuit of justice, the evictees sought the intervention of the Truth Justice and Reconciliation Commission in 2018 to no avail and sought the intervention of the National Assembly in securing the resettlement;
 - (iv) The Petitioners, therefore, prayed that the National Assembly through the Departmental Committee on Lands investigates the matters raised in the petition to find a resolution relating to the settlement of the East Mau Evictees.

3.3 Recommendations of the Departmental Committee on Lands

11. The Committee on Lands tabled its report on 5th October 2021 and recommended that the Cabinet Secretary, Ministry of Lands and Physical Planning in consultation with the Cabinet Secretary for the Ministry of Interior and Coordination of National Government profiles and vet the Petitioners with a view of establishing the veracity of their claims within six (6) months of tabling the report.

3.4 Implementation status

12. The Select Committee on Implementation wrote to the relevant agencies seeking the implementation status of the report on 25th January 2022.

13. The Committee received a submission from the Ministry of Interior and Coordination of National Government who submitted that the Environment and Land Court issued conservatory orders on 18th December 2020, prohibiting any person from conducting land audits, surveys, placing beacons on land titles in eastern Mau either on 11th December 2020 or any other date thereafter. The orders are in effect until further orders of the court/ or until the consolidated petitions are fully heard and determined.

3.5 Committee Observations

14. Implementation of the House resolution has not been done.

3.6 Committee Recommendation

15. The Environment and Land Court should expedite the resolution of this matter.

4.0 REPORT OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY ON ITS CONSIDERATION OF THE PUBLIC PETITION NO. 41 OF 2021 REGARDING RECOGNITION OF THE PEMBA PEOPLE OF KENYA AS CITIZENS OF THE REPUBLIC OF KENYA

4.1 Background

16. The Public Petition No. 41 of 2020 was submitted to the National Assembly on Thursday, 19th November 2021 by Hon. Owen Baya, M.P on behalf of the Pemba People of Kenya.
17. The Petitioners averred that failure by the Government of Kenya to recognize the Pemba people as citizens continues to cause great anguish and inconvenience to them since they were unable to register their children at birth; they miss out on education; health and other social services; were excluded from employment; were unable to register businesses or to open bank accounts or even register phone sim cards; had unrecognized marriages; were compelled to register assets for failing to carry out identity cards and for allegedly being in Kenya illegally.
18. The Petitioners also averred that the continued delay in recognition of the stateless communities in Kenya such as the Pemba community by the authorities was in clear violation of both the constitution and statutory provisions on citizenship in Kenya.
19. The Petitioners, therefore, asked the House through the Departmental Committee on Administration and National Security to inquire into the matter with a view of securing the urgent recognition of the Pemba People of Kenya as citizens of the Republic of Kenya to safeguard their constitutional right as well as recognizing their economic and social contribution to the coastal region and country at large; and secure the submission of a report by the Cabinet Secretary for the Ministry of Interior and Coordination of National Government on measures, including affirmative action programmes, taken by the State to address the plight of stateless persons and communities living in Kenya.

4.2 Recommendations of the Departmental Committee on Administration and National Security

20. The Committee tabled its report on 11th August 2021 and recommended that:
 - (i) The Pemba People from the coast of Kenya be recognized as an ethnic group in Kenya;
 - (ii) That the Cabinet Secretary, Ministry of Interior, and Coordination of National Government should initiate the process of recognizing the Pemba people as citizens of Kenya; and

- (iii) Upon recognition of the Pemba people as citizens of the Republic of Kenya, the Cabinet Secretary for the Ministry of Interior and Coordination of National Government does ensure that the Pemba people are issued with relevant identification documents per the constitution and the law.

4.3 Implementation status

- 21. The Select Committee on Implementation wrote to the Ministry of Interior and Coordination of National Government requesting the status of implementation.

The Ministry submitted as follows in a letter dated 18th February 2022:

- 22. That the Directorate of Immigration is mandated to register persons claiming to be stateless as per the Kenya Citizenship and Immigration Act (KCIA), 2011 in Sections 15 and 16. The registration for descendants of stateless persons and migrants is provided for under Section 17 of the Act. The KCIA defines a stateless person as one who does not have an enforceable claim to the citizenship of any recognized state and has been living in Kenya for a continuous period since 12th December 1963. It further states that the subject may be deemed to have lawfully resident and may, on application, in the prescribed manner be eligible to be registered as a citizen of Kenya.
- 23. The Ministry reported that the Government initiated two successful processes geared towards eradicating the stateless with the latest being the formation of the National Taskforce for the Identification and Registration of Eligible Stateless Persons as Kenya Citizens whose tenure lapsed on 21st August 2021. The Taskforce was initially appointed through Kenya Gazette notice number 7881/2019 on 23rd August 2019 and their tenure was extended vide Kenya Gazette notice 9772/2020 on 20th November 2020.
- 24. The Ministry further reported that members of the Pemba community have been unable to acquire identification documents since they do not fit the definition of Persons Claiming Statelessness. The majority of the Pemba were born and bred on the Pemba Island of the United Republic of Tanzania hence they are not stateless because:
 - (i) They have a claim to Tanzania Citizenship; and
 - (ii) They have not been continuously living in the Republic of Kenya since 12th December 1963.
- 25. The Cabinet Secretary further submitted that there is no law governing the registration of stateless persons as the initial mandate provided in sections (15) 2 and 16(2) which states that applications under these sections shall be made within five years from the date of commencement of KCIA, 2011 and may by notice in the gazette be extended by the Cabinet Secretary for an additional of three years. These provisions lapsed on 30th August 2018 and a further extension by the Cabinet Secretary was done for three (3) more years until 30th August 2021.

4.4 Committee Observation

26. The resolution has not been implemented as the Ministry of Interior and Coordination of National Government submitted that the members of the Pemba community have been unable to acquire identification documents since they do not fit in the definition of Persons Claiming Statelessness; further, they have a claim to Tanzania Citizenship. The Ministry further reported that the Pemba Community has not been continuously living in the Republic of Kenya since 12th December 1963. The provisions of sections (15) 2 and 16(2) of the KCIA, 2011 on the registration of stateless persons lapsed on the 30th August 2021.
27. The Committee notes that the above submission was not satisfactory.

4.5 Committee Recommendation

28. The Select Committee on Implementation should engage the Ministry of Interior and Coordination of National Government further to ensure the recommendations of the Departmental Committee on Administration and National Security implemented.

5.0 REPORT ON THE PETITION REGARDING WATER SUPPLY CONSTRAINTS CAUSED BY KENYA POWER TARIFFS IN KILIFI COUNTY

5.1 Background

29. The Hon. Owen Baya, MP, the Member for Kilifi North Constituency, presented a petition on behalf of residents of Kilifi County, on Wednesday 12th June 2019, regarding water supply constraints caused by Kenya Power Tariffs in Kilifi County.
30. The petition was referred to the Departmental Committee on Energy, which considered the petition and Tabled a report before the House on 9th October 2019.
31. The Petitioners prayed that the National Assembly through the Departmental Committee on Energy:
- (i) Inquires into the outstanding water production power bills owed by Coast Water Services Board to Kenya Power
 - (ii) Considers the cost of electricity per cubic meter of water to facilitate the affordable provision of water supply in the counties;
 - (iii) Recommends the harmonization of power tariffs between Kenya Power and the Water Resources Authority to ensure affordable production and supply;
 - (iv) Recommends a review of the cost of water production and supply to guarantee an affordable and uninterrupted supply of water
 - (v) Makes any other order, directions, or recommendations that it deems fit in the circumstances of the Petition.
32. The Select Committee on Implementation wrote to the Ministry of Energy vide a letter dated 2nd August 2021 and requested a comprehensive report on the implementation status of the report of the Departmental Committee on Energy on the Petition regarding water supply constraints caused by Kenya Power Tariffs in Kilifi County.

5.2 Submission by the Ministry of Energy on the implementation status

33. The Ministry vide a letter dated 13th August 2021 provided a written submission regarding the implementation status of the recommendations contained in the aforementioned report as follows: -
- I. *Recommendation 1: The Energy and Petroleum Regulatory Authority, as the Convener, undertake and engage in a consultative forum with waterworks development agencies, water companies, and various water service boards to come up with the non-***

commercial water pumping and supply tariff(s) for public water utilities including Baricho Water Works.

Implementation Status

34. EPRA convened a meeting with water service boards through Water Service Providers Association (WASPA) on 1st October 2019 following recommendations from the Departmental Committee on Energy. The meeting noted that the Retail Electricity Tariffs have not been reviewed since 2018 and that a special tariff can only be considered when the tariff review process resumes.
35. The Energy and Petroleum Regulatory Authority also encouraged the Water Service providers to take advantage of the Time of Use Tariffs and explore the usage of solar energy for water pumping.
36. The Ministry further provided minutes of meeting with water agencies, and the current tariff schedule prescribing the tariffs, charges, prices, and rates to be charged by the Kenya Power & Lighting Company Limited to the Consumers for electrical energy they consume.

- II. ***Recommendation 2:** The Baricho Water Works Agency and Kenya Power in the Coast region, to ensure there is a cordial working arrangement before resorting to disconnection or interruption of the supply of electricity. That the same arrangement is subjected to, regulatory concurrence that involved the Energy and Petroleum Regulatory Authority (EPRA) and Water Resources Authority to ensure each party meets its obligations as per the working arrangement.*

Implementation Status

37. The regulator has continued to encourage Kenya Power and Baricho Water Works Agency to have a good working relationship for the mutual interests of both parties. So far, Kenya Power has been very understanding of issues affecting the water agency. Kenya Power allowed Baricho Water Works time to reduce their bills.
38. KPLC engaged Baricho Waterworks Agency in a credit arrangement to avoid disconnection of supply who are now paying weekly towards reducing the arrears and honoring the current monthly bills.
39. KPLC and the Water Service Provider have severally agreed on payment proposals, which are reviewed upon request. The latest agreement was entered into in June 2021 whereby Baricho Water pays Kshs. 14 million per week to cover the monthly bill and part of the arrears, and they are upholding the agreement.
40. Kenya Power also has a dedicated Key Account Manager, who handles all matters that relate to the Account.

- III. *Recommendation 3: The Water Resources Authority and EPRA audit all Water Service Boards and water companies responsible for the supply of water to determine the level of water losses and categorize the type of losses before qualifying for a special non-commercial tariff. This is to ensure that only acceptable water losses in the system are considered in the design of the tariff.***

Implementation Status

41. An internal sector audit was carried out between 29th and 30th July 2021, to explain the current levels of electricity consumption, and to study the equipment in use in the facility and their operations, taking relevant measurements, data analysis, and interpretation. The detailed energy audit shows potential for cost-effective energy savings. The two regulators are however yet to meet and agree on a workable formula for the joint audit due to Covid-19 restrictions. The Director-General at EPRA will reach out to Water Resources Authority to progress the matter.

- IV. *Recommendation 4: Within three months of the adoption of the petition, each county to apply for separate accounts from Kenya Power and are metered separately. This is to ensure ownership of bills by each entity responsible for the supply and distribution of water.***

Implementation Status

42. Baricho Water Works Agency has not yet applied for meter separations and KPLC is therefore awaiting feedback from the user.

- V. *Recommendation 5: That Kenya Power maintains a working and cordial engagement with the waterworks agencies and establishes a framework that involves respective regulators in the water and energy sector. Water agencies to ensure prioritization of arrears within an agreed framework that takes into account the financial needs of Kenya Power while balancing the interests of water users.***

Implementation Status

43. The regulator has continued to encourage Kenya Power and Baricho Water Works Agency to have a good working relationship for the mutual interests of both parties. So far, Kenya Power has been very understanding of issues affecting the water agency. Kenya Power allowed Baricho Water Works time to reduce their bills.

44. KPLC engaged Baricho Waterworks Agency in a credit arrangement to avoid disconnection of supply who are now paying weekly towards reducing the arrears and honoring the current monthly bills.

45. KPLC and the Water Service Provider have severally agreed on payment proposals, which are reviewed upon request. The latest agreement was entered into in June 2021 whereby Baricho Water pays Kshs. 14 million per week to cover the monthly bill and part of the arrears, and they are upholding the agreement.

46. Kenya Power also has a dedicated Key Account Manager, who handles all matters that relate to the Account.

VI. **Recommendation 6:** *That the Ministry of Energy in conjunction with the State Department for Water and Sanitation initiate an intervention of mapping all public water utilities and facilities to be connected with a relevant and affordable source of electricity ranging from grid power and innovative solar regimes for off-grid areas while minimizing the use and/or impact of the policy statement to allow affordable use of clean and safe water.*

Implementation Status

47. Energy has been identified as a key enabler in the realization of the Big Four Agenda. As such, the Ministry of Energy has been working closely with the State Department of Water and Sanitation to ensure that water utilities and boreholes are electrified.
48. Furthermore, the Ministry has been undertaking a program to electrify boreholes located in off-grid areas through the Kenya Off-grid Solar Access Project (KOSAP) which is a program in collaboration with the World Bank. 380 boreholes are targeted covering 14 underserved counties namely: West Pokot, Turkana, Marsabit, Mandera, Wajir, Garissa, Isiolo, Tana River, Lamu, Kilifi, Kwale, Samburu, Taita Taveta, and Narok.

VII. **Recommendation 7:** *That, to ensure sustainable and affordable use of water across the country, the State Department of Energy in consultation with the Ministry of Water and Sanitation initiated an intervention of mapping all public water utilities and pumping facilities to be connected with an affordable source of electricity ranging from grid power and innovative alternative energy sources such as solar regimes for off-grid areas. That, the policy intervention therein and strategies be considered in the 2020/21 Medium Term Policy Statement to allow affordable use of clean and safe water in the Country.*

Implementation Status

49. Energy has been identified as a key enabler in the realization of the Big Four Agenda. As such, the Ministry of Energy has been working closely with the State Department of Water and Sanitation to ensure that water utilities and boreholes are electrified.
50. Furthermore, the Ministry has been undertaking a program to electrify boreholes located in off-grid areas through the Kenya Off-grid Solar Access Project (KOSAP) which is a program in collaboration with the World Bank. 380 boreholes are targeted covering 14 underserved counties namely: West Pokot, Turkana, Marsabit, Mandera, Wajir, Garissa, Isiolo, Tana River, Lamu, Kilifi, Kwale, Samburu, Taita Taveta, and Narok.

5.3 Committee Observation

51. Implementation of the resolutions is ongoing.

6.0 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON ITS CONSIDERATION OF THE PETITION BY RESIDENTS OF VOTA, MUA WARD IN MACHAKOS TOWN CONSTITUENCY REGARDING THE OBSTRUCTION OF A PUBLIC ROAD (KONZA-KATUMANI ROAD)

6.1 Background

52. The Honourable Speaker of the National Assembly, pursuant to Standing Order 225 (2) conveyed a petition on Thursday 2nd July 2020, on behalf of Mr. Bernard Kioko Mutisya and five other residents of Vota Mua Ward, Machakos Town Constituency, regarding obstruction of the tarmacking of Konza-Katuman road.
53. The Petition was referred to the Departmental Committee on Lands, which considered the petition. The Committee tabled its report on 13th October 2020.
54. The Konza-Katuman road has been in existence for the last 50 years and was in November 2018 taken over by the Kenya Urban Roads Authority and the contractor was engaged to improve it to bitumen standard. However, before the anticipated construction began, one Harrison Kikavi Muambi, a director of a company known as Muambi Properties Limited confronted the contractor and has since obstructed the contractor from further works as he claims ownership of the affected land.
55. The Petitioners sought to have the affected portion of land, L.R. No. 7374 (stretching approximately 400 Meters) was acquired by the National Land Commission to create a public right of way over the parcel.

6.2 Prayers of the Petitioners

56. The Petitioners prayed that the National Assembly through the Departmental Committee on Lands invokes the provisions of Article 37, 95 (1) 119(1) of the Constitution of Kenya and section 143 of the Land Act, 2012, to: -
- i) Declare a portion of land L.R. No. 355/2 ordinarily utilized as a road connecting Katuman and Mombasa Road through Vota be declared public land for a public purpose and public interest in accordance with Articles 40 (3)(a) and 60 (1) (h), section 141 & 143 of the Land Act 2012; and
 - ii) Recommend that there is an easement on the land known as L.R. No. 335/2 petitioned by members of the public and that the National Land Commission create an easement on the land over L.R. No. 355/2 for purposes of public utility.

6.4 Recommendations of the Departmental Committee on Lands

57. The Committee, having considered the petition and submissions by various stakeholders, recommended that the National Land Commission does consider facilitating the creation of a public right of way pursuant to Section 143 of the Land Act, 2012 to ensure convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years.
58. The committee on Lands also recommended that the Cabinet Secretary Ministry of Lands and Physical Planning does fast track the development of the Land Value Index as contained in the Land Value (Amendment) Act 2019 to address the challenge of over-valuation of land identified for the development of public projects.

6.5 Submission by the National Land Commission

59. The National Land Commission presented the following as the Implementation status of the report regarding obstruction of the tarmacking of the Konza-Katumani road.

Implementation status

60. The NLC submitted that the Konza-Katumani road provides linkage to the Mombasa road (A109) for the transport of goods, services, and passengers. The road branches off Machakos-Wote road passing through part of Katumani to Vota ward and finally joining Mombasa road directly opposite the entry to Kapiti Plains Estate Ltd Research Centre. It is 9 km long and its construction is financed through Road Maintenance Fund and managed by Kenya Urban Roads Authority.
61. The Commission also submitted that at the time the project was 70 percent complete and follows the existing road corridor/alignment, of which 400 meters traverses LR No. 7374/3.
62. The Commission submitted that pursuant to the recommendations of the Departmental Committee on Lands, it proceeded to initiate the process of creating a public right of way on the identified land parcel L.R. No. 7374/3 registered in the name of Muambi properties Limited where an area of 0.7972 Ha would be affected by the right of way. The Commission wrote to the Cabinet Secretary, Ministry of Lands and Physical Planning on 13th April 2021 and recommended the creation of a public right of way as provided for in Section 146 (1)(b) of the Land Act, 2012. The CS, MOLPP responded vide letter dated 29th April 2021.
63. Subsequent discussions were held with representatives from the Ministry of Lands and Physical Planning who pointed out that NLC must initiate the process by publishing a gazette notice. The Ministry also wanted confirmation on who will pay compensation.

64. To fast-track the process and take into consideration that the contractor was on site, the Commission prepared and had the notice of intention to create a public right of way published by the Government printer in gazette notice number 6381 dated 25th June 2021.
65. The Commission requested KURA to settle the proforma invoice No. PTG No. 000271520-21 issued by the Government printer vide letter dated 22nd June 2021. In their letter dated 2nd July 2021 KURA responded and requested for termination of the process citing the fact that the road had been re-aligned.
66. A subsequent letter from KURA dated 9th July 2021 affirmed its inability to execute the matter as envisaged by the Lands Committee.
67. The Commission was unable to progress the matter further without assurance of the availability of budgetary support to meet administrative costs as well as compensation (if any) for the land affected. The Commission further sought guidance from the Committee on the overall way forward as well as clarity on the Government Agency that is to be vested with the public right of way once created taking into consideration that the identified agency will be responsible for the administrative costs as well as compensation (if any).
68. The Chairperson of the NLC confirmed that pending matters have been resolved and the Commission was currently processing a request by KURA to amend the aforementioned Gazette Notice.

6.6 Submission by the Kenya Urban Roads Authority

69. The Select Committee on Implementation during its sitting on Wednesday, 21st July 2021 resolved to invite the Director-General, Kenya Urban Roads Authority (KURA), and the Chairperson, National Lands Commission for a joint meeting to brief the Committee on the implementation of the report.
70. The Managing Director for Kenya Urban Roads Authority (KURA), through a letter dated 27th July 2021 requested more time to conclude the matter with the National Land Commission. The Managing Director also submitted that the Authority and NLC had agreed to implement the creation of a right of way as recommended by the Departmental Committee of Lands.
71. Further, in their letter, the Authority also submitted that it had requested for a corrigendum on the Kenya Gazette Notice No. 6381 dated 25th June 2021 to reflect the creation by NLC and not the Ministry of Transport and Public Works.
72. The Authority also wrote to the National Land Commission vide a letter dated 2nd July 2021 acknowledging receipt of proforma invoice PTG No.0002715 20-

21 regarding Machakos road project-land acquisition property. The Authority indicated that the road has been re-aligned to traverse the planned corridor and requested the National Land Commission to de-gazette the intended acquisition.

73. However, in a letter dated 13th August 2021, the Authority submitted that Muambi Properties Limited, the property owners filed a court case; ELC Case No. 078 of 2021 in the Environment and Land at Machakos Law Court. The matter is still in Court.

6.7 Committee Observations

74. As regards the recommendation that the National Land Commission, does consider facilitating the creation of a public right of way to ensure convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years, the Committee notes that the National Land Commission in conjunction with the Kenya Urban Roads Authority did initiate the process as directed. However, the owners of the property where the land was to traverse went to court.

75. The above matter is still in court.

76. As regards the recommendation on the development of the Land Value Index as contained in the Land Value (Amendment) Act 2019, the Ministry of Land submitted that the implementation of the resolution is ongoing as this is a countrywide exercise.

7.0 REPORT OF THE PETITION BY RESIDENTS OF IKOLOMANI CONSTITUENCY REGARDING DELAYED COMPENSATION OF LANDOWNERS FOR THE EXPANSION OF SIGALAGALA-MUSOLI-BUKURA BUTERE ROAD

7.1 Background

77. The Hon. Benard Shinali, the Member for Ikolomani Constituency, presented a petition on Wednesday 2nd October 2019, on behalf of the residents of Ikolomani Constituency, Kakamega County, regarding delayed compensation of landowners for the expansion of Sigalagala–Musoli-Bukura-Butere Road D260.
78. The Petition was referred to the Departmental Committee on Lands which concluded the matter and Tabled a report before the House on 21st November 2019.
79. In its report dated November 2019, the Departmental Committee on Lands observed that the delay in compensating the affected residents was inordinate, not justifiable, and contravened the requirement for prompt and just compensation as contained in Article 40 of the Constitution as read with the Land Act, 2012.

7.2 Recommendations by the Departmental Committee on Lands

80. The Departmental Committee on Lands recommended that pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala-Musoli-Bukura Butere road project.
81. The Departmental Committee on Lands also recommended that the National Land Commission conducts the valuation of parcels of land, crops, and trees affected by the project within ninety days upon the gazette of the inquiry dates for the Sigalagala-Musoli-Bukura Butere road.
82. The Departmental Committee on Lands further recommended that upon the conclusion of the inquiries and remittance of compensation funds from the Kenya Rural Roads Authority (KeRRA), the Chairperson of, the National Land Commission does disburse the compensation funds to the respective project affected persons.

7.3 Submission from the National Land Commission

83. The National Government through the Kenya Rural Roads Authority embarked on upgrading the approximately 35 Kilometres long Sigalagala-Musoli-Bukura Butere road in 2011. The construction encroached into private properties displacing many of the residents residing along the road. At the start of the project, the Authority agreed with the landowners to allow it to enter into the affected land for the construction of the road. The Authority jointly with the landowners and an agricultural officer documented the developments for purposes of compensation.
84. In 2012, the Kenya Rural Roads Authority submitted the request for compulsory land acquisition to the then Commissioner of Lands. However, the enactment of the Land Act in 2012 shifted the mandate of compulsory land acquisition to the National Land Commission. The Commission was constituted in 2013 and it took over the matter and published the intention to acquire the land vide Gazette Notice No. 6472 of July 7, 2017.
85. The Commission and KeRRA carried out inspections of the properties affected by the project between March and May 2018. After the inspections, the Commission requested KeRRA to revise the land acquisition maps to reflect the actual status on the ground.
86. Gazettement of inquiries into claims of compensation by those affected by the project has been pending awaiting submission of the revised land acquisition maps and the appointment of the new commissioners, as it is the only Chairperson who can approve and gazette the inquiries.

Implementation Status

87. The Commission published in the Kenya gazette notice of deletion, addendum, and inquiry No. 10918 of 22nd December 2020 upon receipt of the amended acquisition plan from KeRRA. The inquiry was held between 16th and 25th February 2021, at Shivakala chief's office as per the notice of inquiry.
88. The Commission further submitted a post inquiry report vide a letter Ref: NLC/VAL/1431/27 dated 10th March 2021, with various observations and recommendations for KeRRA to consider urgently.
89. The Commission is finalizing on valuation to issue awards to the project affected persons. The Commission in liaison with KeRRA, the acquiring entity is addressing various matters that arose during the inquiry to ensure that all project-affected persons are compensated. These issues include the following:
- (i) Claims presented by project affected persons during inquiry citing the destruction of crops, trees, and buildings resulting from the road's construction. Details of what had been affected by the road were not

available to the Commission since the road had already been constructed at the time of inspection.

- (ii) KeRRA has been requested to confirm whether they had paid compensation for the improvements as in previous cases or if they have in their possession the inventory of the affected improvements;
 - (iii) Some parcels had been subdivided and this would necessitate publication of a notice of addendum to include the new parcels for compensation. The Authority dispatched a team of surveyors to the ground to take stock and document changes occasioned by other subdivisions. The exercise was to be completed by Mid-August, 2021;
 - (iv) Ungazetted parcels affected require inclusion for compensation.
90. The Commission in consultation with KeRRA is expediting the completion of the valuation process and issuance of awards for all the affected parcels.
91. To facilitate compensation, KeRRA took inventory of all developments affected during road construction (before NLC inspection) and in consultation with relevant departments, mainly Agriculture and Forestry, have valued them in readiness for compensation.

7.4 Committee Observation

92. The Committee notes that implementation of the recommendations is ongoing.

8.0 REPORT ON PAYMENT OF TERMINAL DUES TO THE FORMER EMPLOYEES OF PAN PAPER MILLS COMPANY

8.1 Background

93. The public Petition on the payment of terminal dues to the former employees of the pan paper Company Limited was presented to the National Assembly by the Hon. Patrick Wangamati, M.P under Standing Order 225(2) on 1st December 2015.

94. The Petitioners prayed that the National Assembly:

- (i) Recommends payment of the final dues to all former employees
- (ii) Ensures that the Petitioner's plight is addressed; and
- (iii) Makes any other order and/or direction that it deems fit in the circumstance of the case.

8.2 Recommendations by the Departmental Committee on Finance and National Planning

95. The Departmental Committee on Finance and National Planning made the following recommendations:

- (i) The Government of Kenya, through the Ministry of Industry, Trade and Cooperatives in conjunction with the National Treasury expedites the compilation of the authentic list of all former employees of the Pan Paper Mills Company Limited within three months of the tabling of the report;
- (ii) The Government of Kenya, through the Ministry of Industry, Trade and Cooperatives and the National Treasury computes the final dues of the former employees of Pan Paper Mills Company Limited to pay them as provided for under section 66 of the Employment Act, 2012 and other related legislation; and
- (iii) The Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for payment of terminal dues to the employees of the Pan Paper Mills Company Limited.

8.3 Submission by the Ministry of Industrialization, Trade and Enterprise Development

96. The Ministry vide a letter Ref: MITED/SDI/1/26 dated 26th April 2021 apprised the Committee of the implementation status of the report of the Departmental Committee on Finance and National Planning regarding the petition on payment of terminal dues to the former employees of Pan Paper Mills Company Limited.

97. In her submission, the Cabinet Secretary clarified that the Ministry of Industrialization was not involved in the payment of terminal dues of former employees of Pan Paper Company Limited. The payment was undertaken by the

GoK-appointed Joint Receiver and Manager Munio Thoithi and Kuria Muchiru PWC. The details and particulars of the former employees who received the payment were not made available to the Ministry.

98. The Cabinet Secretary for Industrialization vides a letter dated 22nd March 2022 indicating that various negotiations and correspondence between the Ministry, the Receiver Manager representing the former employees and Pan Paper Company Limited, and representatives of the former employees have established that the total amounts owed to the former employees (after reconciliation of the payments) was Kshs. 229,290,192.
99. The Ministry requested additional funding for Kshs. 229,290,192 to process compensation to the former employees of Pan Paper Company Limited in the current budget to dispense with this long outstanding matter.
100. The request for the additional funding was not approved during the consideration of the Budget Estimates for the Financial Year 2022/2023.

8.4 Submission by the National Treasury and Planning

101. The National Treasury vide a letter Ref: RES 1175/20/01 'A' (32) dated 21st April 2021 apprised the Committee on the implementation status of the report of the Departmental Committee on Labour & Social Welfare regarding the petition on payment of terminal dues to the former employees of Pan Paper Mills Company Limited.
102. The National Treasury only plays a facilitative role through the allocation of financial resources requested by Ministries, Departments, and Agencies for underwriting their expenditures. The actual payment of dues owed to public officers is the responsibility of relevant Ministries, Departments, and Agencies.
103. The National Treasury was not in a position to determine and compile the list of eligible former employees of the then Pan Paper Mills Company. In this regard, the State Department for Industrialization should compile the list of the former employees and submit it to Parliament.
104. Given the above, the National Treasury recommended that the State Department of Industrialization should determine the amount due to the former employees of Pan Paper Mills Limited for consideration by the National Treasury within the prevailing legal framework.
105. The National Treasury vide a letter dated 1st March 2022 reiterated the need by the Ministry of Industrialization, Trade and Enterprise Development to prioritize the payment of the terminal dues within the ceilings approved in the 2022 Budget Policy Statement.

8.5 Submission by Joint Receiver and Manager

106. The Pan Paper Mills (East Africa) Limited (in Receivership) vide a letter Ref. X21G30EOo1 dated 30th July 2021 provided the following regarding payment to former employees.
107. The Company has been under receivership since 19th March 2009. Following a rigorous marketing exercise, the Receivers sold the assets of PPM to a new investor, Tarlochan Limited. The Receivers officially handed over the Company's assets to the new investor on 9th May 2016. The new management, trading as Rai Paper, is now in charge of the operation.
108. In an insolvency scenario, as per the old Companies Act (chapter 486), creditors are paid from the proceeds of realization of company assets in the order of priority of receivership expenses, preferential creditors, secured creditors, and unsecured creditors; to which the unpaid dues of the employees fell.
109. As of 19th March 2009 when the receivers were first appointed, there were 1,349 employees on the payroll of the company. The final dues calculated as per the Employment Act amounted to Kshs. 229,033,327, of which the preferential portion was Kshs. 16,773,170. The receivers fully settled the preferential component of employees' claims in 2009 in accordance with the Companies Act and the applicable insolvency laws which amounted to Kshs. 16,773,170. The unsecured component of employees' claims, like all PPM's unsecured claims, could not be paid as no funds were available from the proceeds of the sale of the Company's assets to settle any unsecured creditor claims.
110. However, in 2017, the GoK offered to make an ex-gratia payment to former employees of the company that was in employment at the time it was placed in receivership, i.e. as of 19th March 2009. The ex-gratia payment was based on the former employees' three months' salary, net of PAYE, based on the records obtained from the Company's officers upon the appointment of Receivers in 2009. It should be noted that this was not a legal obligation or requirement given the circumstances of the Company as is the case with all other insolvency cases.
111. The government made an ex-gratia payment of Kshs. 74,575,440. The payments were made in 6 tranches to the employees between 12 June 2017 and 5 July 2018. To date, 18 employees have not come forward to claim their ex-gratia payments and a balance of Kshs. 1, 143,621 is awaiting disbursement from the original amounts set aside by the GoK.
112. The Joint Receiver and Manager submitted that they have provided the list of the 349 employees to the Ministry of Industrialization, Trade, and Enterprise Development.

8.6 Committee Observations

113. The Committee notes that the recommendation requiring the Government of Kenya, through the Ministry of Industry, Trade and Cooperatives in conjunction with the National Treasury to expedite the compilation of an authentic list of all former employees of the Pan Paper Mills Company Limited has been implemented.
114. As regards the payment of terminal dues, the Committee notes that this has not been fully done over five years since the resolutions were made. The Ministry of Industrialization, Trade, and Enterprise Development have cited a lack of financial resources to implement the resolution.
115. The government made an ex-gratia payment of Kshs. 74,575,440 to the former employees of the Pan Paper Mills Company Limited between 12 June 2017 and 5 July 2018.

8.7 Committee Recommendation

116. The National Assembly should approve the allocation of additional Kshs. 229 million to the Ministry of Industrialization, Trade, and Enterprise Development during the First supplementary for the Financial Year 2022/2023.

9.0 REPORT OF THE DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE REGARDING IMPROVED TERMS FOR PENSIONERS IN KENYA

9.1 Background

117. The Honourable Speaker of the National Assembly pursuant to Standing Order 225 (2) conveyed a petition on behalf of the Kenya Association of Retired Officers, on Thursday 27th February 2020, regarding the improvement of terms and conditions of pensioners in Kenya. The petition was referred to the Departmental Committee on Labour & Social Welfare, which tabled its report before the House on 3rd December 2020.

9.2 Submissions from the Ministry of Health

118. The Ministry of Health vide letter Ref. MOH/ADM/NA/01/93 VOL. VI/23 dated 4th March 2021 provided a comprehensive report on the implementation status of the report of the Departmental Committee on Labour and Social Welfare on its consideration of the petition by the Kenya Association of Retired Officers regarding improved terms of Pensioners in Kenya.

119. The National Hospital Insurance Fund (NHIF) is currently providing comprehensive medical covers to public servants under the Civil Service, County Governments, County Assemblies, National Police Service, Kenya Prisons Service, State Departments, and Constitutional Commissions. In addition, NHIF is also currently providing comprehensive medical covers to retired public servants who opt to purchase such covers from the national health insurance upon retirement. Comprehensive medical covers are enhanced through the National Health Scheme which is available for all NHIF beneficiaries.

120. Beneficiaries of the comprehensive medical covers are covered during their active service and up to the time of exit of the employee from the public service after which they revert to the National Health Scheme where they are expected to contribute to NHIF Kshs. 6,000 per annum to access the NHIF National Health Scheme's Supa Cover. Super Cover is not comprehensive for the whole range of healthcare needs offered by all healthcare providers, except in public healthcare providers where members can access comprehensive coverage to a great extent.

121. Retirees have to voluntarily enroll with NHIF upon retirement to access Supa Cover. Currently, there is no structured arrangement for such beneficiaries to be enrolled in comprehensive medical covers by their pension funds.

122. To ensure retired public servants maintain a quality of life as they had during employment and as envisaged in Article 43 of the Constitution, it will be prudent to establish a post-retirement medical scheme. A proposal is made for public servants to contribute while in service so that they can be covered comprehensively upon retirement. Through Legal Notice No. 192 of 2018, Retirement Benefits Authority issued guidelines on Post-Retirement Medical Funds which guide the process of establishing post-retirement medical schemes for public servants both at the National and County Governments. For instance, a defined contribution scheme where an amount to be contributed to the post-retirement medical funds would be dependent on the number of years remaining to retirement and whether the Government would determine subsidies to the retirees.
123. A survey done for the Civil Servants Comprehensive Medical Scheme in 2017 showed that about 85% of the civil servants were in support of having a post-retirement medical cover.
124. Currently, NHIF is managing comprehensive medical schemes for two retired public servants' associations namely: the Kenya Association of Retired Officers (KARO) with 1,415 retired public servants and the Former Parliamentarians Association (FoPA). Members of these schemes are required to pay annual premiums depending on the desired scope of coverage.
125. Previously, NHIF ran comprehensive medical schemes for retired public servants under the Central Bank of Kenya Pensions Fund (CBK-PF), KenGen Pensions Fund, and Kenya Power Pensions Fund; however, the three schemes were terminated following the restrictions in the Insurance Act.
126. Following Gazette Notice No. 4240 of 12th June 2020 through which exemptions were given allowing NHIF to offer comprehensive Medical Schemes to public institutions and retired public servants, NHIF has received requests for renewal of these three schemes and two requests from the Kenya Ports Authority Pensions Fund and the National Association of Retired Police Officers-Kenya.

Conclusion

127. NHIF has successfully been managing the Civil Servants Comprehensive Medical Schemes since 1st January 2012 and is also running 35 other comprehensive medical schemes for different public institutions including the National Police Service, the Kenya Prisons Service, and the Office of Director of Public Prosecutions, eighteen (18) County Governments among others. With experience spanning over 50 years of managing health insurance needs for more than 9.8 million members covered currently besides the dependants, NHIF has the

experience and fully established structures and systems necessary to manage post-retirement medical schemes for all public servants in the Country.

128. In this regard, mechanisms need to be put in place in line with the Legal Notice No. 192 of 2018 of the Retirement Benefits Authority such that employees can make contributions during their active public service for comprehensive medical covers upon retirement. For the public servants already on retirement mechanisms need to be put in place for direct deduction from their monthly pensions by their pension funds and the same is remitted to NHIF for cover.

129. NHIF would be best suited to offer such a post-retirement medical cover due to affordable premiums, wide benefits coverage, a vast network of service points and an extensive network of over 8,200 empanelled healthcare providers where retirees can access quality healthcare services.

Submissions by the National Treasury

130. The National Treasury appeared before the Committee on Thursday 9th December 2021; Thursday 10th March 2022, and further provided written submissions regarding the implementation status of the report of the Departmental Committee on Labour & Social Welfare on its consideration of the petition on improved terms for pensioners in Kenya.

Recommendation 1: *The Cabinet Secretary for National Treasury and Planning should fast-track the ongoing process of the development of the National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country.*

Implementation Status

131. The National Treasury retained a consultant to work with the teams appointed in the realization of the National Retirement Benefits Policy. The Consultant has prepared an inception report, a draft situational & gaps analysis report to be reviewed by the Inter-agency Taskforce and a draft revised National Retirement Policy & attendant legislation in consultation with the Inter-agency Taskforce.

132. However, the Cabinet is yet to approve the policy, and programming for its implementation is dependent on the budget considering that the country was working on a tight fiscal framework.

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

Implementation Status

133. A review of the public service pension laws has commenced under the banner of the transformation of the public service pension ecosystem initiative of the National Treasury and Planning. The Initiative has three thematic areas, one of which is to review the public pension legal framework to bring it into tandem with current times.
134. The National Treasury has constituted a Multi-Agency Taskforce on the transformation of the Public Service pension arrangement. One of the Taskforce's terms of reference is the review of the Pensions Act, Cap 189, and the Pensions Increase Act, Cap 190. The Taskforce has commenced its work and held a workshop in Nakuru in March 2022.

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

Implementation Status

135. A Post-Retirement Medical Insurance Policy and guidelines have been prepared by the State Department for Public Service in the Ministry of Public Service, Gender, Senior Citizens Affairs, and Special Programmes. A public participation forum on medical policy was held at the Kenya School of Government on 2nd March 2021.
136. The implementation of the policy will be preceded by an actuarial study that is proposed in the fourth quarter of the current Financial Year.
137. Additionally, on 3rd March 2021, the Cabinet Secretary for National Treasury requested the Cabinet Secretary for Health to consider any possible assistance, through the NHIF, for low earning pensioners, noting that as of 1st February 2021 a total of one thousand six hundred eighty-seven (1687) pensioners were earning less than Kshs. 5,000 monthly.
138. The Post-retirement Medical Policy is due for consideration by the Cabinet.

***Recommendation 4:** The Cabinet Secretary for the National Treasury and Planning should implement the recommendations of the SRC on pensions increase policy as contained in the public sector remuneration and benefits policy 2015, launched by his Excellency the President*

in June 2015 and submitted to the National Treasury for implementation, should be executed equitably to ensure it does not perpetuate further disparity.

Implementation Status

139. The National Treasury continues to effect the biennial 3% increase of pension in payment according to the Pension Increase Act, Cap 190. The most recent increment was done on 1st July 2021.

140. The National Treasury remains alive to the recommendations of the SRC to embrace the spirit of the recommendations as and when the fiscal space allows.

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

Implementation status

141. The National Treasury communicated with the Ministry of Labour to establish collaboration in the consideration of this recommendation and the consultations are ongoing.

142. On 3rd March 2021, the National Treasury gave the Ministry of Labour documentation of the pensioners earning less than Kshs. 4,000 for their consideration in the planning for MTEP 4 and beyond, noting that as of 1st February 2021 a total of nine hundred seventy-seven (977) pensioners were earning less than Kshs. 4,000 monthly.

Recommendation 6: *The Cabinet Secretary for the National Treasury should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) to manage and administer pensions and with a wider mandate of developing and implementing the pension policy for the public service that would address the issues of fairness, adequacy, affordability, and sustainability of pension benefits. In line with the ILO recognition of pensions as a form of social security, the Government should in the long run consider domiciling the management of the retirement benefits sector under the State Department for Social Protection together with other social protection initiatives.*

Implementation status

143. In improving the management of pensions, the National Treasury enhanced the capacity of the Pensions Department through; the appointment and training of 100 new Pension Officers and reinvigorated the electronic Pension Management System for enhanced efficiency.

144. An invitation for bids for an end-to-end ERP solution for the Pensions Department was published on 25th January 2022. Further, Tender evaluation has commenced following the opening of the bids on 1st March 2022.
145. On 29th October 2021, the National Treasury constituted a Multi-Agency Taskforce on the Transformational Change in the Public Service Pension Arrangement with the main objective of realizing a transformed public service pension sector that is technologically driven.
146. To enhance the administration of the public service pension arrangement, the National Treasury & Planning is working closely with the Public Service Commission to enable the deployment of technical pension officers to all MDAs.
147. The National Treasury has deployed the Pension Management Information System (PMIS) to the Teachers Service Commission and the National Police Service for the initial processing of the pension claims. Additionally, a total of 32 pension officers have been posted to the two institutions.
148. The National Treasury has staffed all the 52 Huduma Centres with qualified personnel and packed with a real-time PMIS to attend to all customer inquiries.
149. The Kenya Association of Retired Officers appreciated improved efficiency at the Pensions Department and informed the Committee that pensions were disbursed promptly.

9.3 Committee Observations

150. The Committee notes that the implementation of most of the resolutions is ongoing. However, the Committee notes with concern that the National Treasury is yet to implement the recommendation regarding *the implementation of the recommendations of the SRC on pensions increase policy as contained in the public sector remuneration and benefits policy 2015*.
151. During deliberations, it emerged that there has been a remarkable improvement in efficiency at the Pensions Department in the National Treasury. It also emerged that pensions are now disbursed promptly.

9.4 Committee Recommendations

152. The National Treasury should tabulate the funds needed to carry out a one-off pension increase payment and submit it to the National Assembly within sixty (60) days of the tabling of the report.
153. The Cabinet Secretary for Health in consultation with the management of the National Hospital Insurance Fund does streamline operations at the Fund to reduce delays of payment to hospitals for medical services, clearly outlines ailments covered by the National Hospital Insurance Fund, and considers the inclusion of more age-related ailments to be covered by the Fund.

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

10.1 Background

154. The Report of the Special Funds Accounts Committee on its consideration of the Audited Financial Statements for the National Government Constituencies Development Fund, for Constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15, and 2015/16, was adopted by the House in July 2019. The Select Committee on Implementation wrote to request the status of implementation on 20th September 2020 and again on 18th November 2021.

10.2 Implementation status

155. Mr. Yusuf Mbuno, Chief Executive Officer (CEO), and other officials from the National Government Constituencies Development Fund appeared before the Committee on 30th November 2021, to apprise it of the implementation status of the Second Report of the Special Funds Accounts Committee, on Audited Financial Statements for the National Government Constituencies Development Fund, for Constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15 and 2015/16.

156. The CEO appraised the Committee as follows: -

Recommendation 1: The National Treasury expedites the process of quarterly disbursements of funds to the National Government Constituencies Development Fund Board for timely release to constituencies

Implementation Status

157. That the Board in liaison with the National Assembly Select Committee on CDF continually engages the National Treasury for prompt release of funds. The disbursement of funds has significantly improved in the financial year 2021/2022.

158. The NG-CDF Board releases monies to the constituencies based on amounts received from the Treasury and the National Treasury disbursed over 90% of the funds so far. The Board received Ksh. 44 million for the 1st quarter and Ksh. 23 million for the 2nd quarter in the current financial year, which was released to the constituencies.

159. The disbursement of funds depends on the status of approval of projects and so far over 80% of constituencies received their money.

160. In the financial year 2020/2021, some constituencies did not receive their money due to pending arrears and failure to receive funds from Treasury despite submitting project proposals.

Committee Observation

161. This is an ongoing matter. The Committee however noted that at the time of the meeting (December 2021) the Board had disbursed 90% of the Fund to the Constituencies. The Committee was assured the pending disbursements would be completed by March 2022.

Recommendation 2: The National Treasury factors an amount of Ksh. 4,976,750,000 being the previous year's underfunding in the supplementary budget for the financial year 2018/19 as additional allocation to the NG-CDF Board

Implementation Status

162. The Board submitted the request to the National Treasury through the State Department for Planning. Further, the Board presented the issue to the National Assembly Select Committee on CDF. Through a motion, the NG-CDF Committee presented the matter to the National Assembly which resulted in a House resolution that the arrears be included in the financial year 2021/2022 supplementary budget.

163. The Board will disburse all pending arrears once the supplementary budget is received from Treasury.

Recommendation 3: The NG-CDF Board issues an administrative circular directing Fund Account Managers to comply with the provisions of the Constitution of Kenya, 2010, the Public Audit Act No. 34 of 2015, the Public Finance Management Act No. 18 of 2012, and Public Procurement and Asset Disposal Act No. 33 of 2015

Implementation Status

164. The Committee was informed that the Board has issued circulars directing FAMs to comply with the provisions of the Constitution of Kenya 2010, Public Audit Act No. 34 of 2015, Public Finance Management Act No. 18 of 2012, and Public Procurement and Asset Disposal Act No. 33 of 2015. The circulars also require the FAMs to maintain Project Management Committee files as per the recommendation. The Board continues to enforce compliance through annual training, monitoring and evaluation, internal audits, and systems checks.

Committee Observation

165. This resolution has been implemented.

Recommendation 4: The NG-CDF Board reviews guidelines on the issuance of bursaries to enhance efficiency and fast-track adoption of electronic funds transfer in the disbursement of bursaries

Implementation Status

166. The Chief Executive Officer submitted that guidelines on bursary fund, which incorporates electronic funds transfers, have been approved and issued to constituencies. The Board continues to enforce compliance through monitoring and evaluation, internal audits, and systems checks and prioritize capacity building for fund managers.
167. The Board encouraged constituencies to use electronic funds transfers so that monies are directly accredited to accounts of those institutions to minimize misplaced cheques.
168. He added that the Board developed the NG-CDF management information system, a platform for constituencies to submit their project proposals and tracking bursaries through the system and project code list generated for AIEs. He however added that the main challenge was that some constituencies insisted on the issuance of cheques through a public forum.

Committee Observation

169. The Committee notes that this recommendation has been implemented.

Recommendation 5: The National Government Constituencies Development Fund Board in consultation with the Public Sector Accounting Standards Board conducts continuous capacity building on financial reporting standards for constituency staff.

Implementation Status

170. Capacity building targeting Fund Account Managers, National Sub-County Accountants, and Constituency Committee Chairpersons on Financial Reporting Standards is done annually upon a needs assessment. The Board has also involved sub-county accountants in the preparation of the financial statements which has reduced challenges in financial reporting.

Committee Observation

171. The Committee notes that this recommendation has been implemented.

Recommendation 6: The Board takes administrative action against Fund Account Managers who reallocated funds contrary to the NG-CDF Act, 2015

Implementation Status

172. The Chief Executive Officer submitted that administrative action has been taken against the affected Fund Account Managers. Further, the Board has intensified internal audits and put up a mechanism to expeditiously act on officers who flout all relevant laws and regulations including reallocation of funds without the approval of the Board.

Committee Observation

173. The Committee notes that implementation of the resolution is ongoing.

Recommendation 7: The Board publishes a list of all incomplete and/or stalled projects initiated by the former Constituency Development Fund Board before the enactment of the National Government Constituencies Development Fund Act, 2015

Implementation Status

174. The Board has compiled a report on incomplete and stalled projects for publishing and initiated a mechanism for the completion of such projects.

Recommendation 8: The Board adopts and implements electronic monitoring and evaluation systems and tools to monitor all projects in the Constituencies and have them linked to the electronic National Government monitoring and evaluation systems.

Implementation Status

175. The Board has developed Management Information System and Enterprise Risk Management Systems for effective monitoring and evaluation. The rollout is ongoing and FAMs have been trained on utilization. Project proposals for the 2018/2019 and 2019/2020 financial years were submitted to the Board's Management Information System. The Board has been monitoring the utilization of the systems.

Recommendation 9: The NG-CDF Board in consultation with the National Treasury and Planning and other relevant authorities expedite the completion of all incomplete and/or stalled projects

Implementation Status

176. The Board has implemented the recommendation by ensuring that constituencies do not start new projects before setting funds for the ongoing projects or committing by a minute to set aside funds in the 2018/2019 and 2019/2020 Financial Years.

177. For projects falling under County Government functions, the Board has compiled a report on their status including the cost of completing the pending works. The report was completed and shared with the National Assembly Select Committee. In consultation with NASC, a meeting bringing together the Council of Governors and State Department for Planning was held to deliberate on mechanisms of completing the projects. Discussions are ongoing.

Recommendation 10: The NG-CDF Board recovers all outstanding imprest from defaulting officers with an interest at the prevailing Central Bank rate as provided under Article 226(5) of the Constitution of Kenya, 2010

Implementation Status

178. The Board has put in place mechanisms to ensure imprests are duly surrendered. Further cases of imprest defaulters are continuously identified through the Board's internal audit and recovery instituted through the payroll and paid back to the respective constituencies.

Recommendation 11: The NG-CDF Board provides a status report to the National Assembly on the transfer of assets and liabilities amongst constituencies following the delimitation of constituency boundaries that resulted in the creation of the 290 constituencies in Kenya

Implementation Status

179. The Board in a circular dated 16th April 2013 guided the constituency committees on how to transfer assets and liabilities between the parent and newly created Constituencies. The circular provided, inter alia, that:

- (i) The parent constituency shall assume custody of all the assets held by the CDFC before it was split;
- (ii) Each of the constituencies resulting from the split shall assume oversight and control of projects (whether proposed, ongoing, or stalled) falling within its boundaries. Reallocation of funds from any of the projects during the transition period was discouraged.
- (iii) Funds for projects located in the new constituencies were disbursed to the constituency account of the parent constituency with fund account managers under the instruction to ensure projects located in the new constituencies were implemented as per approval.

180. The affected constituency committees, with the guidance of the Board, resolved teething issues experienced during the transition. The Board has sought information from the affected constituencies on the status of the transfer of assets and liabilities following the delimitation of constituency boundaries that resulted in the creation of the 290 constituencies in Kenya. The report is being finalized and the CEO undertook to provide it to the National Assembly within two weeks.

Recommendation 12: The Cabinet Secretary for National Treasury and Planning establishes the office of the Regional Accountant to support Fund Account Managers in Nairobi City County

Implementation Status

181. The Board engaged the National Treasury on the matter resulting in the National Treasury establishing four National Sub-County Treasuries in Dagoretti, Kamukunji, Kasarani, and Embakasi to serve the 17 Constituencies in Nairobi.

Recommendation 13: The NG-CDF Board reviews its policy on renewal of contracts for Fund Account Managers to provide for clearance of outstanding audit queries raised in reports of the Auditor-General in constituencies they are engaged in before effecting any transfers or deployment

Implementation Status

182. The Board has implemented the recommendation. All requests for renewal of contract are reviewed with regard to the outstanding audit queries both internal and external and also project issues.

Recommendation 14: The NG-CDF Board fills existing vacancies for Fund Account Managers and Regional Coordinators

Implementation Status

183. The Board has developed an appropriate structure to ensure implementation of the recommendation and secured the approval of the national government to commence the recruitment of staff.

Recommendation 15: The NG-CDF Board adheres to its deployment policy on the maximum number of years that Fund Account Managers should be engaged in a constituency

Implementation Status

184. The Board has progressively implemented its deployment policy.

Recommendation 16: The Cabinet Secretary for National Treasury and Planning appoints seven other persons to the NG-CDF Board as provided under Section 15(1) of the NG-CDF Act, 2015

Implementation Status

185. The resolution was implemented. The Board of Directors was appointed for a period of three years with effect from the 26th March 2019.

Recommendation 17: The NG-CDF Board fills the position of the Chief Executive Officer

Implementation Status

186. The position was filled with effect from 7th May 2020 for a three-year term.

Recommendation 18: The NG-CDF Board restructures its operations to decentralize its services in the regions

Implementation Status

187. The Board has developed an appropriate structure and is in liaison with other government agencies to ensure the implementation of the recommendation.

Recommendation 19: The NG-CDF Board reviews its policy on withholding funds for Constituencies with a balance of Ksh. 10 million and above in their account

Implementation Status

188. The Board has commenced implementing the recommendation and will analyze it to determine a further threshold.

Committee Observation

189. The Committee notes that implementation of the recommendation is ongoing.

Recommendation 20: The Ethics and Anti-Corruption Commission expedites investigations into these matters and furnishes a status report on the investigations to the National Assembly

Implementation Status

190. This Committee was yet to receive submissions from the Ethics and Anti-Corruption Commission at the time of writing the report.

Recommendation 21: The NG-CDF Board suspends Fund Account Managers and any other officer of the Board who are under investigation by the EACC until these investigations are completed

Implementation Status

191. The Board has taken administrative action on all officers under investigation and/or charged in court. The procedure is provided for in the HR manual and the Public Officers Ethics Act.

Committee Observation

192. The Committee notes that this recommendation has been implemented.

11. COMMITTEE OBSERVATIONS

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

- (i) Some of the House resolutions were not accompanied by the requisite budget hence making it difficult for Ministries, Departments, and Agencies to implement them.
- (ii) Some Agencies were not able to follow up on and implement some recommendations of the House due to the outbreak of the Covid-19 pandemic.

12. COMMITTEE RECOMMENDATION

194. The Committee recommends that the respective committees and the House should consider the financial implications of resolutions before committing them for implementation; and should allocate adequate funds to the implementing agencies.

Signed..... Date..... 7th June, 2022.

Hon. Moitalel Ole Kenta, MP

Chairperson, Committee on Implementation

 THE NATIONAL ASSEMBLY	
P. 0	
DATE: 08 JUN 2022	
TABLED BY:	
CLERK-AT THE TABLE:	

Annex I

Minutes of the Committee

**MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON IMPLEMENTATION
HELD ON TUESDAY, 7TH JUNE, 2022, IN 5TH FLOOR COMMITTEE ROOM,
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 A.M.**

PRESENT

1. The Hon. Moitalel Ole Kenta, MP – **Chairperson**
2. The Hon. Godfrey Osotsi, MP – **Vice Chairperson**
3. The Hon. Alois Musa Lentoimaga, MP
4. The Hon. Benjamin Dalu Tayari, MP
5. The Hon. Gabriel Kago Mukuha, MP
6. The Hon. (Dr.) James Kipkosgei Murgor, MP
7. The Hon. Feisal Bader, MP
8. The Hon. Jared Okello, MP
9. The Hon. Hassan Hulufu, MP
10. The Hon. Joash Nyamache Nyamoko, MP
11. The Hon. John Njuguna Wanjiku, MP
12. The Hon. Joshua Mbithi Mwalyo, MP

ABSENT WITH APOLOGIES

1. The Hon. Paul Simba Arati, MP
2. The Hon. Johnson Many Naicca, MP
3. The Hon. John Muchiri Nyagah, M.P
4. The Hon. Richard Onyonka, MP
5. The Hon. Moses Kuria, MP
6. The Hon. Nelson Koech, MP
7. The Hon. Paul Odalo Abuor, MP
8. The Hon. Charles Ngusya Nguna, MP
9. The Hon. Peter Kihara, MP
10. The Hon. Michael Kingi, MP
11. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Ms. Tracy Chebet Koskei | - | Senior Clerk Assistant |
| 2. Mr. Abdirahman Hassan | - | Second Clerk Assistant |
| 3. Dr. Donald Manyala | - | Research Officer II |
| 4. Ms. Jane Serem | - | Audio Officer |

MIN.NO.NA/COI/2022/034: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten o'clock (10.20 a.m.) and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. Joshua Mbithi Mwalyo, MP, and the Hon. Jared Okello, MP, respectively.

MIN.NO.NA/COI/2022/035: CONFIRMATION OF THE PREVIOUS MINUTES

Minutes of the Ninth Sitting held on Tuesday, 17th May, 2022 were confirmed as a true record of the proceedings having been proposed by the Hon. Godfrey Osotsi, MP and seconded by the Hon. John Njuguna Wanjiku, MP, respectively.

MIN.NO.NA/COI/2022/036: MATTERS ARISING

There were no matters that arose from the confirmations of the Minutes of the previous Sitting.

MIN.NO.NA/COI/2022/037: CONSIDERATION AND ADOPTION OF THE FIFTH REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF INQUIRIES, PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee considered and adopted the Fifth Report on submissions from stakeholders regarding the implementation status of inquiries, petitions and resolutions passed by the House, having been proposed and seconded by the Hon. Hassan Hulufu, MP and the Hon. Joash Nyamache Nyamoko, MP, respectively.

The Committee made the following observations and recommendations:

Observations

- 1) A majority of the House resolutions require financial obligations for adequate implementation to be carried out by the Executive, thus there is a need for the appropriation of funds to ensure House resolutions are implemented as directed; and
- 2) Government officials in the Executive seem not to be implementing House resolutions promptly thus causing matters to delay unnecessarily longer.

Recommendations

- 1) The National Treasury should ensure appropriation of funds for implementation of House resolutions is done within one financial year following the adoption of a House resolution for the public to derive the intended benefit; and
- 2) Government Agencies and Departments directed to implement a House resolution should endeavor to fit in their work plans and deliver within the stipulated timeframe, failure to which sanctions shall be imposed on the responsible officials.

**MIN.NO.NA/COI/2022/038: CONSIDERATION AND ADOPTION OF THE SIXTH
REPORT ON SUBMISSIONS FROM STAKEHOLDERS
REGARDING THE IMPLEMENTATION STATUS OF
INQUIRIES, PETITIONS AND RESOLUTIONS PASSED BY
THE HOUSE**

The Committee considered and adopted the Fifth Report on submissions from stakeholders regarding the implementation status of inquiries, petitions and resolutions passed by the House, having been proposed and seconded by the Hon. Hassan Hulofo, MP and the Hon. Alois Musa Lentoimaga, MP, respectively.

The Committee made the following observations and recommendation:

- 1) Some of the House resolutions were not accompanied by the requisite budget hence making it difficult for Ministries, Departments, and Agencies to implement them; and
- 2) Some Agencies were not able to follow up on and implement some recommendations of the House due to the outbreak of the Covid-19 pandemic.

The Committee subsequently recommended that respective committees and the House should consider the financial implications of resolutions before committing them for implementation; and should allocate adequate funds to the implementing agencies.

**MIN.NO.NA/COI/2022/039: REPORT ON IMPLEMENTATION STATUS OF THE
REPORT OF THE PUBLIC INVESTMENTS COMMITTEE
ON CONSIDERATION OF THE SPECIAL AUDIT REPORT
ON PROCUREMENT OF PRE-EXPORT VERIFICATION
OF CONFORMITY (PVOC) TO STANDARD SERVICES
FOR USED MOTOR VEHICLES, MOBILE EQUIPMENT
AND USED SPARE PARTS BY THE KENYA BUREAU OF
STANDARDS**

The Committee considered and adopted the Report on implementation status of the Public Investments Committee on consideration of the special audit report on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards, having been proposed and seconded by the Hon. Joshua Mbithi Mwalyo, MP and the Hon. Feisal Bader, MP, respectively.

The Committee made the following observations and recommendation:

Observations

- 1) MD KEBS, Lt. Col (Rtd.) Bernard Njiraini obtained orders staying implementation of the PIC recommendations against himself as a person and is still in office;
- 2) PPRA established that there was a prima facie case for debarment of M/S EAA Company Limited and M/S Auto Terminal Japan Limited in accordance with regulation 22(5) (a) of the Public Procurement and Asset Disposal Regulations, 2020 and the Debarment Committee had

already issued a Notice of Intended Debarment for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015; and

- 3) The Directorate of Criminal Investigations has carried out investigations and forwarded the file to the Office of the Director of Public Prosecution recommending action against M/S EAA Company Limited and M/S Auto Terminal Japan Limited.

The Committee subsequently recommended that the Office of the Director of Public Prosecutions expedite the process of preferring charges against both M/S EAA Company Limited and M/S Auto Terminal Japan.

MIN.NO.NA/COI/2022/040: CONSIDERATION AND ADOPTION OF THE LEGACY REPORT FOR THE SELECT COMMITTEE ON IMPLEMENTATION FOR THE PERIOD 2017-2022

The Committee considered and adopted the Committee's Legacy Report for the period 2017-2022, having been proposed and seconded by the Hon. Godfrey Osotsi, MP and the Hon. Benjamin Dalu Tayari, MP, respectively.

The Committee made the following recommendations:

- 1) The House should consider financial implications of resolutions before committing them for implementation, and should allocate adequate funds to the implementing bodies.
- 2) The National Assembly should develop an online tracking tool for the implementation of House resolutions as a matter of priority for effective follow up of implementation of House resolutions.
- 3) The National Assembly should enhance its scrutiny of Laws, resolutions and motions to ensure that resolutions passed are implementable.
- 4) The House and by extension committees should ensure that all resolutions passed are SMART, to ensure that they are implemented and for effective follow up of the same.

MIN.NO.NA/COI/2022/041: ADJOURNMENT

The meeting was adjourned at Quarter to one O'clock (12:45 p.m.).

Sign.....

Date.....

Hon. Moitalel Ole Kenta, MP - Chairperson

Annex II

Adoption List

The National Assembly



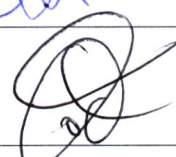
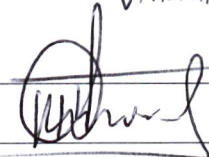
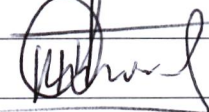
12th Parliament–6th Session-2022

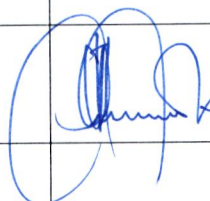
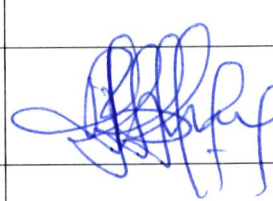
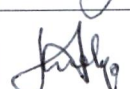
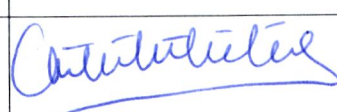
Committee on Implementation

We, the Members of the Committee on Implementation, have pursuant to Standing Order 199 adopted the 6th Report on Submissions from stakeholders regarding implementation status of Legislations, Petitions and Resolutions passed by the House. We affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

venue: 5th floor Committee Room, Continental House

Date: Tuesday 7th June 2022

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP – Chairperson	
2.	The Hon. Godfrey Osotsi, MP – Vice Chairperson	
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	
5.	The Hon. Moses Kiarie Kuria, MP	
6.	The Hon. Feisal Abdalla Bader, MP	Virtually
7.	The Hon. (Dr.) James Kipkosgei Murgor, MP	Virtually 
8.	The Hon. Gabriel Kago Mukuha, MP	

9.	The Hon. Johnson Many Naicca, MP	
10.	The Hon. Joash Nyamache Nyamoko, MP	
11.	The Hon. John Muchiri Nyagah, MP	
12.	The Hon. Paul Simba Arati, MP	
13.	The Hon. Charles Ngusya Nguna, MP	
14.	The Hon. Benjamin Dalu Tayari, MP	
15.	The Hon. Peter Kimari Kihara, MP	
16.	The Hon. Hassan Oda Hulufo, MP	
17.	The Hon. Jared Okello, MP	
18.	The Hon. Joshua Mwalyo Mbithi, MP	
19.	The Hon. Michael Thoya Kingi, MP	
20.	The Hon. Nelson Koech, MP	
21.	The Hon. John Njuguna Wanjiku, MP	
22.	The Hon. Paul Abuor, MP	
23.	The Hon. Silvanus Osoro, MP	

Committee Clerk

Name..... Tracy Chebet Koskei

..... E. Koskei
(Signature)

Date..... 07/06/2022

Annex III

**Submission by the Ministry of Interior and Coordination of
National Government on the implementation status of the Report of
the Departmental Committee on Lands on its consideration of the
Public Petition by East Mau Forest Evictees regarding settlement of
East Mau Forest Evictees**

**STATEMENT ON THE IMPLEMENTATION STATUS OF THE PETITION
REGARDING RESETTLEMENT OF EAST MAU FOREST EVICTEES**

Honourable Chair, the Committee on Implementation has sought to be apprised on the implementation status of the report of the Departmental Committee on Lands on its consideration of a public petition regarding resettlement of East Mau forest evictees.

The Committee on Land had recommended the profiling and vetting of the petitioners with a view of establishing the veracity of their claims.

Honourable Chair, the Environment and Land Court issued conservatory orders on 18th December, 2020, prohibiting any person from conducting land audits, adjudication, surveys, placing beacons on land or any similar or related acts, including issuance of land titles in Eastern Mau either on 11th December 2020 or any date thereafter. The orders are in effect until further orders of the court and/or until the consolidated petitions are fully heard and determined. I wish to table a copy of the court orders.

The matter is thus in court and owing to the conservatory orders, any activities related to the resettlement of the East Mau forest evictees will be considered contempt of court.

Thank you, **Honourable Chair**.



FRED MATIANG'I, PhD, EGH

CABINET SECRETARY

MINISTRY OF INTERIOR AND

COORDINATION OF NATIONAL GOVERNMENT

17th February, 2022

Annex IV

Submission by the Ministry of Interior and Coordination of National Government on the implementation status of the Report of the Departmental Committee on Administration and National Security on its consideration of the Public Petition No. 41 of 2021 regarding recognition of the Pemba people of Kenya as citizens of the Republic of Kenya

PUBLIC PETITION ON RECOGNITION OF THE PEMBA COMMUNITY AS CITIZENS OF THE REPUBLIC OF KENYA

The Hon. Chair, the National Assembly's Departmental Committee on Administration and National Security has considered a petition regarding recognition of the Pemba people of Kenya as citizens of Kenya. The Committee particularly sought response on the following submissions:

1. That, the Pemba Community whose population in Kenya exceeds 5000 people are part of the 16 Swahili dialects of the traditional Swahili of Kenya whose root word *Suhailya*, means 'people residing on the shore of the ocean';
2. That, the Pemba people of Kenya are originally from the eponymous Island in the Zanzibar archipelago and were part of the Swahili states from Sokorta all the way to Mozambique and Madagascar;
3. That, the Swahili states as established accorded people not only freedom of movement but also equal citizenship rights to settle, farm, marry and trade freely without restrictions which formed the basis of negotiations between the sultan of Zanzibar and the British Colonial Government;
4. That the Pemba Community settled within the Ten-Mile Strip which was part of the Sultanate of Zanzibar which was officially recognized as a Protectorate of Kenya; and were therefore under the sovereignty of the Sultan of Zanzibar and not the British colonial authorities;
5. That as the British Ceded Sovereignty over inland Kenya for independence in 1963, as did the Sultanate of Zanzibar over the Ten-Mile Stripe, Kenya became a country (including the Ten-Mile Strip a where the Pemba Community lived as well as the Inland Protectorate);

6. That, the Pemba people were therefore no longer in the Sultanate of Zanzibar but in the newly formed country but were unfortunately not listed as part of the indigenous Communities of Kenya which has presented huge difficulties in accessing or replacing identity cards;
7. That, majority of the Pemba community reside in Kilifi and Kwale where they live without identity and are stateless because they are not recognized in Kenya or in Tanzania either, and while the Government of Kenya has accorded varying degrees of recognition of the Makonde Community as well as the Malakote Community of Tana River, the Pemba people of Kenya have not been accorded similar citizenship recognition;
8. That, failure by the Government of Kenya to recognize the Pemba people of Kenya as citizens continues to cause great anguish and inconvenience to them since they are unable to register their children at birth, they miss out on education, health and other crucial social services and are exposed to arbitrary arrests for failing to carry identification cards and for allegedly being in Kenya illegally;
9. That, continued delay in the recognition and registration of the stateless communities in Kenya such as the Pemba Community by the authorities is in clear breach and violation of both constitutional and statutory provisions on Kenyan citizenship;
10. That, efforts to have this matter addressed by the relevant authorities have been futile.

I wish to state as follows:

Honourable Chair, the Directorate of Immigration is mandated to register persons claiming statelessness as per the Kenya Citizenship and Immigration

Act, 2011 (KCIA) at **Sections 15** and **16**. The registration for descendants of stateless persons and migrants is provided for under **Section 17** of the Act. The KCIA, 2011 defines a stateless person as one who does not have an enforceable claim to the citizenship of any recognized state and has been living in Kenya for a continuous period since **12th December, 1963**. It further states that the subject shall be deemed to have been lawfully resident and may, on application, in the prescribed manner be **eligible** to be **registered** as a citizen of Kenya.

Honourable Chair, the Government initiated two successful processes geared towards eradicating statelessness with the latest being the formation of the National Taskforce for the Identification and Registration of Eligible Stateless Persons as Kenya Citizens whose tenure lapsed on **21st August, 2021**. The Taskforce was initially appointed through Kenya Gazette notice number **7881/2019** on **23rd August 2019** and their tenure extended vide Kenya Gazette notice **9772/2020** on **20th November 2020**.

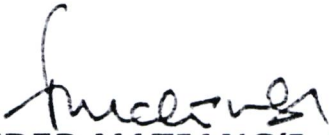
Honourable Chair, the members of the Pemba Community have been unable to acquire crucial identification documents since they do not fit in the definition of Persons Claiming Statelessness. Majority of the Pemba were born and bred in the Pemba Island of the United Republic of Tanzania hence they are not stateless because:

- i. They have a claim to Tanzania Citizenship
- ii. They have not been "continuously living in the Republic of Kenya since 12th December, 1963".

Honourable Chair, Currently, there is no law governing registration of stateless persons as the initial mandate provided in **sections 15(2) and**

16(2) which state that applications under this sections shall be made within a period of five years from the date of commencement of KCIA, 2011 and may by notice in the gazette be extended by the Cabinet Secretary for an additional period of three years. These provisions lapsed on **30th August, 2018** and a further extension by the Cabinet Secretary was done for three (3) more years until **30th August, 2021**.

Thank you, **Honourable Chair**.



FRED MATIANG'I, PhD, EGH
CABINET SECRETARY,
MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT
25th February, 2022

Annex V

**Submission by the Energy and Petroleum Regulatory Authority on
the implementation status of the report of the Departmental
Committee on Energy on its consideration of the Petition regarding
water supply constraints caused by Kenya Power Tariffs in Kilifi
County**

Our Ref: EPRA/ER/2/Vol.4/JM/rb

7th October 2019

Mr. Antony Ambugo
Chief Executive Officer
Water Services Providers Association(WASPA)
Maji House, 5th Floor
P.O. Box 25642 - 00100
NAIROBI

Dear *Mr. Ambugo,*

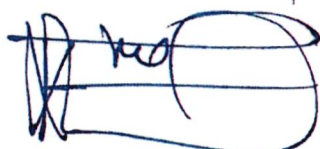
**RE: PREFERENTIAL ELECTRICITY TARIFF FOR WATER AND
SANITATION SERVICE PROVIDERS**

Reference is made to your letter dated 30th September 2019, Ref: WASPA/GEN/VOL.V/2019(192) on the above captioned subject.

This is to thank the Water Services Providers Association (WASPA) for attending the Meeting on Preferential Electricity Tariff for Water and Sanitation Services.

The meeting was very fruitful.

Enclosed please find the Minutes of the Meeting for your information.

Yours *Sincerely*


Robert Pavel Oimeke
DIRECTOR GENERAL

Encl:



ISO 9001:2015 Certified



**MINUTES OF A MEETING BETWEEN WATER SERVICE PROVIDERS AND
ENERGY & PETROLEUM REGULATORY AUTHORITY ON SPECIAL
ELECTRICITY TARIFF FOR WATER PUMPING AND SEWERAGE TREATMENT
HELD ON 1ST OCTOBER, 2019 AT 11:00 A.M IN THE HEARING ROOM**

Present

- | | |
|------------------------|--|
| 1. Dr. John Mutua | Deputy Director, Research and Policy
Analysis (DDER&PA) |
| 2. Leonard Yegon | Senior Pricing Analyst |
| 3. Ambugo Anthony | CEO WASPA |
| 4. Eng.Daniel Ng'ang'a | Chairman WASPA |
| 5. Patrick Langat | MD, Bomet Water |
| 6. Ndege Juma | Accountant, Mombasa Water |
| 7. Munyi Mugo | Legal officer, Mombasa Water |
| 8. Hezekiah Mwarua | MD, Kilifi Water |
| 9. Job Fundi | |
| 10. Margaret Maina | MD, Limuru Water |
| 11. Gerald | Malindi Water |
| 12. Thomas Odero | MD, Kisumu Water |
| 13. Anthony Njaramba | MD, MOWASCO |
| 14. Bonface Gwachi | Pricing Analyst, EPRA |
| 15. Stanely Kutioni | NARWASCO |

Apologies

None

Preamble

The Deputy Director Energy Research and Policy Analysis Dr. John Mutua called the meeting to order at 11:00 am. He welcomed all the Water and Sanitation Companies Chief Executive and Water Service Providers Association (WASPA) membership to the meeting on behalf of the Director General and invited participants to introduce themselves.

Agenda

The meeting adopted the following Agenda

1. Water consumption and electricity usage
2. Time of Use Tariff and how it is applied
3. Customer relation with Kenya Power.
4. Proposed Special Tariff for Water Companies
5. Sewerage treatment and pumping costs
6. Water Levies
7. Re-Billing
8. Suggestions to use Solar energy in water Pumping.
9. Submission of Operational and Administrative expense and revenues reports.
10. Net Metering
11. Way Forward

MIN 1/10/2019: Water Consumption and Electricity Usage

Representatives from water service providers argued that they were incurring huge electricity expenses on pumping of water to consumers. They highlighted that water being a key enabler of the big four agenda and by the fact that it is a social resource is not supposed to be commercialized. They argued that electricity tariffs charged on pumping of water was a major hindrance to their major goal of 100% supply of water to households by 2030 and therefore requested EPRA to intervene and to try to find an amicable solution to the huge electricity costs incurred by these companies.

MIN 2/10/2019: Time of Use Tariff and How it is Applied

The current time of use is tariff applicable from 10:00 pm – 6:00 am. In their opinion, the water service providers require an adjustment in the time of use from the current time of use to the one that runs from 6:00 pm – 6:00 am to enable them pump more water during their peak demand hours at a lower tariff in order to cut down electricity costs which were eating up a large portion of their revenues. They cited the Time of Use tariff for street lighting an example.

The team complained that they were being charged same tariff regardless of the time of water pumping thus they were not benefiting from the time of use program. They did not understand how the set threshold works.

MIN 3/10/2019: Customer Relation between Water Service Providers and Kenya Power.

The Water Service Providers argued that Kenya power has a bad customer relationship with them. Kenya Power can disconnect water service Providers quite often even when they had held discussions with them over the same issue. Because of this action, water service providers were exposed to high electricity costs as a result of re-starting their machines for water pumping due to the power factor surcharge levied on them.

The water service providers also argued that Kenya Power has restricted access to their SMART meters readings for them to access and ascertain accuracy of their consumption and cost by placing the meters on the electricity posts. This left Kenya Power with exclusive monopoly of access.

MIN 4/10/2019: Proposed Special Tariff for Water Companies

WASPA argued that that water tariffs were not uniform across all water service providers because of variable reasons among them being pumping of water at two different levels i.e. Some water service providers are categorized as Small Commercial customers while others are categorized as Domestic customers.

They notified EPRA that they had different tariffs for different classes of people i.e those from the informal settlements who enjoyed lower water tariffs compared to those from the formal settlements.

The CEOs noted that factors such as quantity of water pumped, the length of the head through which water is pumped, the nature of pumping i.e. electricity or gravity had a big impact on electricity costs incurred by these companies. This was the reason as to why water tariff was not uniform across all water service providing companies despite WASRB giving a water tariff of ksh.20/M³.

They also notified EPRA that customers who consume more water are charged high water tariffs to cross subsidize the customers who consume lesser quantities through a cross subsidy program.

They raised concerns over what seemed to be a discriminatory approach by Kenya Power over tariffs charged to different water companies.

A specific example was that of Kiambu whereby the water source was from small different units of boreholes.

They argued that Kenya Power charges same electricity tariff across for pumping water from individual source units same as pumping water from a single unit. They notified EPRA that the total cost of pumping water from many different units was high as compared to pumping water from a single source unit thus giving preferential treatment to those companies drawing water from a single source unit.

MIN 5/10/2019: Sewerage Treatment and Pumping Costs

The team informed EPRA that electricity pumping costs depended on different factors such as the length of the head through which water is to be pumped, the type of water source i.e. river or borehole, the nature of pumping e.g. pumping through gravity or pumping through electricity.

They noted that pumping water from boreholes was expensive as this was against gravity and thus making them incur more electricity costs thus higher water tariffs.

They also notified the EPRA team that they were incurring huge electricity costs in water treatment since the treatment process consume a lot of electricity.

MIN 6/10/2019: Water Levy

WASPA members noted that Kenya Power was charging them WARMA levies on their electricity bills and yet they were being charged for water obstruction fee which they considered a double charge thus reducing their revenues.

However, EPRA clarified that WRAM levy that is pass through to customers is the levy that is levied upon the hydro generators by Water Resources Management Authority and does not result in double taxation in any way

MIN 7/10/2019: Re-Billing

The issue of re-billing also arose from the Water Service Providers. This is worsened by the fact that the WASPA members cannot ascertain the level of their consumption in any particular month.

MIN 8/10/2019: Suggestions to use Solar Energy in Pumping Water

The Water companies argued that they could seek remedy for the higher electricity tariffs charged by installing solar power for water pumping if Kenya power could not consider their request of lowering their electricity tariffs. EPRA highlighted the various opportunities available with regard to this aspect.

MIN 9/10/2019: Submission of Operational & Administrative Expenses and revenues Reports.

The Senior Pricing Analyst, Mr. Leonard Yegon requested the team to submit their OPEX and revenue reports.

Representatives from water service providers promised to submit OPEX and revenue reports in a week's time

MIN 10/10/2019: Net Metering

Representatives from water service providers had a suggestion for EPRA and the Ministry to consider the issue of net metering in case these water companies decide to pump water using their own power generation plants where they could supply the excess power to Kenya Power and then get it back for at an agreement whenever their demand for it arises.

Dr. Mutua informed them that the issue of net metering are covered by the net metering regulations which are yet to be finalized.

MIN 11/10/2019: Way Forward

On the way forward, the water companies made the following requests to EPRA and the Energy sector in general:

- i. EPRA to intervene and to try to find an amicable solution to the huge electricity costs incurred by these companies.
- ii. Threshold of Time of Use Tariffs should be removed in the case of water and sanitation service providers, as water is a basic good and a right for all Kenyans.
- iii. KPLC should improve on their customer relations with water companies and avoid unwarranted disconnections of services.
- iv. KPLC should allow water companies access to electricity meters for transparency and accountability.
- v. EPRA should consider providing a special tariff for water companies at KSh. 5.25/kWh.
- vi. Kenya Power should NOT penalize water companies on the power factor requirements especially in cases where they unfairly disconnect the companies from supply and as result not meeting electricity demand thresholds.
- vii. KPLC should avoid rebilling and ensure transparency in the process.
- viii. Water Resources and Management (WRMA) levy should be scrapped in the case of water companies.
- ix. Sanitation and sewerage pumping costs should also be give a preferential tariff as they consume a lot of electricity.
- x. EPRA to prevail upon energy auditors to charge low consultation fees. The energy auditors that work and the Kenya Association of Manufacturers (KAM) energy conservation and efficiency arm are too expensive. They should lower their fees to water companies.
- xi. EPRA to fast-track net metering, energy banking regulations so that water companies can invest, and benefit from this noble initiative.

There being no other business, the meeting was adjourned at 1:35pm.

CHAIRMAN:



DATE:

8/10/2019.

APPROVAL OF THE SCHEDULE OF TARIFFS SET BY THE ENERGY REGULATORY COMMISSION FOR SUPPLY OF ELECTRICAL ENERGY BY THE KENYA POWER AND LIGHTING COMPANY LIMITED PURSUANT TO SECTION 45 OF THE ENERGY ACT, 2006

NOTICE is hereby given that pursuant to section 45 of the Energy Act, 2006, the Energy Regulatory Commission has set out the following Schedule of Tariffs- 2018, prescribing the Tariffs, Charges, Prices and Rates to be charged by The Kenya Power and Lighting Company Limited to the Consumers for electrical energy they consume.

PART I

GENERAL

1. This Schedule of Tariffs- 2018, shall take effect on 1st November 2018 and shall apply to;
 - i) Each Post-paid Consumer for all bills raised based on meter readings taken on or after the Effective Date.
 - ii) Each Pre-paid Consumer, for all Units purchased on or after the Effective Date.
2. In this document, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Act": means the Energy Act No. 12 of 2006;

"Commission": means the Energy Regulatory Commission established under the Act;

"Company": means The Kenya Power and Lighting Company Limited;

"Consumer": means any person supplied with electrical energy, but does not include a person supplied with electrical energy for delivery or supply to another person;

"Contract": means the agreement made between a Consumer and the Company for supply of electrical energy, in force on the date of commencement of this Schedule of Tariffs and includes all contracts entered into with consumers after this date;

"Demand": means the maximum electric power demand drawn by a Consumer in each Post-paid Billing Period;

"Demand Charge": means a charge for Demand supplied per kVa in each Post-paid Billing Period, when applicable, with respect to Consumer category as shown in PART II;

"Effective Date": means 1st November 2018,



"Electric Power Producer": means a person who owns or operates facilities for generation of electrical energy pursuant to a generating license issued by the Commission;

"Energy charge": means a charge per Unit consumed in each Post-paid Billing Period or per Unit purchased in each Pre-paid Units Purchase Period, as the case may be, with respect to each Consumer category as shown in PART II;

"Interconnected System": means those works inclusive of power stations, electric supply lines electrically interconnected forming the main supply grid in the Republic of Kenya;

"KenGen": means the Kenya Electricity Generating Company Limited;

"kVA": means kilovolt Ampere;

"Meter": means any and every kind of machine, device or instrument used for the measurement of the quantity of electrical energy, and includes such auxiliary appliances as resistors, shunts, reactance, current transformers, voltage transformers and time switches, external and necessary to the meter;

"Off-Grid System": means those works inclusive of power stations and electrical supply lines, which are electrically and physically separate from the Interconnected System;

"Post-paid Billing Period": means the period of time elapsing between the issuing of two consecutive bills by the Company, but with the exception of their first and last period, such period of time shall be as near to thirty days as possible;

"Post- paid Consumer": means Consumer who consumes electricity on credit and pays for it after receiving a bill from the Company in accordance to the terms and condition of supply;

"Power Factor": means the decimal fraction obtained by dividing the Demand in kilowatts by the Demand in kiloVolt Amperes and shall be ascertained by suitable apparatus installed by the Company;

"Pre-paid Consumer" means a Consumer who pays for electricity up-front, by purchasing electricity units from the Company or its agent in accordance with the terms and condition of supply;

"Pre-paid Unit Purchase Period" means a period of one calendar month;

"Tariff": means the prices, rates, costs and all other charges including adjustments, formulae and other terms, conditions and information contained in parts II, III and IV of this Schedule of Tariffs- 2018.

"Unit": means one kilowatt hour (kWh);



"Units Purchased": means electricity measured in kWh generated by the Company's Power Plants or Electric Power Producers Power Plants delivered to and purchased by the Company;

PART II

SCHEDULE OF NON-FUEL TARIFFS FOR ELECTRICAL ENERGY SUPPLIED BY THE COMPANY

Part II –Effective from 1stNovember 2018

The Tariffs to be applied by the Company for the supply of electrical energy from both the Interconnected System and the Off-Grid Systems, in each Post-paid Billing Period or Pre-paid Units Purchase Period shall be as detailed below:

METHOD DC-1: Applicable to Domestic Consumers for supply provided and metered by the Company at 240 or 415 volts and whose consumption does not exceed 100 Units per Post-paid Billing Period or Pre-paid Units Purchase Period.

- a) Energy charges of KSh.10.00per Unit for Units consumed;

METHOD DC-2: Applicable to Domestic Consumers for supply provided and metered by the Company at 240 or 415 volts and whose consumption is greater than 100 units but does not exceed 15,000 Units per Post-paid Billing Period or Pre-paid Units Purchase Period .

- a) Energy charges of KSh.15.80per Unit for Units consumed:

METHOD SC-1: Applicable to non-domestic Small Commercial Consumers for supply provided and metered by the Company at 240 or 415 volts and whose consumption does not exceed 100 Units per Post-paid Billing Period or Pre-paid Units Purchase Period.

- a) Energy charge of KSh.10.00per Unit for all Units consumed.

METHOD SC-2: Applicable to non-domestic Small Commercial Consumers for supply provided and metered by the Company at 240 or 415 volts and whose consumption is greater than 100 units but does not exceed 15,000 Units per Post-paid Billing Period or Pre-paid Units Purchase Period.

- a) Energy charge of KSh.15.60per Unit for all Units consumed.

METHOD CI1:Applicable to Commercial and Industrial Consumers for supply provided and metered by the Company at 415 volts three phase four-wire and whose consumption exceeds 15,000 Units per Post-paid Billing Period.

- a) Energy charge of KSh.12.00 per Unit consumed.



- b) Energy charge of KSh.6.00 per unit for supply metered during off-peak hours as prescribed in Note 2.
- c) Demand charge of KSh. 800.00 per kVA.

METHOD CI2: Applicable to Commercial and Industrial Consumers for supply provided and metered by the Company at 11,000 volts, per Post-paid Billing Period.

- a) Energy charge of KSh.10.90per Unit consumed.
- b) Energy charge of KSh. 5.45 per unit consumed for supply metered during off-peak hours as prescribed in Note 2.
- c) Demand charge of KSh.520.00 per kVA.

METHOD CI3: Applicable to Commercial and Industrial Consumers for supply provided and metered by the Company at 33,000 volts, per Post-paid Billing Period.

- a) Energy charge of KSh. 10.50per Unit consumed.
- b) Energy charge of KSh. 5.25 per unit consumed for supply metered during off-peak hours as prescribed in Note 2.
- c) Demand charge of KSh. 270.00 per kVA

METHOD CI4: Applicable to Commercial and Industrial Consumers for supply provided and metered by the Company at 66,000 volts, per Post-paid Billing Period.

- a) Energy charge of KSh. 10.30 per Unit consumed.
- b) Energy charge of KSh. 5.15 per unit consumed for supply metered during off-peak hours as prescribed in Note 2.
- c) Demand charge of KSh. 220.00 per kVA.

METHOD CI5: Applicable to Commercial and Industrial Consumers for supply provided and metered by the Company at 132,000 volts, per Post-paid Billing Period.

- a) Energy charge of KSh. 10.10per Unit consumed.
- b) Energy charge of KSh. 5.05 per unit consumed for supply metered during off-peak hours as prescribed in note 2.
- c) Demand charge of KSh. 220.00 per kVA.

METHOD SL: Applicable to public and County Governments metered by the Company at 240 or 415 volts per Post-paid Billing Period for supply of electrical energy to public lamps (Street Lighting).

- a) Energy charge of KSh. 7.50 per Unit consumed

Supply under this Method of Charge shall be available for a minimum period of 11 hours per night for public lamps and for no other purpose.

The attention of public and County Governments taking supply on this tariff is drawn to the fact that where public lamps are fitted on the



Company's poles, all maintenance of the lamps, switch wire and associated equipment must be carried out by the Company and shall be charged for on the basis of net costs of materials, labour and transport plus 25%.

Note 1: This discounted Time of Use Tariffs shall be applicable during off-peak period ONLY.

Note 2: The off-peak hours are as follows:

Day	Start (Hrs.)	End (Hrs.)
Weekdays	00:00	06:00
	22:00	00:00
Saturday/Holidays	00:00	08:00
	14:00	00:00
Sunday	00:00	00:00

Note 3: CI customers will be required to meet their monthly Energy Consumption Threshold then any units over and above that threshold is billed at the discounted TOU Tariff subject to Note 1 above

Note 4: Energy Consumption Threshold shall be the existing average monthly consumption for the last six consecutive months and a new threshold determined after every 6 months interval based on preceding six months actual consumption.

Note 5: For new CI1-CI5 customers, Energy Consumption Threshold shall be the average monthly consumption for the first three consecutive months and thereafter Note 4 applies.

Note 6: The Amendments set out herein shall take effect on 1st day of November 2018

Note 7: For CI1-CI5 customers operating at 100% production capacity during on peak and off-peak, they will be given a 5% discount on the applicable Energy Rate in respect of the Schedule of Tariffs - 2018 for the off-peak consumption upon satisfactory confirmation by KPLC that their production is 100%.

Note 8: Every Consumer shall pay to the Company in addition to the charges specified in Part II of this Schedule of Tariffs a Fixed Charge at a rate not exceeding KSh 50.00 per kVA per Billing Period of nameplate kVA continuous rating in respect of all electric welding plant, as adjusted by any power factor equipment in use.

Note 9: The Domestic Consumers have been categorized into two distinct categories i.e. Domestic Consumers-1 (DC-1) and Domestic Consumer-2 (DC-2). For clarity DC-1 shall shift from DC-1 to DC-2 if the average three months' consumption (moving average) preceding the current billing cycle is >100 kWh/billing cycle or the DC-2 shall shift to DC-



1 if the average three months' consumption (moving average) preceding the current billing cycle is $\leq 100\text{kWh/billing cycle}$.

Note 10: The Small Commercial Customers have been categorized into two distinct categories i.e. Small Commercial - 1 (SC-1) and Small Commercial - 2 (SC-2). For clarity SC-1 shall shift from SC-1 to SC-2 if the average three months' consumption (moving average) preceding the current billing cycle is $>100 \text{ kWh/billing cycle}$ or the SC-2 shall shift to SC-1 if the average three months' consumption (moving average) preceding the current billing cycle is $\leq 100\text{kWh/billing cycle}$.

Note 11: New customers under Domestic and Small Commercial categories be admitted as DC-1 and SC-1 tariff categories, respectively for the first three months before being subjected to the moving average criteria.

PART III

OTHER CHARGES

1. Fuel Energy Cost

- (a) All units billed to each Post-paid Consumer or purchased by each Pre-paid Consumer every month shall be liable to Fuel Energy Cost rate which shall be calculated in accordance with the following formula:

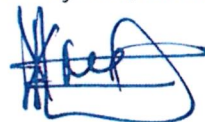
Fuel Energy Cost rate in Kenya cents/Unit calculated to the nearest one cent:

$$= \frac{1}{1-L} \times \left\{ \frac{\sum C_i G_i S_i + \sum P_{im} - \sum P_{xp} + \sum P_i}{G} \right\} \times 100$$

Where:

C_i = Actual price in KSh/kg paid by the Company or Electric Power Producers for fuel consumed by Plant i , where $i=1, 2, \dots, n$, during the calendar month immediately preceding each Post-paid Billing Period or Pre-paid Units Purchase Period at all existing thermal plants on the Interconnected System and the Off-Grid System, as the case may be. This shall also include other thermal power plants to be constructed and in respect of which the Company shall enter into Power Purchase Agreements.

G_i = All Units generated and or purchased by the Company from Electric Power Producers' Plant i , where $i=1, 2, \dots, n$, during the calendar month immediately preceding each Post-paid Billing Period or Pre-paid Units Purchase Period at each existing thermal plant on the Interconnected System and the Off-Grid System, and imports/exports



from Uganda Electricity Transmission Company Limited adjusted for system losses as the case may be. This shall also include other thermal power plant(s) to be constructed and in respect of which the Company shall enter into Power Purchase Agreement(s).

G= Total of all Units purchased by the Company from Electric Power Producer(s), generated by the Company and net imports during the calendar month immediately preceding each meter reading period.

S_i = Specific fuel consumption in kg/Unit for the following thermal plants:

Muhoroni Gas Turbine I	0.315 kg/Unit purchased
Muhoroni Gas Turbine II	0.315 kg/Unit purchased
Kipevu I Diesel Plant	0.217 kg/Unit purchased
Kipevu II Diesel Plant (Tsavo)	0.222 kg/Unit purchased
Kipevu III Diesel Plant	0.2095 kg/Unit purchased

Iberafrica Diesel Plants:

56.346 MW Plant	0.226 kg/Unit purchased
52.5 MW Plant	0.224 kg/Unit purchased

Rabai Diesel Plant*:

With steam turbine or above 33MW	0.200 kg/Unit purchased
Without steam turbine or below 33MW	0.211 kg/Unit purchased

Triumph Diesel Plant**

With steam turbine or above 35MW	0.201kg/Unit purchased
Without steam turbine or below 35MW	0.210kg/Unit purchased

Gulf Diesel Plant 0.215kg/Unit purchased

Thika Diesel Plant

With steam turbine or above 33MW	0.199 kg/Unit purchased
Without steam turbine or below 33MW	0.215 kg/Unit purchased

Diesel Plants in Off-Grid System***

Lodwar	0.282 kg/Unit generated
Mandera	0.266 kg/Unit generated
Marsabit	0.290 kg/Unit generated
Wajir	0.260 kg/Unit generated
Moyale	0.277 kg/Unit generated
Habaswein	0.290 kg/Unit generated
Merti	0.290 kg/Unit generated
Elwak	0.290 kg/Unit generated
Mfangano	0.290 kg/Unit generated
Baragoi	0.290 kg/Unit generated
Lokichogio	0.290 kg/Unit generated
Takaba	0.290 kg/Unit generated

Eldas	0.290 kg/Unit generated
Rhamu	0.290 kg/Unit generated
Laisamis	0.290 kg/Unit generated
North Horr	0.290 kg/Unit generated
Lokori	0.290 kg/Unit generated
Dadaab	0.290 kg/Unit generated
Faza Island	0.290 kg/Unit generated
Lokitaung	0.290 kg/Unit generated
Kiunga	0.290 kg/Unit generated
Kakuma	0.290 kg/Unit generated

*Rabai: The higher specific fuel consumption for Rabai Diesel Plant also applies for a period of 2.5 hours during start up after a plant shutdown of more than 8 hours.

**Triumph: The higher specific fuel consumption for Triumph Diesel Plant also applies for a period of 2.5 hours during start up after a plant shutdown of more than 8 hours.

*** Specific fuel consumption for Off-Grid System shall be estimated at 0.290 kg/unit for any other thermal power plants to be constructed for the supply of electricity to the Company from that Power Station with the approval of the Commission.

P_{im} = Sum of fuel costs for imported units calculated based on respective power import contracts.

P_{xp} = Sum of fuel costs for exported units calculated based on respective power export contracts.

P_i = Sum of fuel displacement costs and other pass through charges based on power purchased from Power Plant i, where $i = 1, 2 \dots n$. This refers to Mumias, future temporary power plants, geothermal steam charge as approved by the Commission and other power plants to be constructed in respect of which the Company shall enter into a Power Purchase Agreement.

- i) The fuel displacement costs, P_i , for the Mumias Power Plant shall be computed using the formula $P_i = G_i \times DCR_i$.

Where;

G_i = Units purchased by the Company from the plant during the calendar month immediately preceding each Post-paid Billing Period and/or Pre-paid Units Purchase Period,

DCR_i = the approved Displacement Charge Rate for the plant being US\$ 0.034/kWh.

- ii) The fuel displacement costs, P_i , for the geothermal steam shall be computed using the formula $P_i = G_i \times DCR_i$.

Where;



G_i = Units purchased by the Company from the plant during the calendar month immediately preceding each Post-paid Billing Period and/or Pre-paid Units Purchase Period,

DCR_i = the approved Charge Rate for the plant being US\$ 0.02/kWh or any other rate approved by the Commission.

- iii) The fuel displacement costs, P_i , for the Kipeto and Prunus Wind Power Plants shall be computed using the formula $P_i = G_i \times DCR_i$.

Where;

G_i = Units generated delivered and purchased by the Company from the plant or Units curtailed from being generated by such plant as invoiced to the Company in accordance with the Power Purchase Agreement for such plant, during the calendar month immediately preceding each Post-paid Billing Period and/or Pre-paid Units Purchase Period,

DCR_i = The approved Displacement Charge Rate for the plant being US\$ 0.084/kWh.

- iv) The fuel displacement costs, P_i , for Power Plant plants procured through the FiT Policy shall be computed using the formula $P_i = G_i \times DCR_i$.

Where;

G_i = Units generated, delivered and purchased by the Company from the plant or Units curtailed from being generated by such plant as invoiced to the Company in accordance with the Power Purchase Agreement for such plant, during the calendar month immediately preceding each Post-paid Billing Period or Pre-paid Units Purchase Period,

DCR_i = The approved Displacement Charge Rate for the plant being 85% and 70% of the applicable FiT tariff for Solar based plants and all other plants, respectively.

All fuel displacement and pass through costs shall be converted to Kenya Shillings using the CBK mean exchange rate of the calendar month immediately preceding each Post-paid Billing Period.

L = Target System loss factor in transmission and distribution equal to 14.9% in year 2018/19.

- (b) The Commission shall publish a monthly notice in the Kenya Gazette showing the Fuel Energy Cost rate applicable to all Units billed to every Post-paid Consumer or Units Sold with respect to Pre-paid Consumers during the month of publication of such notice.



2. Foreign Exchange Rate Fluctuation Adjustment

- (a) All units billed to each Post-paid Consumer or purchased by each Pre-paid Consumer every month shall be liable to Foreign Exchange Rate Fluctuation Adjustment which shall be calculated in accordance with the following formula:

Foreign Exchange Rate Fluctuation Adjustment in Kenya cents/Unit calculated to the nearest one cent

$$FERFA_t = \frac{1}{1-L} \times \left\{ \frac{(\sum (F_{t-1} \times Z_t) X_0) + (\sum (H_{t-1} \times Z_t) X_0) + (\sum (IPP_{t-1} \times Z_t) X_0)}{G} \right\} \times 100$$

Where:

F_{t-1} = Sum of the foreign currency costs incurred by KenGen in the calendar month immediately preceding current Post-paid Billing Period or Pre-paid Units Purchase Period.

H_{t-1} = Sum of the foreign currency costs incurred by the Company other than those costs relating to Electric Power Producers in the calendar month immediately preceding current Post-paid Billing Period or Pre-paid Units Purchase Period.

IPP_{t-1} = Sum of the foreign currency costs paid by the Company to Electric Power Producers (except KenGen) in the calendar month immediately preceding current Post-paid Billing Period or Pre-paid Units Purchase Period.

The factor Z_t is the proportionate change in the exchange rate (X_t) in the current Post-paid Billing Period or Pre-paid Units Purchase Period t from the Base Exchange rate (X_0) in the base period and shall be determined according to the following formula:

$$Z_t = \frac{X_t - X_0}{X_0}$$

Where:

X_t = CBK mean exchange rate for the calendar month immediately preceding current Post-paid Billing Period or Pre-paid Units Purchase Period.

X_0 = CBK mean exchange rate as tabulated below;

CBK Mean Exchange Rates

Foreign Currency	March 2017
US Dollar	102.8482
STG Pound	126.8636

Foreign Currency	March 2017
Euro	109.8634
SA Rand	7.9618
AE Dirham	28.0022
Canadian Dollar	76.8489
Swiss Francs	102.5884
JPY(100)	91.0744
SW Kroner	11.5282
NOR Kroner	12.0999
DAN Kroner	14.7782
IND Rupee	1.5607
Hongkong Dollar	13.2433
Saudi Riyal	27.4245
Chinese Yuan	14.9124
Australian Dollar	78.3915

Note: Applicable CBK mean rates for KenGen power plants with Kenya Shillings denominated charge rates are as stipulated in the respective Power Purchase Agreements.

G= Total of all Units purchased by the Company from Electric Power Producer(s), generated by the Company and net imports during the calendar month immediately preceding each meter reading period.

L = Target System loss factor in transmission and distribution equal to 14.9% in year 2018/19.

(c) The Commission shall publish a monthly notice in the Kenya Gazette showing the amount of the Foreign Exchange Rate Fluctuation Adjustment applicable to all Units billed to every Post-paid Consumer or Units Sold with respect to Pre-paid Consumers during the month of publication of such notice.

3. Inflation Adjustment

(a) All units billed to each Post-paid Consumer or purchased by each Pre-paid Consumer every month shall be liable to an Automatic adjustment for inflation at the end of every six month period starting from 1st July 2018.

The effect of domestic and international inflation on cost of supply shall be calculated in accordance with the following formula:

$$INFA_t = \frac{1}{1-L} \times \left(\frac{INFA_{KenGen} + INFA_{IPP} + INFA_{KPLC}}{G_p} \right) \times 100$$

Where;

INFA_t = Total Inflation Adjustment in Kenya cents per Unit for the half year period t. The first adjustment shall be effected on 1st July 2018.

L = Target System loss factor in transmission and distribution equal to 14.9% in year 2018/19.

G_p = Total projected Units generated or purchased by the Company from Electric Power Producer(s), during the half-year Adjustment Period. This shall also include other power plants to be constructed and in respect of which the Company shall enter into a Power Purchase Agreement.

i) $INFA_{KenGen}$

$$INFA_{KenGen} = \sum INFAKP_i$$

Where;

$INFAKP_i$ = Specific Inflation Adjustment in half-year period, relating to contracted KenGen Plant i, which shall be determined as follows:

$$INFAKP_i = [KP_i \times FOMCR_{bi} + Gk_i \times VOMCR_{bi}] \times \left[0.7 \times 0.5 \left(\frac{CPIU_t}{CPIU_b} - 1 \right) + 0.3 \left(\frac{USCPI_t}{USCPI_b} - 1 \right) \right]$$

Where:

KP_i = Contracted capacity for KenGen Plant i in kW.

$FOMCR_{bi}$ = The base escalable Capacity Charge Rate for KenGen Plant i in KSh./kW/year for March 2017, divided by two

$VOMCR_{bi}$ = The base escalable Variable Operation and Maintenance Charge Rate or variable energy charge rate as applicable, for KenGen plant i in KSh./kWh for March 2017

Gk_i = Projected Units purchased from KenGen plant i in kWh in the half-year Adjustment Period.

$CPIU_b$ = The Geometric Underlying Consumer Price Index for March 2017 as posted by Kenya National Bureau of Statistics (Index base - March 2009= 100), being 152.95

$CPIU_t$ = The Underlying Consumer Price Index for the month of March for adjustments effected in the period July - December; and September for adjustments effected in the period January - June every year as provided by the Kenya National Bureau of Statistics (Index base - March 2009= 100), being 152.95.

$USCPI_b$ = The "Consumer Prices Index for all urban consumers (CPI - U) for the US city average for all items 1982 - 84 =100" as published by the United States Department of Labour Statistics index for March 2017, being 243.801.

USCPI_t = The "Consumer Prices Index for all urban consumers (CPI - U) for the US city average for all items 1982 - 84 =100" as published by the United States Department of Labour Statistics index for the month of March for adjustments effected in the period July - December; and for September for adjustments effected in the period January - June every year.

ii) INFA_{IPP}

$$INFA_{IPP} = \sum INFA_{IPP_i}$$

Where,

INFA_{IPP_i} = Specific Inflation Adjustment in half-year period, relating to contracted Electric Power Producer's (excluding KenGen) Plant i, which shall be determined as follows:

$$INFA_{IPP_i} = [IPP_i \times CCR_{bi} + GIPP_i \times ECR_{bi}] \times \left[\frac{USCPI_t}{USCPI_b} - 1 \right] *$$

Where:

IPP_i = Contracted capacity for IPP Plant i in kW.

CCR_{bi} = Base escalable capacity charge rate for IPP plant i in US\$/kW/year, for March 2017, divided by two.

GIPP_i = Projected Units purchased from IPP plant i in kWh in the half-year Adjustment Period.

ECR_{bi} = Base escalable energy charge rate for IPP plant i in US\$/kWh for March 2017

USCPI_b = The "Consumer Prices Index for all urban consumers (CPI - U) for the US city average for all items 1982 - 84 =100" as published by the United States Department of Labour Statistics index for March 2017, being 243.801.

USCPI_t = The "Consumer Prices Index for all urban consumers (CPI - U) for the US city average for all items 1982 - 84 =100" as published by the United States Department of Labour Statistics index for the month of March for adjustments effected in the period July - December; and for September for adjustments effected in the period January - June every year.

*Note:

For Euro denominated costs

CCR_{bi} = Base escalable capacity charge rate for IPP plant i in €/kW/year, for March 2017, divided by two.

ECR_{bi} = Base escalable energy charge rate for IPP plant i in €/kWh for March 2017

$USCPI_b$ = The Monetary Union Index of Consumer Prices for European Union as published by Eurostat for March 2017 being 119.70.

$USCPI_t$ = The Monetary Union Index of Consumer Prices for European Union as published by Eurostat for the month of March for adjustments effected in the period July-December; and for September for adjustment effected in the period January-June every year.

All inflation adjustment costs for IPPs shall be converted to Kenya Shillings using the Base Exchange rates in this Schedule of Tariffs and Rates 2018.

iii) $INFA_{KPLC}$

$INFA_{KPLC}$ Is the Specific Inflation Adjustment in half-year period, relating to the Company's transmission and distribution operation and maintenance costs, which shall be determined as follows:

$$INFA_{KPLC} = TDOM_b \left[0.7 \times 0.5 \left(\frac{CPIU_t}{CPIU_b} - 1 \right) + 0.3 \left(\frac{USCPI_t}{USCPI_b} - 1 \right) \right]$$

Where;

$TDOM_b$ = The transmission and distribution network operation and maintenance costs excluding depreciation of assets and provision for bad debts in year 2016/17, divided by two.

$CPIU_b$ = The Geometric Underlying Consumer Price Index for March 2017 as posted by Kenya National Bureau of Statistics (Index base - March 2009= 100), being 152.95

$CPIU_t$ = The Underlying Consumer Price Index for the month of March for adjustments effected in the period July - December; and September for adjustments effected in the period January - June every year as provided by the Kenya National Bureau of Statistics (Index base - March 2009= 100).

$USCPI_b$ = The "Consumer Prices Index for all urban consumers (CPI - U) for the US city average for all items 1982 - 84 =100" as published by the United States Department of Labour Statistics index for March 2017, being 243.801.

$USCPI_t$ = The "Consumer Prices Index for all urban consumers (CPI - U) for the US city average for all items 1982 - 84 =100" as

published by the United States Department of Labour Statistics index for the month of March for adjustments effected in the period July - December; and for September for adjustments effected in the period January - June every year.

Note:

Any difference between the total inflation costs and the actual billed amount for a given half year adjustment period shall be adjusted for in the following half year period.

- (b) The Commission shall publish in the first month of the half-year inflation adjustment period a notice in the Kenya Gazette showing the half-year Inflation Adjustment rate applicable to all Units billed to each Post Paid Consumer or with respect to Pre-paid Consumer Units sold during that half-year period.

4. Security Support Facility

- a) All units billed to each Post-paid Consumer or purchased by each Pre-paid Consumer shall with effect from the last day of the month in which Lake Turkana Wind Power Limited (LTWP) commissions into operation at least 50MW of the 300MW Wind Power Plant under the Power Purchase Agreement between the Kenya Power & Lighting Company Limited (KPLC) and LTWP, be liable to security support facility monthly computed in accordance with the Formula set out below this paragraph 4. The security support facility shall be collected and remitted by KPLC into an escrow account established as security for the KPLC's payment obligations to Lake Turkana Wind Power Limited under the Power Purchase Agreement in respect of the 300MW Wind which has been approved by the Commission. The security support facility hereby shall be charged on all units consumed monthly in accordance with this paragraph until the total amount in the escrow account is equal to Euro forty two million and six hundred thousand (€ 42,600,000.00) and shall thereafter be discontinued.

The security support facility is calculated in equivalent Kenya cents per unit to the nearest one cent as follows:

$$SSF = \frac{1}{1-L} \times \left(\frac{\sum G_{pi} \times SSFR_{pi}}{G} \right) \times 100$$

Where:

G= Total of all Units purchased by the Company from Electric Power Producer(s), generated by the Company and net imports during the calendar month immediately preceding each meter reading period, including all hydro stations, Off-Grid power stations and imports

G_{pi} = Actual Units purchased by the company from Lake Turkana Wind Power Limited's wind power plant during the calendar month preceding each Post-paid Billing Period or Pre-paid Units Purchase Period.



$SSFR_{pi}$ = Euro cents 1.86/kWh

X_t = CBK mean exchange rate for the calendar month immediately preceding current Post-paid Billing Period or Pre-paid Units Purchase Period

L = Target System loss factor in transmission and distribution equal to 14.9% in year 2018/19.

Note

Any difference between the total Security Support Facility and the actual collected amount for a given Post-paid Billing Period or Pre-paid Units Purchase Period shall be adjusted for in the following period.

b) The Commission shall publish a monthly notice in the Kenya Gazette showing the amount of the Security Support Facility applicable to all Units billed to every Post-paid Consumer or Units Sold with respect to Pre-paid Consumers during the month of publication of such notice. The notice shall also show the amount collected by KPLC by way of the security support facility and standing to the credit of the escrow account on the last business day of the month preceding the date of the notice.

5. Water Levy

a) All units billed to each Post-paid Consumer or purchased by each Pre-paid Consumer every month shall be liable to Water Resource Management Authority (WRMA) Levy for water used by hydro power plants that have a capacity equal to or above 1MW as approved by the Commission.

WRMA levy is calculated in Kenya cents/Unit to the nearest one cent as follows:

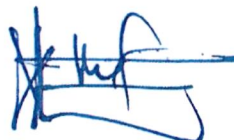
$$WRMA_{LEVY} = \frac{1}{1-L} \times \left(\frac{\sum G_h \times WL}{G} \right) \times 100$$

Where:

G = Total of all Units purchased by the Company from Electric Power Producer(s), generated by the Company and net imports during the calendar month immediately preceding each meter reading period, including all hydro stations, Off-Grid power stations and imports

G_h = Total units purchased from the preceding month from hydroelectric power producer from plant i that have a capacity equal to or above 1MW, where i is equal to 1,2,...,n during the calendar month preceding each Post-paid Billing Period or Pre-paid Units Purchase Period for plants in the interconnected system or off grid system as the case may be. This shall also include hydro power plants to be constructed and in respect of which the Company shall enter into Power Purchase Agreements.

WL = Approved water levy for plant i as per the approved PPA.



L = Target System loss factor in transmission and distribution equal to 14.9% in year 2018/19.

Note:

Any difference between the total WRMA levy invoiced and the actual collected amount for a given Post-paid Billing Period or Pre-paid Units Purchase Period shall be adjusted for in subsequent periods.

b) The Commission shall publish a monthly notice in the Kenya Gazette showing the amount of the WRMA Levy applicable to all Units billed to every Post-paid Consumer or Units Sold with respect to Pre-paid Consumers during the month of publication of such notice .

6. Taxes and Levies

The Consumer shall pay any taxes, levies or duties imposed from time to time by the Government. At present, the following are levied by the Government:

- i) VAT at 16% charged to:
 - a) Demand Charge;
 - b) Foreign Exchange Fluctuation Adjustment;
 - c) Inflation Adjustment
 - d) Fuel Energy Cost ; and
 - e) Non Fuel Energy Cost
- ii) Rural Electrification Programme (REP) levy at 5% of revenue from Unit sales.
- iii) Energy Regulatory Commission (ERC) levy at 3 Kenya cents/kWh.

PART IV

OTHER IMPORTANT CONDITIONS

- a) In the event of the supply of electrical energy to the installation of any Consumer having a Power Factor of less than 0.90, then the Company may give to such Consumer thirty days' notice in writing requiring him to improve the Power Factor of his installation to or in excess of 0.90.
- b) If a Consumer fails to comply with such notice as aforesaid, then the Company shall be at liberty to impose a surcharge as specified below until such time as the Power Factor of such Consumer's installation is equal, or in excess of 0.90 :-
 - i) for Consumers charged under Methods DC, SC and SL, the payment for electrical energy consumed in each Post-paid Billing Period (exclusive of VAT, Fuel Energy Cost Charge, Foreign Exchange Rate Fluctuation Adjustment, REP and ERC levies) shall be increased by 2 per cent for each complete 1 per cent by which the power factor is below 0.90.



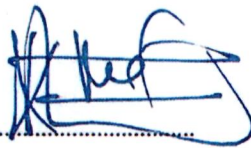
- ii) for Consumers charged under Methods CI - the payment for electrical energy consumed and chargeable KVA of Demand in each Post-paid Billing Period (exclusive of VAT, Fuel Energy Cost charge, Foreign Exchange Rate Fluctuation Adjustment, REP and ERC levies) shall be increased by 2 per cent for each complete 1 per cent by which the Power Factor is below 0.90.
- c) Any apparatus installed by the Company for the purpose of ascertaining the power factor of any Consumer's installation or of any part thereof shall be installed and maintained at the sole expense of the Company.
- d) The Company shall determine the voltage at which a supply of electrical energy shall be provided to any Consumer's supply terminals and this voltage shall be maintained by the Company subject to the permissible variations as provided for in the Act.

REPUBLIC OF KENYA

THE ENERGY ACT 2006

Pursuant to Section 45 of The Energy Act 2006, I hereby approve the Schedule of Tariffs and Rates 2018 attached hereto for supply of electricity by The Kenya Power and Lighting Company Limited, to come into force on the 1st day of November 2018.

APPROVED.....



Dated at NAIROBI this20..... day ofDECEMBER..... 2018

PAVEL ROBERT OIMEKE
DIRECTOR GENERAL



REPUBLIC OF KENYA

MINISTRY OF ENERGY

**MEETING REGARDING IMPLEMENTATION STATUS OF HOUSE
RESOLUTIONS**

SUBMISSIONS BY THE CABINET SECRETARY FOR ENERGY

Following the letter dated 2nd August, 2021, Ref: NA/DAASC/COI/2021/(93), the Select Committee on Implementation resolved to request for a comprehensive report on the Petition regarding water supply constraints caused by Kenya Power tariffs in Kilifi County:

- 1) That the Energy and Petroleum Regulatory Authority, as the Convener, to undertake and engage in a consultative forum with water works development agencies, water companies and various water service boards to come up with the non-commercial water pumping and supply tariff(s) for public water utilities including Baricho Water Works and report to the Committee within 90 days.**

EPRA convened a meeting with water service boards through Water Service Providers Association (WASPA) on the 1st October 2019 following recommendations from the Energy Committee of the National Assembly.

The meeting noted that the Retail Electricity Tariffs have not been reviewed since 2018 and that a special tariff can only be considered when the tariff review process resumes.

The Authority also encouraged the Water Service providers to take advantage of the Time of Use Tariffs and explore usage of solar energy for water pumping.

(Attached find minutes of meeting with water agencies and the current tariff schedule)

- 2) The Baricho Water Works Agency and Kenya Power in the Coast region, to ensure there is a cordial working arrangement before resorting to disconnection or interruption of supply of electricity. That the same arrangement be subjected to, regulatory concurrence that involved the Energy and Petroleum Regulatory Authority (EPRA) and Water Resources Authority to ensure each party meets its obligations as per the working arrangement.**

The regulator has continued to encourage Kenya Power and Baricho Water Works Agency to have a good work relationship for mutual interests of both parties. So far, Kenya Power has been very understanding to issues affecting the water agency. Kenya Power allowed them time to reduce their bills.

KPLC engaged Baricho Water works Agency in a credit arrangement to avoid disconnection of supply who are now paying weekly towards reducing the arrears and honoring the current monthly bills.

KPLC and the Water Service Provider and have severally agreed on payment proposals, which are reviewed upon request. The latest agreement was entered into in June 2021 whereby Baricho Water pays Kshs.14Million per week to cover the monthly bill and part of the arrears, and they are upholding this agreement.

Kenya Power also has a dedicated Key Account Manager, who handles all matters that relate to the Account

- 3) The Water Resources Authority and EPRA to audit all water Service Boards and water Companies responsible for supply of water to determine the level of water losses and categorize the type of losses before qualifying for a special non-commercial tariff. This is to ensure that only acceptable water losses in the system are considered in the design of the tariff.**

An internal sector audit was done which is attached. The two regulators are however yet to meet and agree on a workable formula for the joint audit. These meetings have not been undertaken due to COVID 19 restrictions. The New Director General at EPRA will reach out to Water Resources Authority to progress the matter.

- 4) That within three months upon adoption of the petition, each county to apply for separate accounts from Kenya Power and are metered separately. This is to ensure ownership of bills by each entity responsible for supply and distribution of water.**

Baricho Water Works Agency has not yet applied for meter separations and KPLC is therefore awaiting feedback from the user.

- 6) That Kenya Power maintains a working and cordial engagement with the water works agencies and establishes a framework that involves respective regulators in the water and energy sector. That water agencies to ensure prioritization of arrears within an agreed framework that takes into account financial needs of Kenya Power while balancing the interests of water users.**

This has been provided in the response to recommendation No.2

- 7) That the Ministry of Energy in conjunction with the State Department for Water and sanitation to initiate an intervention of mapping all public water utilities and facilities so as to be connected with relevant and affordable source of electricity ranging from grid power and innovate solar regimes for off-grid areas while minimizing the use and/or impact of policy statement to allow affordable use of clean and safe water.**

Energy has been identified as a key enabler in the realization of the Big Four Agenda. As such, the Ministry of Energy has been working closely with the State Department of Water and Sanitation to ensure that water utilities and boreholes are electrified.

Furthermore, the Ministry has been undertaking a program to electrify boreholes located in off-grid areas through the Kenya Off-Grid Solar Access Project (KOSAP) which is a program in collaboration with the World Bank. 380 boreholes are targeted covering 14 underserved counties namely: West Pokot, Turkana, Marsabit, Mandera, Wajir, Garissa, Isiolo, Tana River, Lamu, Kilifi, Kwale, Samburu, Taita Taveta and Narok.

- 9) That, to ensure sustainable and affordable use of water across the country, the State Department of Energy in consultation with the Ministry of Water and Sanitation to initiate an intervention of mapping all public water utilities and pumping facilities so as to be connected with affordable source of electricity ranging from grid power and innovative alternative energy sources such as solar regimes for off-grid areas. That, the policy intervention therein and strategies be considered in the 2020/21 Medium Term Policy Statement to allow affordable use of clean and safe water in the Country.**

This has been provided in the response to recommendation No.7

 Signed:

**Hon. Charles Keter, EGH
Cabinet Secretary**

Date: 13th August, 2021



ENERGY AUDIT REPORT

COAST WATER SERVICES BOARD.
BARICHO WATER WORKS.



Audit Team:

1. James Namisi Wasula

Signed: _____

1st August 2021

1. BACKGROUND

Baricho Water Works is located in Kilifi County and managed by Coast Water Services Board.

Currently the Agency oversees the production and supply of bulk water to Mombasa and Malindi towns.

In the face of rising energy costs at the utility, Kenya Power carried out an energy audit of the facility in order to explain the current levels of electricity consumption.

As such a team visited the utility between the dates of 29th to 30th of July 2021 to carry out the exercise.

The audit entailed interviews with site management and staff, measurement of energy parameters using various audit instruments and identification of energy efficiency opportunities.

Our detailed energy audit shows potential for cost effective energy savings.

2. SCOPE OF THE WORKS

The work involved the study of the equipment in use in the facility and their operations, taking relevant measurements, data analysis and interpretation.

The following activities were undertaken:

- a. Confirmation of the Metering Accuracy of the Kenya Power meter.
- b. Confirmation of the Tariff as applied to the meter.
- c. Confirm the power factor at the metering point.
- d. Study of the energy using equipment operations and utilization in the facility.
- e. Identification of main energy end uses and measurements of relevant energy consumption parameters associated with them.
- f. Identification of energy efficiency improvement opportunities.

3. ENERGY SCENARIO AT THE FACILITY.

Energy Sources at Baricho Water Works

The main source of energy at the farm is electricity, the average monthly electricity consumption is approximately 2.2 MWh with a maximum apparent power demand of 4950 kVA this corresponds average bill of Ksh. 44,000,000.00.

Electricity metering at Baricho Water Works.

Power supply to the Utility is via a 33KV line from the Kakuyuni 132/33kv substation, and metered via smart meter no. 040016110706 under Tariff C3. This Tariff is applicable to Commercial and Industrial consumers metered at 33,000 volts per postpaid billing period.

The billing components under the tariff are listed below:

- Energy charge of ksh.10.50 per unit consumed
- Energy charge of Ksh 5.25 per unit consumed for supply metered off peak hours as per Time of Use rules.
- Demand charge of Ksh. 270 per KVA.

Power distribution at Baricho Water Work

After metering at 33kV, power is supplied to a distribution panel which has four outgoing feeders to Transformer 1 (2MVA, 33/3.3kV), Transformer 2 (5MVA, 33/3.3kV), Transformer 3 (2MVA, 33/3.3kV) and an outgoing 33kv feeder.

Load details for the transformers and outgoing feeder are tabulated below.

	Primary Voltage	Secondary Voltage	MVA Rating	Measured Voltage (kV)	Measured Current	Measured MVA	% TX Loading
Incoming 33 kV Feeder	33000			31.658	88.63	4.85973	
Transformer 1	33000	3300	2	31.658	9.79	0.536802	26.84%
Transformer 2	33000	3300	5	31.658	58.65	3.215877	64.32%
Outgoing 33 kV Feeder	33000			31.658	20.19	1.107051	
Transformer 4	33000	3300	2	31.658	0	0	0.00%

Table 3.1. Distribution at 33kV detail.

The historical energy consumption trends and electrical load are shown following tables.

Historical Energy Consumption:

Historical data was extracted from Kenya Power's billing System for Large Power Customer. The data shows a consistently good power factor with the Apparent demand matching the loads on site.

Real Date	T1 Energy(kWh)	T2 Energy(kWh)	Total Energy(kWh)	Apparent Demand (kVA)	Apparent Demand Date	Active Power(kW)	Average Power Factor
01-06-19	1031670	1043250	2074920	4470	11-05-19 11:21	4130.28	0.92
01-07-19	1161900	1243752	2405652	4590	05-06-19 20:39	4273.29	0.93
01-08-19	1192713	1096887	2289600	4620	09-07-19 10:10	4278.12	0.93
01-09-19	1072278	1077777	2150055	4530	01-08-19 17:06	4163.07	0.92
01-10-19	853593	1144659	1998252	4380	25-09-19 1:16	4073.4	0.93
01-11-19	1240911	1181214	2422125	4530	11-10-19 21:31	4226.49	0.93
01-12-19	837825	982980	1820805	4320	05-11-19 7:39	3974.4	0.92
01-01-20	889584	1141326	2030910	3780	01-12-19 11:23	3504.06	0.93
01-02-20	1275003	1257306	2532309	4500	30-01-20 23:25	4198.5	0.93
01-03-20	955563	1028298	1983861	4560	01-02-20 10:32	4186.08	0.92
01-04-20	964011	1073655	2037666	4260	07-03-20 18:37	3914.94	0.92
01-05-20	1150428	1051701	2202129	4260	19-04-20 17:51	3919.2	0.92
01-06-20	1092354	1224633	2316987	4830	30-05-20 16:31	4472.58	0.93
01-07-20	1185090	1200147	2385237	4800	04-06-20 16:58	4425.6	0.92
01-08-20	1306566	1193715	2500281	4860	22-07-20 20:16	4471.2	0.92
01-09-20	1076406	1109667	2186073	4830	02-08-20 3:36	4429.11	0.92
01-10-20	1178511	1103859	2282370	3870	02-09-20 17:01	3568.14	0.92
01-11-20	968514	979146	1947660	3510	28-10-20 19:01	3257.28	0.93
01-12-20	808860	875331	1684191	3630	28-11-20 14:55	3379.53	0.93
01-01-21	1308279	1313649	2621928	4830	13-12-20 6:56	4453.26	0.92
01-02-21	1241928	1412922	2654850	4890	27-01-21 19:13	4489.02	0.92
01-03-21	1089270	1219566	2308836	4920	17-02-21 21:32	4531.32	0.92
01-04-21	1173678	1240359	2414037	4890	20-03-21 9:46	4503.69	0.92

Electric Load Breakdown:

The major rumpwing loads were visited and measurements taken with a power quality analyzer for the Mombasa and Malindi, a clamp meter

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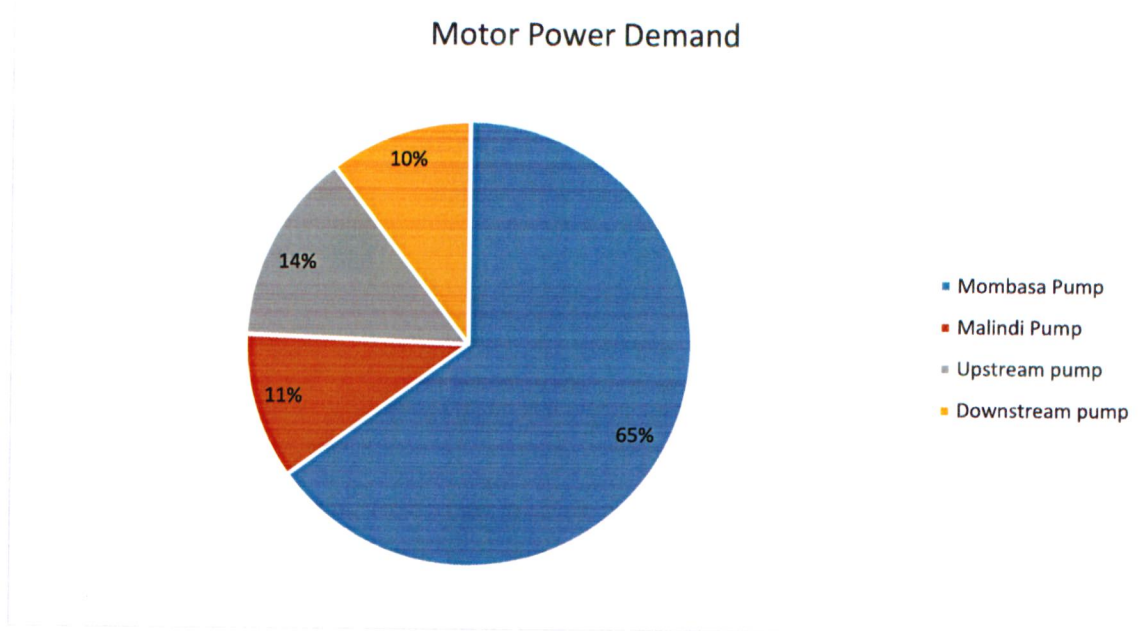


Figure 3.1. Motor Power Demand Share.

Majority share of the load has been taken up by Mombasa pumps, out of the five, three are always on duty. Mombasa pumps are supplied at a medium voltage of 3.3kV, this helps reduce ohmic losses for such big motor rated 840kW. The pumps drive centrifugal pumps that deliver water to Mombasa.

All of the upstream and downstream pumps are low voltage(0.415kV) and employ soft starting. All motors have capacitor banks on site for power factor correction.

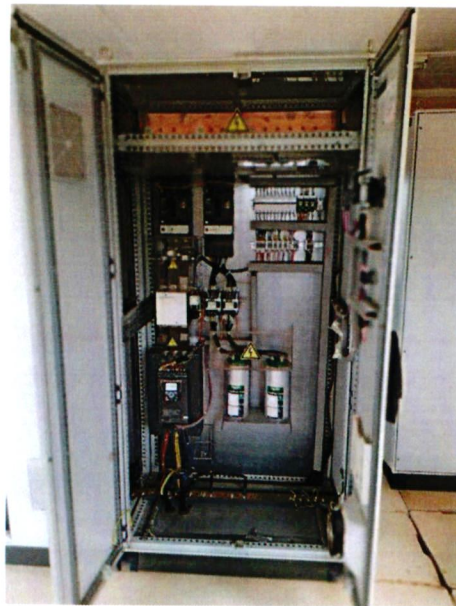


Figure 3.2. Downstream Motor 11 soft starter with power factor correction capacitors.

4. ENERGY AUDIT FINDINGS

Metering.

Baricho Water Works is centrally metered using a three wire High Voltage Current transformer and Voltage transformer indirect metering. The current transformer has a ratio of 100/5A whilst the voltage transformer has a ratio of 33000/110V.

Using an Amp stick, the currents and voltages on the 33kV line were confirmed to be similar to those being recorded by meter 040016110706.

PHASE	AMPSTICK CURRENT(A)	METER CURRENT(A)	AMPSTICK VOLTAGE (kV)	METER VOLTAGE (kV)
R(red)	85.1	86.6	31.66	31.658
Y(yellow)	86.5	0	31.72	0
B(Blue)	88.8	89.8	31.63	31.627

Table 5.1. Comparison of Current and Voltage measurements on Amp-stick and KPLC Meter.

Metering Accuracy.

The meter was tested for accuracy and the results obtained are as follows.

Meter Number	Area of Service	Meter Accuracy Class	Accuracy Test Results	Results attachment
40016110706	Whole utility plant	Class 0.2s	0.192	Appendix-I

Table 5.2. Meter Accuracy Test Results.

For accurate energy metering the test results should not be outside the class of the meter. As such it is noteworthy that meter no. 040016110706 was within acceptable limits for margin of error, for a class 0.2S meter the margin of error should not be outside $\pm 0.2\%$.



Fig. 5.1 Meter 40016110706

5. RECOMMENDATIONS.

For most of the smaller pumps in upstream and downstream, measures to improve efficiency have been put in place. Power factor correction has been done for each motor which in turns boost the overall power factor. Use of soft starters also helps to reduce the losses that occurs due to requirements of high starting torques for motors.

Below are some recommendations that when applied may lead to efficient use of power.

I. USE OF SOFT STARTER FOR MOMBASA PUMPING SYSYTEM

From Figure 3.1 it was realized that at least 65% of the energy consumed was attributed to the Mombasa Pumps. Hence improvements in energy efficiency in the motor loads shall lead to significant cost savings.

Current Situation

The total installed Mombasa Pump motor load is 4200 Kw comprising of 5 no. of 840kw. At any given time, there are three pumps running. The motors use an Auto-transformer mode of starting that makes the motors draw very high currents during the initial starting.

Recommendations

One of highest areas of energy consumption for electric motors is the start-up cycle, as accelerating up to the necessary speed requires a lot of power. Soft starters and VSDs are great ways to reduce and manage energy usage during these periods, by reducing stresses on motors through optimizing start-ups and controlling speeds.

On the power grid, soft starters improve the power quality and enable the realization of appreciable energy savings.

II. OHMIC LOSSES IN ELECTRICAL CABLES SUPPLYING UPSTREAM AND DOWNSTREAM MOTORS

Current Situation

A 3.3kv line from the one of the 33/3.3kv transformers supplies power to a 1MVA transformer which feeds the three upstream pumps with a 415V supply. The three submersible pumps rated 145,180 and 180kW are supplied via two runs of three core 70mm² cables. The voltages at the end use equipment were noted to have significantly dropped. The low voltage

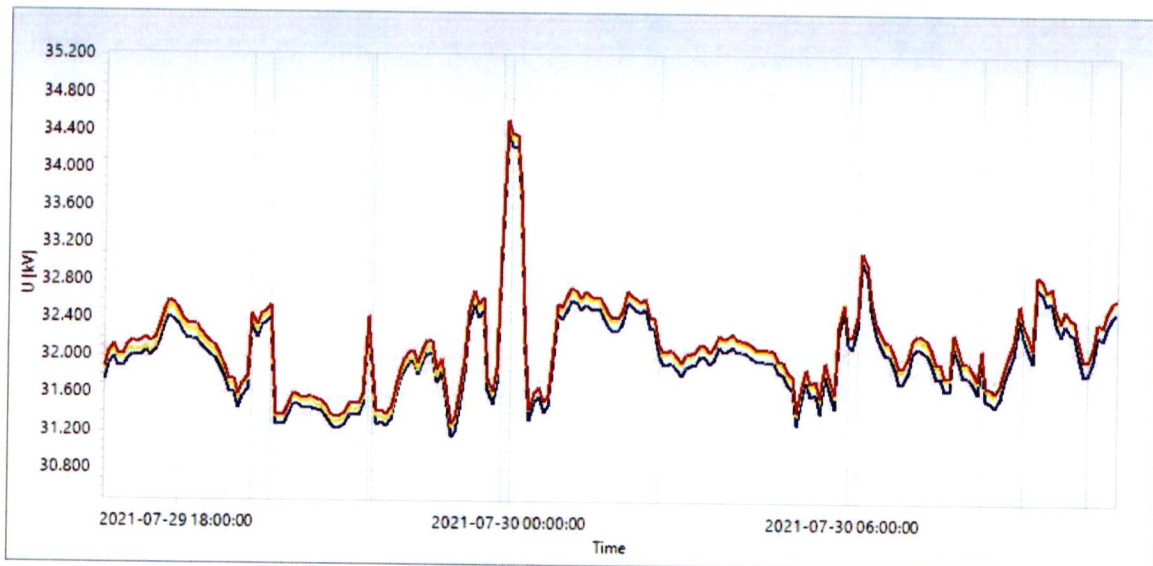
would otherwise make the motors draw higher currents above the rated current which in the long run may shorten the lifespan of the motor.

The drop in voltage occurs as a result of distance from the supply point and the cross sectional area of the cable used.

Recommendations

Adequate Cable sizing of the motors to reduce the voltage drops. The 145kw and 180kW motors at an estimated distance of 40 meters can be sufficiently supplied using two runs 150mm² x3core in place of the 70mm² cables to reduce ohmic losses.

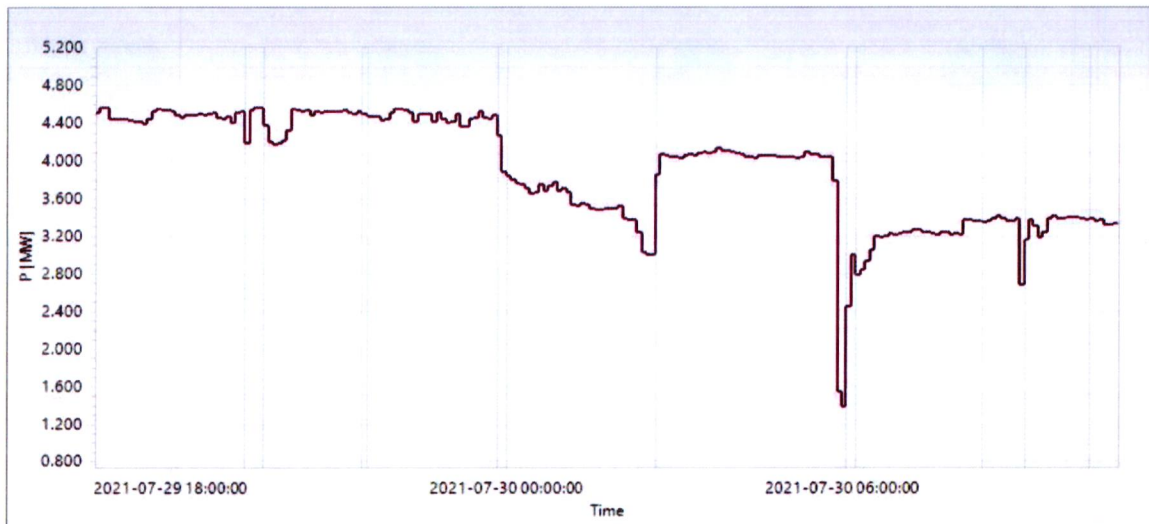
APPENDIX I



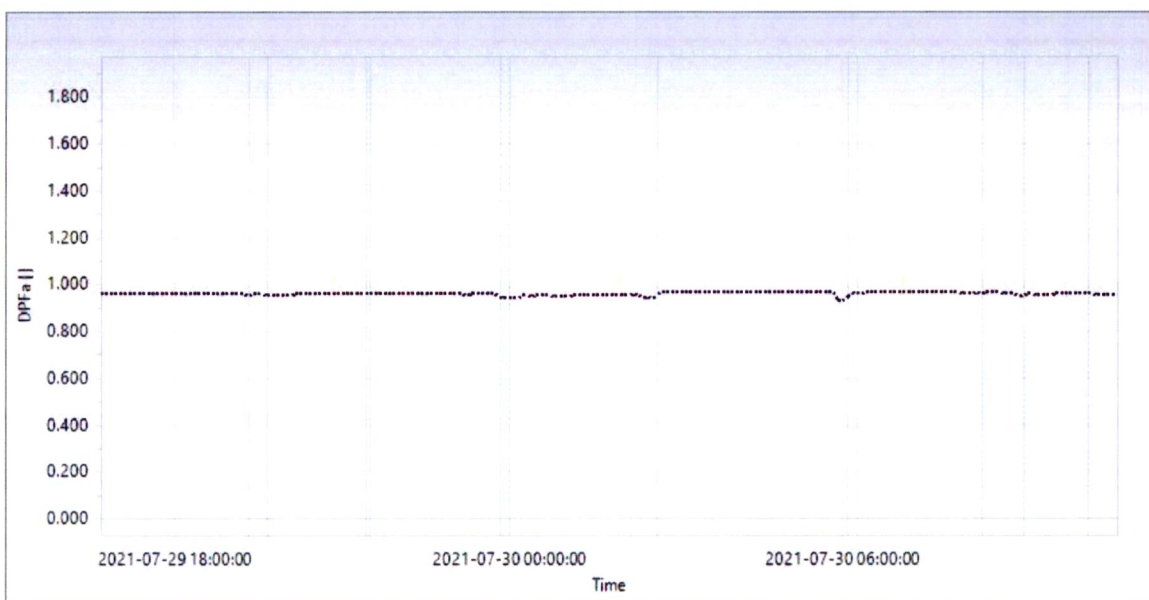
A logging of Voltage at the 33kV metering point



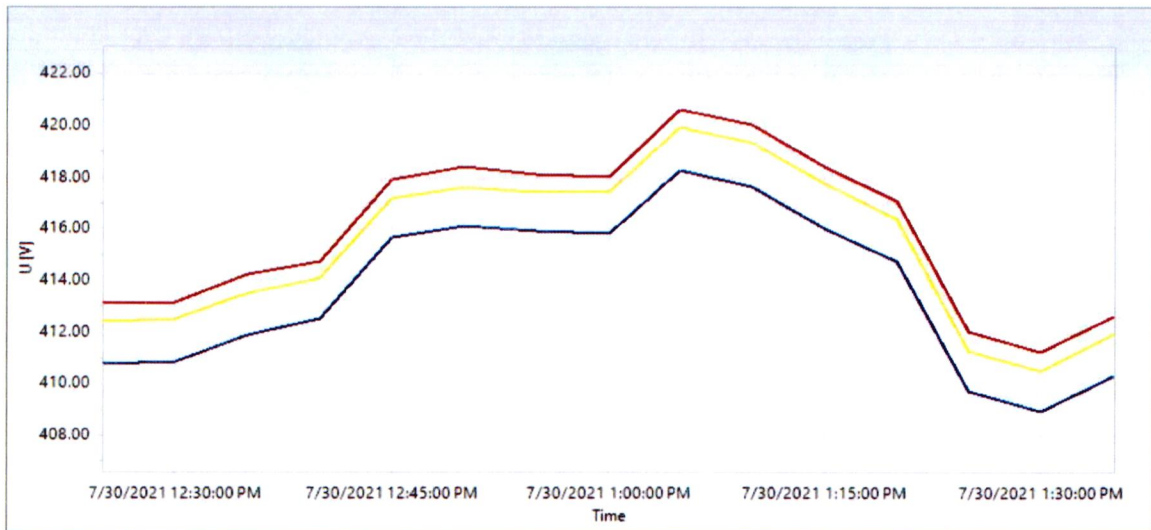
A logging of Currents at the 33kV metering point



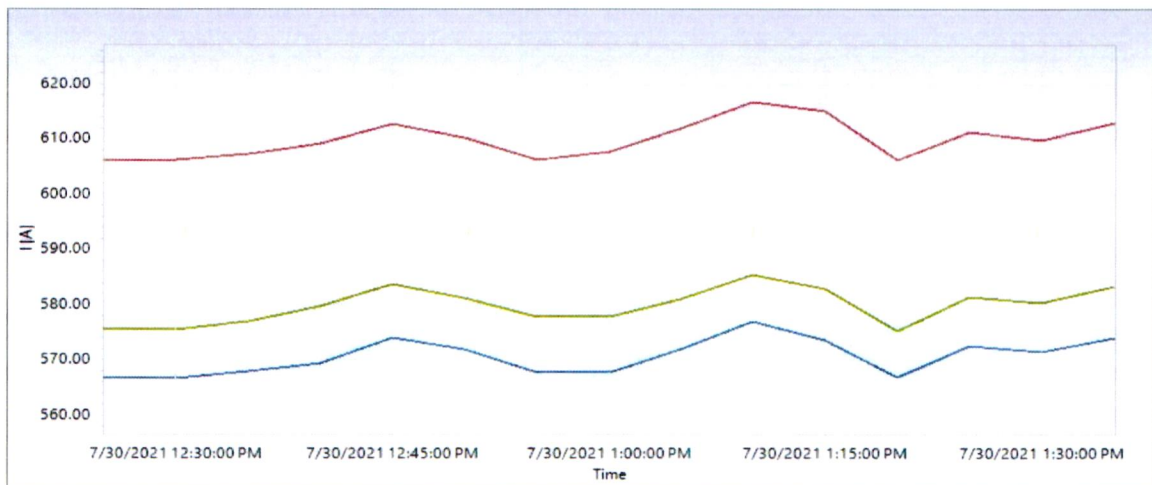
A logging of Power at the 33kV metering point



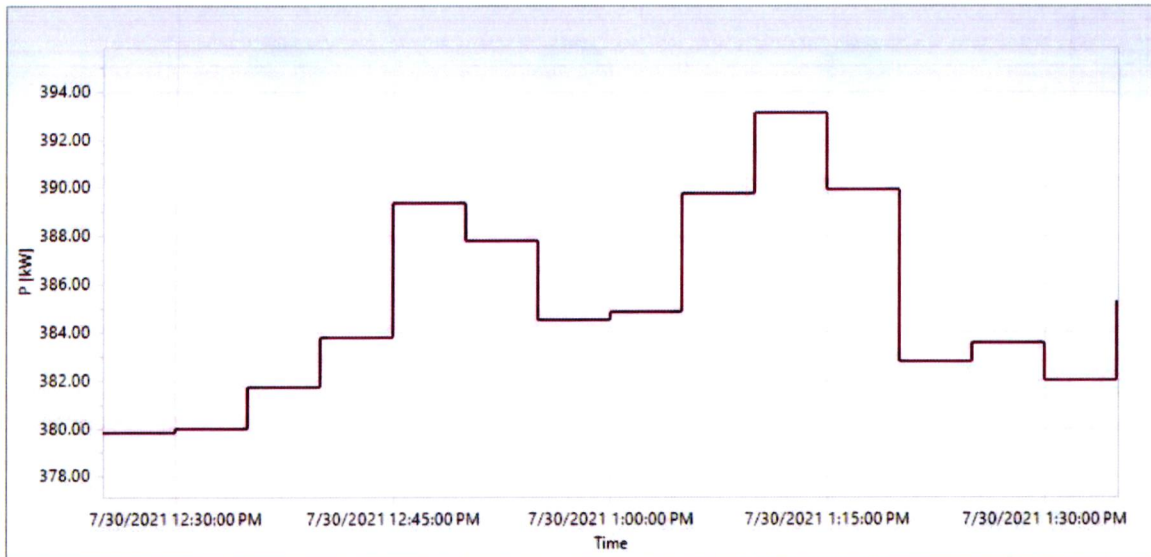
A logging of Power factor at the 33kV metering point



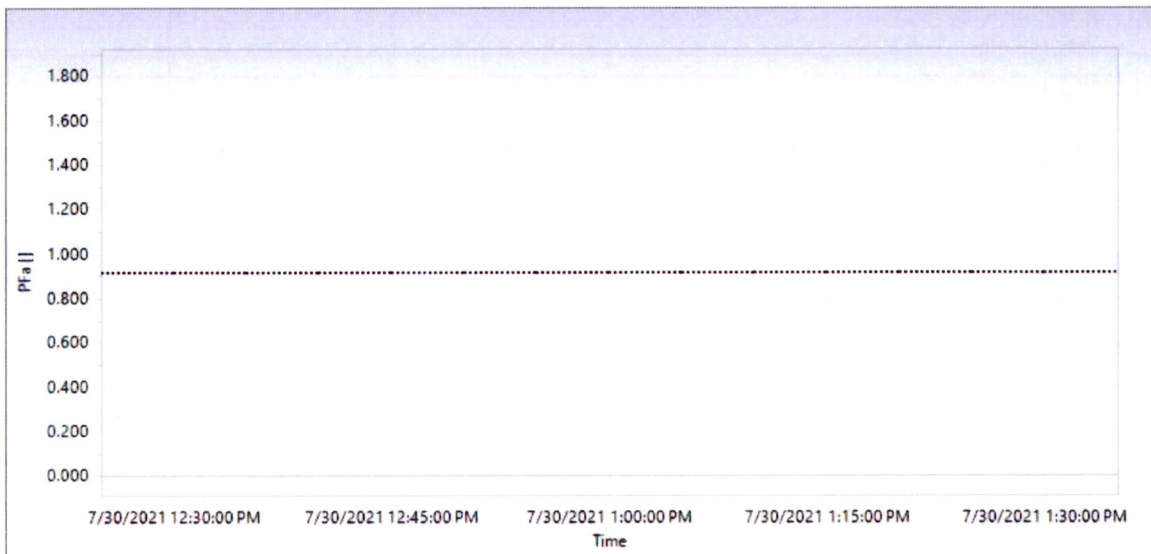
A logging of Voltages at the Malindi pumps



A logging of Currents at the Malindi pumps



A logging of Power at the Malindi pumps



A logging of Power Factor at the Malindi pumps

Annex VI a

Submission by the Kenya Urban Roads Authority on the implementation status of the Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of a public road (Konza-Katumani Road)



KENYA URBAN ROADS AUTHORITY

Efficient and safe urban roads

Barabara Plaza, Mazao Road - Off South Airport Road, JKIA

Tel: 254-020-8013844 / 254-717-105233

Email: info@kura.go.ke Web: www.kura.go.ke

P.O. Box 41727-00100, GPO, NAIROBI

REF: KURA/NA/PAR/9 (1)

VERY
URGENT

DATE: 27th July, 2021

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

Dear Sir,

RE: MEETING REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTION

We are in receipt of your letter Ref. NA/DAASC/COI/2021/ (089) dated 22nd July, 2021 Inviting the Authority to appear before the Committee for a joint meeting to appraise the Committee on implementation status of the report of the Departmental Committee on Lands on its consideration of the petition by residents of Vota, Mua Ward in Machakos Town Constituency, regarding the obstruction of the tarmacking of Konza-Katumani Road.

Kenya Urban Roads Authority and National Lands Commission have agreed to implement the creation of right of way as recommended by the National Assembly.

Kindly give us time to conclude with National Lands Commission and appear before the Committee of National Assembly, if necessary.

Thank you for your continued support.

Yours faithfully,

Eng. Silas M. Kinoti, MBS
DIRECTOR GENERAL

Copy to: The Chairman
National Lands Commission
Ardhi House, 1st Ngong Avenue
NAIROBI

(2) CHIEF
please deal
fna
29/7/21



Annex VI (b)

Submission by the Ministry of Lands and Physical Planning on the implementation status of the Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala-Musoli-Bukura Butere Road



MINISTRY OF LANDS AND PHYSICAL PLANNING

SUBMISSIONS TO THE NATIONAL ASSEMBLY SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. **NA/DAASC/COI/2021/ (084)** dated June 10, 2021, the Committee requested the Cabinet Secretary, Ministry of Lands and Physical Planning to report on the implementation status of the following reports:

1. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260
2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces
3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani Road
4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited
5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, I wish to respond as follows:

1. **Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260**

Honourable Chair,

The Departmental Committee on Lands considered a petition regarding delayed compensation for private land compulsorily acquired by Kenya Rural Road Authority (KeRRA) in 2011 for construction of the Sigalagala-Musoli-Bukura Butere Road. The Committee in its report dated November 19, 2019 recommended as follows:

- i) Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson, National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report
- ii) The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazette of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road
- iii) Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does disburse the compensation funds to the respective project affected persons within ninety days.

Implementation Status

Honourable Chair,

Recommendations (i) (ii) and (iii) are to be actioned by the National Land Commission and Kenya Rural Road Authority KeRRA.

2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Honourable Chair,

The petition concerned land L.R No. 5875/2 claimed by the petitioners (Roysa Community Development Society, the Kenya Defence Forces (KDF) and Kasarani Mall Limited (a subsidiary of Uchumi Supermarket PLC).

The land was registered in the name of Mayer Jacob Samuels (who died in 1974). The Government published a notice of intention to acquire the parcel for the Kenya Defence Forces vide Kenya Gazette Notice No. 5151 and 5152 of November 22, 1985. On August 8, 1995 an award for Kshs. 4,140,000/- was issued by the Commissioner of Lands. A 'Notice of Taking Possession' by the Government was lodged and registered in volume N. 10, Folio 494/30 File 6943 on June 25, 1986. The notice required the owner to deliver the title document to the Registrar of Titles for cancellation

The award was however challenged in the High Court under Land Acquisition Appeal No. 2 of 1986. In accordance with Section 13(2) of the Land Acquisition Act, the compensation money was deposited in the High Court and a deposit receipt issued by the Registrar. The money was subsequently deposited to Middle East Bank and released to the owner of the land on October 3, 1987. The High Court enhanced the award to Kshs. 23,000,000 and the same was subsequently appealed by the Hon. Attorney General vide Civil Appeal No. 109 of 1987.

The appeal was stood over generally to pave way for an out of court settlement. The out of court settlement was not finalized owing to the fact that the family of the late Mayer Jacob Samuels relocated from Kenya to Israel.

Despite the compulsory acquisition, the land was allocated to Solio Construction Company Limited as a fresh allocation in 2001 and was later transferred to Kasarani Mall Limited on March 20, 2001. In 2019, the County Government of Nairobi and the National Land Commission also allocated the land to the petitioners who claimed to be occupying the same. Subsequently, the Ministry of Lands and Physical Planning issued the subdivision scheme approval letters.

In considering the petition, the Committee noted in its report dated December 2019 that:

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date.

It thus recommended that:

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The Honourable Attorney General as the Principal Legal Advisor to the Government gave an advisory to the National Assembly vide a letter Ref. AG/CIV/47/20 dated August 11, 2020 regarding implementation of the report of the Departmental Committee on Lands in this matter (**Annexure 1a**). In view of this advisory, the Ministry has not been able to implement the recommendation. We have written to the Hon. Attorney General to seek guidance on the way forward and shall report to the Committee as soon as we are guided.

Further, the Environment and Land Court in Nairobi issued a judgement in ELC Case No. 153 of 2017 (formerly 495/2011) concerning the subject parcel of land L.R 5875/2. The said judgment upheld the title held by Kasarani Mall Limited and issued a permanent injunction restraining the petitioners from trespassing on the land. A copy of the judgment is marked (**Annexure 1b**).

The Petitioners also have a subsisting court case over the subject land at the Environment and Land Court in Nairobi, Judicial Review Application No. E008 OF 2020 (Republic-versus-Director Land Administration, Ministry of Lands & Physical Planning, Chief Land Registrar and the Attorney General)

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation of the Committee is to be actioned by the Director of Criminal Investigations.

Honourable Chair, in response to recommendation (iii), I wish to state as follows:

L. R No. 23393 is registered in favour of Kasarani Mall Limited. The parcel is adjacent to L. R 5875/2 and is not in contention given that the application by Kasarani Mall Limited for amalgamation of the two properties was never finalised.

3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katuani Road)

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of the Konza-Katumani road over a contested 400 Meters portion of the road traversing on private land L.R No. 355/2.

In its report dated October, 2020 the Committee noted that although the 400 meters road passing through L.R No. 7374 is not a public road, the petitioners have been in

continuous use for over 50 years. Further, the road is the shortest and most convenient route joining the Mombasa Road for use by the residents of Vota and other members of the public. It thus recommended:

- i) That the National Land Commission does consider facilitating the creation of a public right of way pursuant to Section 143 of the Land Act, 2012 to ensure the convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years within six months of the tabling of this report
- ii) The Cabinet Secretary Ministry of Lands and Physical Planning does fast track the development of the land value index as contained in the Land Value (Amendment) Act 2019 to address the challenge of over-valuation of land identified for the development of public projects within three months of the tabling of this report.

Implementation Status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The process for the creation of a public right of way is prescribed under Sections 143-148 of the Land Act, 2012 read together with Part VII of the Land Regulations, 2017.

The National Land Commission is empowered under Sections 143 to 148 of the Land Act, 2012 to create a public right of way. A public right of way created for the benefit of the National Government or County Government, a Local Authority or any corporate body to facilitate the functions of such bodies is referred to as a wayleave. Where a public right of way is created for the benefit of the public as is the case herein it is referred to as a communal right of way.

Under Section 145 of the Act and Regulation 51 (2) of the Land Regulations, 2017, a county government, an association or any group of persons may make the application to the Commission for creation of a communal right of way. The Commission may also make the application on its own motion pursuant to Section 146 of the Act. The applicant is required to obtain a survey map from the authority responsible for survey and mark the proposed position of the public (communal) right of way.

Regulation 52 (1) requires the Commission to serve a notice of the application to all persons occupying the land over which the communal right of way is sought and make an announcement of the notice in a radio station with nationwide coverage. The Commission is also supposed to publish the notice along the route of the proposed right of way.

Upon receipt of all information and where there are no objections after expiry of the period specified in the notice (90 days) the Commission shall recommend to the Cabinet Secretary to create the communal right of way (Regulation 53).

Where there are objections/representations to the application, Section 146 of the Land Act requires the Commission to consider representations and objections received pursuant to the said notices and recommend to the Cabinet Secretary whether to carry out a public inquiry into the representations/objections or refer the application for creation of a communal right of way to the county government for its opinion or to initiate and facilitate negotiations with persons who have made representations/objections on the application with a view of reaching a consensus on that application.

Honourable Chair,

Where the recommendation is for a public inquiry, the Cabinet Secretary will constitute a public inquiry panel constituting a representative of the Institution of Surveyors of Kenya, Ministry of Lands and Physical Planning, Law Society of Kenya, National Land Commission, the respective county government and Kenya Institute of Planners. The inquiry panel will then place a two weeks' notice specifying the date, time and place of inquiry to all parties to make submissions on the application for the communal right of way. At the expiry of two weeks from the date of hearing, a report of the inquiry shall be submitted to the Cabinet Secretary (Regulations 55 & 56 of the Land Regulations, 2017).

Where the Commission recommends that the matter be referred to the respective county government, the Cabinet Secretary shall within two weeks refer the matter to the county government to give their opinion. The county government shall within two weeks forward its opinion to the Cabinet Secretary in writing (Regulation 57 of the Land Regulations, 2017).

Where the Commission recommends negotiations, the Cabinet Secretary shall within two weeks initiate negotiations between the persons who made objections/ representations and the applicant.

The Cabinet Secretary will determine whether or not to create the communal right of way after considering as the case be the recommendation of the Commission, or the advice of the county government or the outcome of any negotiations that may have been reached between the applicant for the right of way and those who made representations or objections.

If the Cabinet Secretary decides to create a right of way, an Order to that effect which shall be published in the Kenya Gazette. Once the order is made, any person who had made representation or objection to the application to the creation of the right of way may appeal against the decision of the Cabinet Secretary to the Court only on a point of law.

Honourable Chair,

Section 148 (1) of the Act provides that compensation shall be payable to any person for the use of land which the person is in lawful or actual occupation with respect to the communal right of way which compensation shall be based on the value of the land as determined by a qualified valuer. Section 148 (4) of the Act places the duty to pay compensation upon the state department, public authority or corporate authority that has applied for the communal right of way.

Under Regulation 60 (1) of the Land Regulations, 2017 the Cabinet Secretary may create the public right of way upon completion of the processes outlined above.

Honourable Chair,

The Land Act, 2012 and the Land Regulations, 2017 have an elaborate procedure to be followed when one wants to create a communal right of way over private land. The Commission through a letter Ref. NLC/1/26/1 dated April 13, 2021 recommended the creation of the communal right of way on land L. R 7374/3 on the basis of the recommendation of the Departmental Committee on Lands (**Annexure 2**). However, the recommendations of the Committee are subject to the process prescribed in law. We have engaged the Commission to take the necessary steps provided in law vide our letter Ref. MOLPP/ADM/CSO/1/760 dated April 29, 2021 (**Annexure 3**). Once this is done, we shall action accordingly.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

Further to our report dated March 3, 2021 contained in **Annexure 4** (Pgs. 11-14), I wish to report that we have since prepared and undertaken stakeholder validation of Land Value Index Maps for Kakamega, Busia, Bungoma, Vihiga and Siaya counties. The main challenge remains shortage of funds to fast track the process.

The Land Value Index Maps shall be submitted by end of August, 2021 for approval by the National Assembly and the Senate in accordance with Section 107A of the Land Act, 2012.

4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited.

Honourable Chair,

The Committee considered a petition presented by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases held by Del Monte Kenya Limited. The petitioners claimed that the County Government of Muranga renewed the leases to Del Monte contrary to Section 13 of the Land Act requiring public participation to determine whether the public had an interest in the land.

The Committee in considering the petition noted that the National Land Commission dealt with the matter as a historical land injustice claim and recommended, among other things, that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it is not registered to hold. The Committee also observed that despite there being several court cases regarding renewal of leases and implementation of the recommendations of the Commission, Del Monte Kenya Limited was not opposed the resurvey of the land in question.

It therefore made the following recommendations in its report dated November 2019:

- i) The Director of Surveys, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Murang'a and Kiambu Counties within ninety days of tabling of this report.
- ii) The National Land Commission does investigate the circumstances under which L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B. Limited were later irregularly acquired by Del Monte Kenya Limited within ninety days of tabling this report.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

In our report dated October 27, 2020 (**Annexure 5**) (Pgs. 9-11), the Ministry reported that the resurvey of the land held by Del Monte Kenya Limited in Muranga and Kiambu counties was undertaken as directed.

The County Governments of Muranga and Kiambu have not yet given their approvals to the subdivisions and the extension/renewal of the leases (Form PPA 2) to facilitate registration.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation is directed at the National Land Commission.

5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair,

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended in its report dated June, 2015 the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the management of Teita Sisal Estate.

Implementation status

Honourable Chair,

In our report dated March 3, 2021 (**Annexure 4**) (Pgs. 16-17), the Ministry reported that the excision of Singila Majengo Village, Mwandisha Primary School and the public utilities including the roads and the railway reserves was undertaken vide Survey Plan No. F/R 467/87. The County Government of Taita Taveta approved the application for subdivision and change of user vide a PPA 2 form dated November 14, 2019.

This resulted in creation of Mwatate/Mwatate Block 1/ (11-13). Parcels 11 and 12 are to be surrendered to the National Government while parcel 13 is to be registered in the original owner's name. The owner proposed to further subdivide parcel 13.

The Director Land Administration issued subdivision scheme approval letters on January 4, 2021 as follows;

Parcel No.	Size (Ha.)	Beneficiary
Mwatate/Mwatate Block 1/11 (Shingila Majengo)	85.81	Land Settlement Fund Board of Trustees

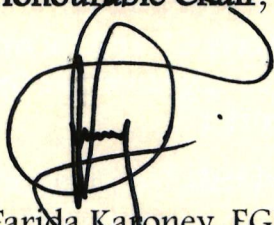
Mwatate/Mwatate Block 1/12 (Mwandishi Primary School)	6.34	Cabinet Secretary to the National Treasury
Mwatate/Mwatate Block 1/14	1191.19	Teita Estates Limited
Mwatate/Mwatate Block 1/15	4936.57	Teita Estates Limited
Mwatate/Mwatate Block 1/16	406.26	Teita Estates Limited
Mwatate/Mwatate Block 1/17 (Langatani)	132.54	Land Settlement Fund Board of Trustees

In our last report dated March 3, 2021, the we reported that we were waiting for surrender of the mother title to facilitate registration of the scheme and issuance of titles.

Honourable Chair, I wish to report that the title has since been surrendered. There were Charges registered against the title in favour of Standard Chartered Bank Limited which were discharged on May 5, 2021 to facilitate registration of the subdivisions. **Annexure 6** is a copy of the title.

The Ministry shall process the titles in two weeks time.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

July 29, 2021

Annex VII

Submission by the Ministry of Lands and Physical Planning on the implementation status of the Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala-Musoli-Bukura Butere Road



MINISTRY OF LANDS AND PHYSICAL PLANNING

SUBMISSIONS TO THE NATIONAL ASSEMBLY SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. **NA/DAASC/COI/2021/ (084)** dated June 10, 2021, the Committee requested the Cabinet Secretary, Ministry of Lands and Physical Planning to report on the implementation status of the following reports:

1. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260
2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces
3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani Road
4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited
5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, I wish to respond as follows:

1. **Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260**

Honourable Chair,

The Departmental Committee on Lands considered a petition regarding delayed compensation for private land compulsorily acquired by Kenya Rural Road Authority (KeRRA) in 2011 for construction of the Sigalagala-Musoli-Bukura Butere Road. The Committee in its report dated November 19, 2019 recommended as follows:

- i) Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson, National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report
- ii) The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazettment of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road
- iii) Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land commission does disburse the compensation funds to the respective project affected persons within ninety days.

Implementation Status

Honourable Chair,

Recommendations (i) (ii) and (iii) are to be actioned by the National Land Commission and Kenya Rural Road Authority KeRRA.

2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Honourable Chair,

The petition concerned land L.R No. 5875/2 claimed by the petitioners (Roysa Community Development Society, the Kenya Defence Forces (KDF) and Kasarani Mall Limited (a subsidiary of Uchumi Supermarket PLC).

The land was registered in the name of Mayer Jacob Samuels (who died in 1974). The Government published a notice of intention to acquire the parcel for the Kenya Defence Forces Vide Kenya Gazette Notice No. 5151 and 5152 of November 22, 1985. On August 8, 1995 an award for Kshs. 4,140,000/- was issued by the Commissioner of Lands. A 'Notice of Taking Possession' by the Government was lodged and registered in volume N. 10, Folio 494/30 File 6943 on June 25, 1986. The notice required the owner to deliver the title document to the Registrar of Titles for cancellation

The award was however challenged in the High Court under Land Acquisition Appeal No. 2 of 1986. In accordance with Section 13(2) of the Land Acquisition Act, the compensation money was deposited in the High Court and a deposit receipt issued by the Registrar. The money was subsequently deposited to Middle East Bank and released to the owner of the land on October 3, 1987. The High Court enhanced the award to Kshs. 23,000,000 and the same was subsequently appealed by the Hon. Attorney General vide Civil Appeal No. 109 of 1987.

The appeal was stood over generally to pave way for an out of court settlement. The out of court settlement was not finalized owing to the fact that the family of the late Mayer Jacob Samuels relocated from Kenya to Israel.

Despite the compulsory acquisition, the land was allocated to Solio Construction Company Limited as a fresh allocation in 2001 and was later transferred to Kasarani Mall Limited on March 20, 2001. In 2019, the County Government of Nairobi and the National Land Commission also allocated the land to the petitioners who claimed to be occupying the same. Subsequently, the Ministry of Lands and Physical Planning issued the subdivision scheme approval letters.

In considering the petition, the Committee noted in its report dated December 2019 that:

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date.

It thus recommended that:

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The Honourable Attorney General as the Principal Legal Advisor to the Government gave an advisory to the National Assembly vide a letter Ref. AG/CIV/47/20 dated August 11, 2020 regarding implementation of the report of the Departmental Committee on Lands in this matter (**Annexure 1a**). In view of this advisory, the Ministry has not been able to implement the recommendation. We have written to the Hon. Attorney General to seek guidance on the way forward and shall report to the Committee as soon as we are guided.

Further, the Environment and Land Court in Nairobi issued a judgement in ELC Case No. 153 of 2017 (formerly 495/2011) concerning the subject parcel of land L.R 5875/2. The said judgment upheld the title held by Kasarani Mall Limited and issued a permanent injunction restraining the petitioners from trespassing on the land. A copy of the judgment is marked (**Annexure 1b**).

The Petitioners also have a subsisting court case over the subject land at the Environment and Land Court in Nairobi, Judicial Review Application No. E008 OF 2020 (Republic-versus-Director Land Administration, Ministry of Lands & Physical Planning, Chief Land Registrar and the Attorney General)

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation of the Committee is to be actioned by the Director of Criminal Investigations.

Honourable Chair, in response to recommendation (iii), I wish to state as follows:

L. R No. 23393 is registered in favour of Kasarani Mall Limited. The parcel is adjacent to L. R 5875/2 and is not in contention given that the application by Kasarani Mall Limited for amalgamation of the two properties was never finalised.

3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katutani Road)

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of the Konza-Katutani road over a contested 400 Meters portion of the road traversing on private land L.R No. 355/2.

In its report dated October, 2020 the Committee noted that although the 400 meters road passing through L.R No. 7374 is not a public road, the petitioners have been in

continuous use for over 50 years. Further, the road is the shortest and most convenient route joining the Mombasa Road for use by the residents of Vota and other members of the public. It thus recommended:

- i) That the National Land Commission does consider facilitating the creation of a public right of way pursuant to Section 143 of the Land Act, 2012 to ensure the convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years within six months of the tabling of this report
- ii) The Cabinet Secretary Ministry of Lands and Physical Planning does fast track the development of the land value index as contained in the Land Value (Amendment) Act 2019 to address the challenge of over-valuation of land identified for the development of public projects within three months of the tabling of this report.

Implementation Status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The process for the creation of a public right of way is prescribed under Sections 143-148 of the Land Act, 2012 read together with Part VII of the Land Regulations, 2017.

The National Land Commission is empowered under Sections 143 to 148 of the Land Act, 2012 to create a public right of way. A public right of way created for the benefit of the National Government or County Government, a Local Authority or any corporate body to facilitate the functions of such bodies is referred to as a wayleave. Where a public right of way is created for the benefit of the public as is the case herein it is referred to as a communal right of way.

Under Section 145 of the Act and Regulation 51 (2) of the Land Regulations, 2017, a county government, an association or any group of persons may make the application to the Commission for creation of a communal right of way. The Commission may also make the application on its own motion pursuant to Section 146 of the Act. The applicant is required to obtain a survey map from the authority responsible for survey and mark the proposed position of the public (communal) right of way.

Regulation 52 (1) requires the Commission to serve a notice of the application to all persons occupying the land over which the communal right of way is sought and make an announcement of the notice in a radio station with nationwide coverage. The Commission is also supposed to publish the notice along the route of the proposed right of way.

Upon receipt of all information and where there are no objections after expiry of the period specified in the notice (90 days) the Commission shall recommend to the Cabinet Secretary to create the communal right of way (Regulation 53).

Where there are objections/representations to the application, Section 146 of the Land Act requires the Commission to consider representations and objections received pursuant to the said notices and recommend to the Cabinet Secretary whether to carry out a public inquiry into the representations/objections or refer the application for creation of a communal right of way to the county government for its opinion or to initiate and facilitate negotiations with persons who have made representations/objections on the application with a view of reaching a consensus on that application.

Honourable Chair,

Where the recommendation is for a public inquiry, the Cabinet Secretary will constitute a public inquiry panel constituting a representative of the Institution of Surveyors of Kenya, Ministry of Lands and Physical Planning, Law Society of Kenya, National Land Commission, the respective county government and Kenya Institute of Planners. The inquiry panel will then place a two weeks' notice specifying the date, time and place of inquiry to all parties to make submissions on the application for the communal right of way. At the expiry of two weeks from the date of hearing, a report of the inquiry shall be submitted to the Cabinet Secretary (Regulations 55 & 56 of the Land Regulations, 2017).

Where the Commission recommends that the matter be referred to the respective county government, the Cabinet Secretary shall within two weeks refer the matter to the county government to give their opinion. The county government shall within two weeks forward its opinion to the Cabinet Secretary in writing (Regulation 57 of the Land Regulations, 2017).

Where the Commission recommends negotiations, the Cabinet Secretary shall within two weeks initiate negotiations between the persons who made objections/ representations and the applicant.

The Cabinet Secretary will determine whether or not to create the communal right of way after considering as the case be the recommendation of the Commission, or the advice of the county government or the outcome of any negotiations that may have been reached between the applicant for the right of way and those who made representations or objections.

If the Cabinet Secretary decides to create a right of way, an Order to that effect which shall be published in the Kenya Gazette. Once the order is made, any person who had made representation or objection to the application to the creation of the right of way may appeal against the decision of the Cabinet Secretary to the Court only on a point of law.

Honourable Chair,

Section 148 (1) of the Act provides that compensation shall be payable to any person for the use of land which the person is in lawful or actual occupation with respect to the communal right of way which compensation shall be based on the value of the land as determined by a qualified valuer. Section 148 (4) of the Act places the duty to pay compensation upon the state department, public authority or corporate authority that has applied for the communal right of way.

Under Regulation 60 (1) of the Land Regulations, 2017 the Cabinet Secretary may create the public right of way upon completion of the processes outlined above.

Honourable Chair,

The Land Act, 2012 and the Land Regulations, 2017 have an elaborate procedure to be followed when one wants to create a communal right of way over private land. The Commission through a letter Ref. NLC/1/26/1 dated April 13, 2021 recommended the creation of the communal right of way on land L. R 7374/3 on the basis of the recommendation of the Departmental Committee on Lands (**Annexure 2**). However, the recommendations of the Committee are subject to the process prescribed in law. We have engaged the Commission to take the necessary steps provided in law vide our letter Ref. MOLPP/ADM/CSO/1/760 dated April 29, 2021 (**Annexure 3**). Once this is done, we shall action accordingly.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

Further to our report dated March 3, 2021 contained in **Annexure 4** (Pgs. 11-14), I wish to report that we have since prepared and undertaken stakeholder validation of Land Value Index Maps for Kakamega, Busia, Bungoma, Vihiga and Siaya counties. The main challenge remains shortage of funds to fast track the process.

The Land Value Index Maps shall be submitted by end of August, 2021 for approval by the National Assembly and the Senate in accordance with Section 107A of the Land Act, 2012.

4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited.

Honourable Chair,

The Committee considered a petition presented by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases held by Del Monte Kenya Limited. The petitioners claimed that the County Government of Muranga renewed the leases to Del Monte contrary to Section 13 of the Land Act requiring public participation to determine whether the public had an interest in the land.

The Committee in considering the petition noted that the National Land Commission dealt with the matter as a historical land injustice claim and recommended, among other things, that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it is not registered to hold. The Committee also observed that despite there being several court cases regarding renewal of leases and implementation of the recommendations of the Commission, Del Monte Kenya Limited was not opposed the resurvey of the land in question.

It therefore made the following recommendations in its report dated November 2019:

- i) The Director of Surveys, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Murang'a and Kiambu Counties within ninety days of tabling of this report.
- ii) The National Land Commission does investigate the circumstances under which L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B. Limited were later irregularly acquired by Del Monte Kenya Limited within ninety days of tabling this report.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

In our report dated October 27, 2020 (**Annexure 5**) (Pgs. 9-11), the Ministry reported that the resurvey of the land held by Del Monte Kenya Limited in Muranga and Kiambu counties was undertaken as directed.

The County Governments of Muranga and Kiambu have not yet given their approvals to the subdivisions and the extension/renewal of the leases (Form PPA 2) to facilitate registration.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation is directed at the National Land Commission.

5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair,

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended in its report dated June, 2015 the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the management of Teita Sisal Estate.

Implementation status

Honourable Chair,

In our report dated March 3, 2021 (**Annexure 4**) (Pgs. 16-17), the Ministry reported that the excision of Singila Majengo Village, Mwandisha Primary School and the public utilities including the roads and the railway reserves was undertaken vide Survey Plan No. F/R 467/87. The County Government of Taita Taveta approved the application for subdivision and change of user vide a PPA 2 form dated November 14, 2019.

This resulted in creation of Mwatate/Mwatate Block 1/ (11-13). Parcels 11 and 12 are to be surrendered to the National Government while parcel 13 is to be registered in the original owner's name. The owner proposed to further subdivide parcel 13.

The Director Land Administration issued subdivision scheme approval letters on January 4, 2021 as follows;

Parcel No.	Size (Ha.)	Beneficiary
Mwatate/Mwatate Block 1/ 11 (Shingila Majengo)	85.81	Land Settlement Fund Board of Trustees

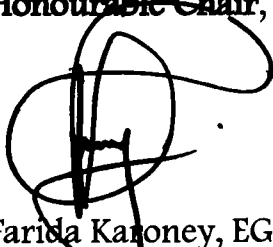
Mwatate/Mwatate Block 1/12 (Mwandishi Primary School)	6.34	Cabinet Secretary to the National Treasury
Mwatate/Mwatate Block 1/14	1191.19	Teita Estates Limited
Mwatate/Mwatate Block 1/15	4936.57	Teita Estates Limited
Mwatate/Mwatate Block 1/16	406.26	Teita Estates Limited
Mwatate/Mwatate Block 1/17 (Langatani)	132.54	Land Settlement Fund Board of Trustees

In our last report dated March 3, 2021, we reported that we were waiting for surrender of the mother title to facilitate registration of the scheme and issuance of titles.

Honourable Chair, I wish to report that the title has since been surrendered. There were Charges registered against the title in favour of Standard Chartered Bank Limited which were discharged on May 5, 2021 to facilitate registration of the subdivisions. **Annexure 6** is a copy of the title.

The Ministry shall process the titles in two weeks time.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

July 29, 2021



NATIONAL LAND COMMISSION

RESPONSE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

REPORT BY:

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

13th April, 2021

RESPONSE TO THE SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. **NA/DAASC/COI/2021/ (32)** dated 10th March, 2021, the Committee requested the Ag.Chief Executive Officer of the National Land Commission to report on the implementation status of the following reports-

1. Report of the Departmental Committee on Lands on its consideration of the Petition regarding the status of the leased land meant for expansion of Moi International Airport
2. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura-Butere Road D260
3. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces
4. Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Pongwe Area, Lunga Lunga Constituency on the imminent eviction from L.R No. 1083, Shimoni in Kwale County
5. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katuani Road)
6. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Golini, Kwale County regarding regularization of allocation of land in the Golini Settlement Scheme
7. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, we wish to respond as follows-

- 1. Report of the Departmental Committee on Lands on its consideration of the Petition regarding the status of the leased land meant for expansion of Moi International Airport**

1.1 Background and Context

Honourable Chair,

The Committee considered a petition presented by Hon. Shimbwa Omar Mwinyi, M.P (Changamwe Constituency) on behalf of Residents Changamwe Constituency regarding the status of the leased land meant for expansion of Moi International Airport. The petitioners sought the intervention of Parliament to investigate the matter with a view to have the

Government discontinue any further leasing of Plot No. 12223/VI/MN claimed by natives of Bokole in Airport Ward and Plot No. 1066 sec. VI/MN in Port Reitz Ward in Changamwe Constituency.

The petitioners were aggrieved that the Plot No. 12223/VI/MN was taken by the Government for the development of Moi International Airport but was leased to Kenya Petroleum Refineries Limited. They claimed that the lease had since expired and therefore requested the National Land Commission to repossess the land and revert to the original owners.

As for Plot No. 1066 sec. VI/MN, the petitioners complained that although the land belonged to Kenya Airports Authority, the company was not utilizing it. Instead, it was being utilized by third parties. They therefore sought to have the land allocated to them.

The Committee in considering the petition observed that:

- i) Projects planned and budgeted for by the National Government, County Government and the CDF committee on Infrastructure and Social Amenities are unable to commence due to unavailability of land in the area
- ii) The Committee could not authenticate ownership of Plot No. 12223/VI/MN because the Ministry of Lands and Physical Planning did not avail the title
- iii) Kenya Petroleum Refineries Limited is the registered owner of Plot No. 12223/VI/MN
- iv) Individuals who have put up a container yard, have taken part of the land and have refused to share the amenities like water with the area residents
- v) Access routes to the area have been closed hence children have to travel long routes to access schools
- vi) The ward is served by only two (2) primary schools, which were built in the early post-independence years and has no secondary school, school for early childhood development, library, stadia, social hall and other social amenities.

The Committee therefore made the following recommendations-

- i) The Ministry of Lands and physical planning and National Lands Commission should intervene with a view to identifying and securing land meant for public utilities in Airport and Port Reitz wards.
- ii) Access routes to schools and hospitals be provided to enable school going children and members of the public seeking treatment to easily access schools and hospitals respectively.
- iii) National Land Commission to visit Port Reitz ward and confirm if the land is public or private and open up the area to provide access routes to schools and hospital.

1.2. Implementation Status

Honourable Chair,

Implementation of the above recommendations of the committee will be achieved through two land use plans prepared by the County Government of Mombasa i.e the Mombasa Development Master Plan 2018 and the Mombasa Integrated Strategic Urban Development Plan, 2015-2035 that are meant to secure public utilities within the county including those in the Airport and Port Reitz wards. The Commission is in consultation with the County Government of Mombasa in this regard.

A preliminary site visit by an officer of the Commission did not conclusively determine the status of the land and the public access sections. The commission intends to conduct a verification visit together with Ministry of Lands and County Officials as soon as Covid restrictions are lifted to be able to prepare a comprehensive report.

2. Report on a petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala-Musoli-Bukura Butere Road D260

2.1 Background and Context

Honourable Chair,

The National Government through the Kenya Rural Roads Authority embarked on upgrading of the approximately 35 Kilometres long Sigalagala-Musoli-Bukura Butere Road in 2011. The construction encroached into private properties displacing many of the residents residing along the road. At the start of the project, the Authority entered into an agreement with the landowners to allow it to enter into the affected land for the purpose of construction of the road. The Authority jointly with the landowners and an agricultural officer documented the developments for purposes of compensation.

In 2012, the Authority submitted the request for compulsory land acquisition to the then Commissioner of Lands. However, the enactment of the Land Act in 2012 shifted the mandate of compulsory land acquisition to the National Land Commission. The Commission was constituted in 2013 and it took over the matter and published the intention to acquire the land vide gazette notice no. 6472 of July 7, 2017. Inspections of the properties affected by the project were carried out by the Commission and KeRRA between March and May 2018. After the inspections, the Commission requested KeRRA to revise the land acquisition maps to reflect the actual status on the ground.

Gazettement of inquiries into claims of compensation by those affected by the project has been pending awaiting submission of the revised land acquisition maps and the appointment of the new Commissioners as it is only the Chairperson who can approve and gazette the inquiries.

In its report dated November 2019, the Committee observed that the delay in compensating the affected residents was inordinate, not justifiable and contravened the requirement for prompt and just compensation as contained in Article 40 of the Constitution as read with the Land Act, 2012.

The Committee recommended as follows-

- i) Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report
- ii) The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazettement of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road
- iii) Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land commission does disburse the compensation funds to the respective project affected persons within ninety days

2.3 Implementation Status

Honourable Chair,

The Commission published in the Kenya gazette a notice of deletion, addendum and inquiry No. 10918 of 22nd December 2020 upon receipt of the amended acquisition plan from KeRRA (Attached).

The inquiry was held between 16th February 2021 and 25th February 2021 at Shivakala chief's office as per the notice of inquiry

The Commission is finalizing on valuation with a view to issuing awards to the project affected persons.

The Commission confirms that it will complete the process of issuing awards and requesting for funds from KeRRA within the given 90 days from date of inquiry.

3. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

3.1 Background and Context

Honourable Chair,

The Committee considered a petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers by the Kenya Defence Forces from L.R No. 5875/2 located in Roysambu measuring 17.16 acres.

The petitioners claimed that they were former workers of the late Mayer Jacob Samuels employed in his sisal processing farm and workshop industry on L.R No. 5875/2 before he passed away in 1974. They claimed that the deceased's family allowed them to continue staying on the land after they were unable to pay their salaries. The petitioners registered Roysa Community Development Society to safeguard the land from grabbers and later requested the Nairobi City County government to allocate the land to them. The County government of Nairobi and the National Land Commission approved the subdivision of the land and the Ministry of Lands and Physical Planning subsequently issued letters of allotment. From the petition, the Kenya Defence Forces (KDF) evicted the petitioners from the land in April 2019.

In its response to the petition, the Ministry submitted that L.R. No. 5875/2 arose from the subdivision of L.R. No. 1012, which measured approximately 4,443 Acres. The land was transferred to Mayer Jacob Samuels from Bau Salau under a 99-year lease with effect from November 1, 1904. The lease expired on November 1, 2003.

The Government published a notice of intention to acquire the land for the Kenya Defence Forces and a 'Notice of Taking Possession' by the Government absolutely was lodged and registered in June 25, 1986. This position was supported by the Ministry of Defence.

The Ministry of Defence stated that the Commissioner of Lands valued the land at Kshs. 3,530,500 which sum was duly paid by the Commissioner. The valuation was challenged in the High Court which enhanced the award to Kshs. 23,000,000. The appeal therefrom is pending in the Court of Appeal.

An application for extension of the lease was made by the administrator of the estate of the late Mr. Jacobs on November 4, 1985. This was however declined by the Commissioner of Land since the process of compulsory acquisition was ongoing. According to the National Land Commission and the Nairobi City County the land therefore reverted to the county government upon expiry of the lease. This was the basis for the approval of the subdivision and subsequent allocation to Roysa Community Development Society.

In 2001, the land was allocated to Solio Construction Company Limited through an allotment letter as a fresh allocation and a title issued. The land was later transferred to Kasarani Mall a subsidiary of Uchumi Supermarket PLC on March 20, 2001.

In considering the petition, the Committee noted in its report dated December 2019 that-

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded.
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs.
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date

In the end, the Committee made the following findings-

- i) There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area
- ii) Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L.R. No. 5875/2 was Mr. M.J. Samuels.
- iii) There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2
- iv) In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land
- v) The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on November 1, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution
- vi) The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved identifying each subplot including plots designated for public utilities,

- vii) The Nairobi county Government had already issued allotment letters to the members of Roysa Community development society regularizing individual ownership upon payment of Kshs. 69,500.00 of which some of the members had already paid.
- viii) There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.
- ix) Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.
- x) The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R. 5875/2 to individual members.
- xi) The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process
- xii) In response to the Petitioners' prayers and based on the observations, the Committee recommends that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report
- xiii) The Committee also recommends that the Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.
- xiv) Finally, the Committee recommends that the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2

Honourable Chair,

In the report dated December 5, 2019, the Departmental Committee on Lands made the following recommendations;

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report.
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report.
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2

3.2 Implementation status

Honourable Chair, I wish to respond as follows-

Issuance of letters of allotment and titles is a multi-stakeholder exercise involving cancellation of any current titles , resurvey and planning ; where County Government and National Government agencies and the NLC are involved. Once there is clarity regarding cancellation of existing (apparently fraudulent) titles, resolution within National Government as to the claim by DOD on the land and, thereafter submission of the letters of allotment for regularization, the Commission shall process the request appropriately.

As Manager of Public Land, NLC is aware of the claim by State Department of Defence to the parcel of land and an enquiry by the Office of the Attorney General (who is handling the litigation on the land) into the matter. There is equally a multi sectoral ad-hoc committee established under the recommendation of the National Assembly Departmental Committees on Defense and Foreign Relations and the Departmental Committee on Lands investigating land owned by the military in the country with a view of recommending necessary legal and policy interventions required to resolve these disputes.

The Commission shall process any requests formally presented to it.

4.Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Pongwe Area, Lunga Lunga Constituency on the imminent eviction from L.R No. 1083, Shimoni in Kwale County

4.1 Background and context

Honourable Chair,

The Commission considered a petition by residents of Pongwe area, Lunga Lunga Constituency, in Kwale County regarding their imminent eviction from L.R No. 1083, Shimoni in Kwale.

The petitioners claimed that they were displaced from their ancestral land to pave way for construction of colonial government facilities and settlement of white settlers. In 1910, the colonial government alienated 320.12 acres of their land and granted one Mr. Charles Anduson as L.R No. 1083 on leasehold basis. The land was however not reverted to them when the lease expired.

The petitioners alleged that were threatened with eviction by a person claiming to be acting on a power of attorney from the owner of the land on a freehold interest yet there were no records to show that it had changed from leasehold to freehold. They requested the National Assembly to intervene to establish the circumstances under which the land changed from leasehold to freehold tenure. The petitioners also requested the National Assembly to compel the National Land Commission to look into the issue with a view to safeguard the land for the community.

In considering the petition, the Committee made the following observations-

- i) that the last verifiable entry on official land documents and transactions of Plot No. 1083 is a charge of a mortgage of 1965 which was never discharged
- ii) there is no record from the Ministry of Lands and Physical Planning or the National Land Commission showing any transfer of Plot No. 1083 from the two Britons
- iii) the indenture by Kibigo Farm Limited is not supported by any document in the Ministry of Lands and Physical Planning
- iv) all attempts by the Committee to reach out and get evidence from Kibigo Farm Limited were futile
- v) there is evidence of settlement by squatters on the land
- vi) the Plot No. 1083 is held on a freehold basis since 1910.

Based on the observations, the Committee made the following recommendations-

- i) that there was no possibility of registering the indenture of 1988 since the mortgage of 1965 had not been discharged
- ii) that the land belongs to Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani and if efforts to trace the legal heirs fails, provisions of Article 62(d) be applied by both the Ministry of Lands and Physical Planning and the National Land Commission

to allocate the land to the squatters as individuals or community in the next six months after tabling the report

4.2 Implementation Status

Honourable Chair,

The Commission does not have and has not been able to obtain such records as would enable it to easily trace the heirs of Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani. Meanwhile the Commission is considering what options exist within its mandate to ensure implementation of the Resolutions.

5 Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katuani Road)

5.1 Background and context

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katamani road.

The Konza- Katamani murrum road has been in existence for the last 50 years was in November 2018 taken over by the Kenya Urban Roads Authority and contractor was engaged to improve it to bitumen standard. However, before the anticipated construction began, one Harrison Kikavi Muambi, a director of a company known as Muambi Properties Limited confronted the contractor and has since obstructed the contractor from further works as he claims ownership of the affected land.

The petitioners sought to have the affected portion of land, L.R No. 7374 (stretching approximately 400 Meters) acquired by the National Land Commission to create a public right of way over the parcel.

In considering the petition, the Committee received submissions and presentations by various stakeholders and noted inter alia following-

- a) Although the petitioners indicated in the petition that the contested 400 Meters portion of the Konza-Katamani road traversed on land L.R No. 355/2, the Director General, Kenya Urban Roads Authority and the Chairperson National Land Commission clarified that the said portion was on land parcel L.R No. 7374/3 owned by Muambi Properties Limited.
- b) Although the 400 meters road passing through L.R No. 7374 is not a public road, it has been in continuous use for over fifty (50) years by residents and other persons crossing from Mombasa Road to Machakos Town through Katamani.

- c) A compulsory acquisition process had been initiated by the Kenya Urban Roads Authority to acquire the affected portion of land measuring approximately 0.7972 Ha.
- d) The Notice of intention to acquire was published via Gazette Notice No. 3215 dated March 29, 2018 and Gazette Notice of inquiry No. 5264 dated May 17, 2018 were issued accordingly.
- e) The submissions made to the Committee by the Director General, Kenya Urban Roads Authority (KURA) indicated that the compulsory acquisition award of Kshs. 52,632,588 made by the National Land Commission (NLC) in respect to subject piece of land measuring approximately 0.7972 Ha. owned by Muambi Properties Ltd to facilitate the tarmacking of the Konza/ Katumani Road appeared to be expensive and exaggerated in comparison to the prevailing market price for comparable land in the area.
- f) KURA did not pay the said award and decided to identify an alternative alignment measuring approximately 1.55km. The National Land Commission was notified of the decision and requested to cancel the acquisition process and issue a degazettement notice thereof.
- g) Sections 143(1), 145 and 146 of the Land Act, 2012 allow the National Land Commission to facilitate the creation of a communal right of way, which shall be known as a public right of way.
- h) There exists a basis for the National Land Commission to create a public right of way over the 400 meter portion of the Konza-Katumani Road traversing on private land L.R. No. 7374/3 considering;
 - i. The said road has been used by the residents of Vota and other members of the public for more than fifty (50) years and maintained by the government; and
 - ii. The 400-meter road is the shortest and most convenient route joining the Mombasa Road for use by the residents of Vota and other members of the public.
- i) The National Land Commission did aver that it would upon request initiate the said creation of a public right of way of the 400-meter portion of land affected by the Konza-Katumani Road in accordance with the Land Act of 2012.
- j) In view of the foregoing, the National Land Commission may consider creating a public right of way pursuant to Section 143 of the Land Act 2012 to facilitate the convenient passage of the residents of Vota through the 400-meter private road, which they have been using for over fifty years.

In view of the foregoing, the Committee recommended that-

- i) National Land Commission does consider facilitating the creation of a public right of way pursuant to Section 143 of the Land Act, 2012 to ensure the convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years within six months of the tabling of this report.
- ii) The Cabinet Secretary Ministry of Lands and Physical Planning does fast track the development of the land value index as contained in the Land Value (Amendment)

Act 2019 to address the challenge of over-valuation of land identified for the development of public projects within three months of the tabling of this report.

5.2 Implementation Status

Honourable Chair,

Our response on this matter is as follows;

1. Ground Status

Konza-Katumani road provides linkage to Mombasa road (A109) for transport of goods, services and passengers. The road branches off Machakos-Wote road passing through part of Katumani to Vota ward and finally joining Mombasa road directly opposite the entry to Kapiti Plains Estate Ltd Research Centre. It is 9 Km long and its construction is financed through Road Maintenance Fund and managed by Kenya Urban Roads Authority.

The project is almost 70 percent complete and follows the existing road corridor/alignment, of which 400 metres traverses LR No. 7374/3.

2. Statutory provisions

The land Act, 2012 section 143(1) provides that subject to and in accordance with this section and section 146, the Commission may, create a right of way which shall be known as public right of way. Further, section 145 states that a county government, an association, or any group of persons may make an application to the Commission for a communal right of way. Section 146 provides the determination of public right of way, process and procedure the Commission shall use to create a public right of over private land. The section further provides that it is the Cabinet Secretary responsible for lands who makes an order through a gazette notice upon recommendation by the Commission.

Once the Cabinet Secretary has made an order to create a public right of way the Commission shall cause all the necessary documents, plans, demarcations and surveys to be delivered to the Registrar to enable the registrar to exercise the powers under this section.

Section 148 states that compensation is payable to any person for the use of land, of which the person is in lawful or actual occupation, as a public/communal right of way based on the value of the land as determined by a qualified valuer.

The Land (General) Regulations provides the instruments required in creation of the right of way (i.e. FORM LA.54 and FORM LA.55)

3. Recommendation to the Cabinet Secretary

The Commission recommend the creation of public right of way by the Cabinet Secretary, Ministry of Lands and Physical Planning as provided for in Section 146 (1)(b) of the Land Act, 2012. A letter has been written to the Cabinet Secretary, Ministry of Lands and Physical Planning to this effect.

6. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Golini, Kwale County regarding regularization of allocation of land in the Golini Settlement Scheme

6.1 Background and context

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Golini in Kwale seeking inter alia to compel the Ministry of Lands and Physical Planning to issue the petitioners with letters of allotment in based on the resurvey map prepared in the year 2007.

Golini settlement scheme was declared in 1994 on L.R 5003 with an area of approximately 377.02 Ha. It was registered in October 1999 after completion of planning, squatter verification and survey. The scheme realized 395 plots which were registered and title deeds issued.

Complaints from locals alleging marginalization during plot allocation necessitated formation of a committee by the District Plot Allocation Committee in 2003. The scheme was abolished vide a Ministerial directive of March 2, 2007, and a re- survey done as per ground occupancy in 2007. 268 parcels were realized in the re-survey.

A legal conflict arose as there were 152 titled parcels from the initial allocation. The re-survey could only be registered upon nullification of the first allocation.

In 2017, the National Land Commission considered the matter and delivered its findings under Article 67 92) (e) on historical land injustices and recommended that-

- i) The first survey map used to allocate the land be abolished because it led to erroneous allocation
- ii) The letters of offer that followed were hence null and void
- iii) The second survey map that was done with the consent and involvement of Golini people be upheld and used as a basis of allocation of the subject land
- iv) Fresh letters of offer be issued in conformity with this map subject to resolving boundary and inheritance matters therein
- v) A proper PDP be prepared to reflect the existing land use and public utilities.

In considering the petition, the National Assembly Departmental Committee on Lands observed that despite the Commission having communicated its decision to the Cabinet Secretary Ministry of Lands and Physical Planning for implementation, the Ministry has failed to ensure

that the initial allocation of land in the scheme is legally cancelled to pave way for the settlement of genuine beneficiaries.

The Committee also noted that the 152 title deeds that had been issued in the initial allocation were not cancelled and this has facilitated continued transfer of the land. It noted that the petitioners were unable to raise the necessary fees to facilitate the lodging of a case in court seeking the revocation of the said title deeds due to the huge cost involved. The Committee also noted that the power of the Commission to review grants and dispositions under the National Land Commission Act, 2012, had since expired.

In the end, the Committee in its report dated October 2020, advised the Ministry to implement the recommendations of the Commission to ensure that the initial allocation of the scheme is revoked and cancelled to pave pay for settlement of beneficiaries as per the second resurvey.

6.2 Implementation Status

Honourable Chair,

The Commission does not have a role in the first stage of the implementation of the resolutions.

Honourable Chair, I Submit



GERSHOM OTACHI BW'OMANWA

CHAIRMAN

Annex VIII (a)

Submission by the Ministry of Labour and Social Protection on the implementation status of the Report of the Departmental Committee on Labour & Social Welfare regarding the Petition by the Kenya Association of Retired Officers on improved terms for pensioners in Kenya



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

Telephone: Nairobi 2727980/4
Email: ps@socialprotection.go.ke
When replying please quote;

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

Ref: ML&SP/SP/37/5

26th July, 2021

Michael R. Sialai, CBS
Clerk to the National Assembly,
Clerk's Chambers, National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI

Dear, *Sialai*

**RE: IMPLEMENTATION STATUS OF THE REPORT BY THE DEPARTMENTAL COMMITTEE
ON LABOUR AND SOCIAL WELFARE ON ITS CONSIDERATION OF THE PUBLIC
PETITION BY THE KENYA ASSOCIATION OF RETIRED OFFICERS REGARDING
IMPROVED TERMS FOR PENSIONERS IN KENYA**

The above subject matter refers.

Reference is made to your letter, Ref No: NA/DCS/COI/2021(012), requesting the Ministry to forward a report on the implementation status of the report by the Departmental Committee on Labour and Social Welfare on its consideration of the public petition by the Kenya Association of Retired Officers regarding improved terms for pensioners in Kenya

Attached herewith, kindly find the statement in response to Petition (iv) on Inclusion of Government Pensioners in the Inua Jamii 70 years and above Cash Transfer Programme.

Yours

Sincerely

[Signature]
Nelson Manwa Sospeter, CBS

Copy to: **Mr. Simon K. Chelugui**
Cabinet Secretary
Ministry of Labour and Social Protection
NAIROBI



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION**

**PETITION TO NATIONAL ASSEMBLY UNDER THE KENYA
CONSTITUTION OF 2010, PARLIAMENT PROCURE ACT OF
2012 AND STANDINGS ORDERS 219-229: PUBLIC PETITION
REGARDING THE WELFARE OF PENSIONERS IN KENYA**

**Petition (iv): Inclusion of Government Pensioners in the Inua
Jamii 70 years and above Cash Transfer Programme.**

IMPLEMENTATION STATUS OF HOUSE RESOLUTION

**The Departmental Committee of Labour and Social Welfare
sought the implementation status of the following
recommendation:**

**4.2.5. The Cabinet Secretary for Labour and Social Protection
in consultation with National Treasury should include
Government Pensioners currently earning less than Kshs.
4,000 in monthly pensions in the next listing of cash transfer
for the elderly as a stop gap measure pending the review of
current pensions to reflect the current cost of living.**

- 1. The Government of Kenya is currently implementing three Inua Jamii cash programmes namely: Older Persons' Cash Transfer, Orphans and Vulnerable Children's Cash Transfer and Persons with Severe Disability Cash Transfer. The Government carried out a nationwide**

The criteria for identification and registration of Older Persons aged 70 years and above to be enrolled in the Consolidated Cash Transfer programme in all the constituencies countrywide are that the person:

- a) Must be aged 70 years and above;
- b) Must be a Kenyan Citizen;
- c) Must have a valid National Identification Card; and
- d) Must not be benefiting from any other Government Safety Net Programme including pensions.**

2. According to the criteria for registration, all beneficiaries of Inua Jamii Cash Transfer ***“Must not be benefiting from any other Government Safety Net Programme including pensions”***.

Due to inadequate budgetary provision, all Government pensioners have been excluded from benefiting into this programme, the reason being that by their inclusion, they would be receiving double benefits. The available resources are currently dedicated to the poor and vulnerable senior citizens who have no other alternative source of income.

3. According to the data from Pensions Department, there is no Government Pensioner who is receiving less than Kshs. 2,000 per month. Inua Jamii beneficiaries receive a monthly stipend of Kshs. 2000 which is paid bi-monthly hence translating into Kshs. 4,000 per payment cycle (2 months).

4. The Inua Jamii Cash Transfer Program has been having a budget deficit of Kshs. 4.7 billion over the last three years. This deficit has seriously affected the programme implementation including the

tracing, updating beneficiaries' records in the field and payment of these beneficiaries.

5. The priority of the Ministry is to migrate the over 140,000 beneficiaries who are currently in both exceptions and legacy list and whose account cannot be opened due to inadequate budgetary provisions and current budget deficit.

In view of the above, the Ministry has not and is not currently in a position to include Government Pensioners currently earning less than Kshs. 4,000 in monthly pensions in the next listing of cash transfer for the elderly. Our current engagement and consultation with the National Treasury is to bridge the budget deficit for the regular Inua Jamii beneficiaries.

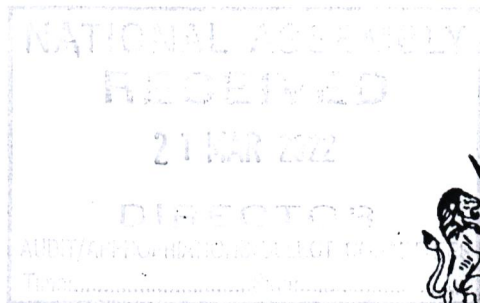
The Ministry recommends that a review of the pensions for retired public officers should be conducted through the relevant department mandated with Administration and payment of pensions.



Nelson Marwa Sospeter, CBS
PRINCIPAL SECRETARY

Annex VIII (b)

**Submission by the National Treasury on the implementation status
of the Report of the Departmental Committee on Labour & Social
Welfare regarding the Petition by the Kenya Association of Retired
Officers on improved terms for pensioners in Kenya**



① DAASC
Approved.
Bw
11/03/22

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
FAX NO.310833
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 20191 -00200
NAIROBI

When replying please quote

Ref:TNT/PENS/15/3/(69)

Date: 9th March, 2022

Mr. Michael Sialai, CBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear *Sialai,*

IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

I wish to refer to your letter No. NA/DAASC/COI/2022/(15) dated 1st March, 2022 inviting the Cabinet Secretary for the National Treasury and Planning to a meeting of the Select Committee on Implementation earlier planned for Wednesday 9th March, 2022 but since rescheduled to Thursday 10th March, 2022 at 10.00 a.m in the 2nd Floor Committee Room, Continental House.

Please find below an update on the status of implementation of the report of the Departmental Committee on Labour and Social Welfare on its consideration of the petition on improved terms for pensioners in Kenya.

No	Recommendation of House Committee	Status Report
1.	The Cabinet Secretary for National Treasury and Planning should fast track the ongoing process on the development of the National Retirement Benefits Policy to provide for the provision and management of retirement benefits in the country.	The National Treasury retained a consultant who has worked with the stakeholders to develop a draft policy that is scheduled for public participation before the end of the Financial Year 2021/2022.
2.	The Cabinet Secretary for National Treasury and Planning should initiate the Comprehensive review/peal of	The National Treasury has constituted a Multi-Agency Taskforce on the Transformation of the Public Service

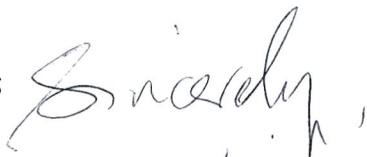
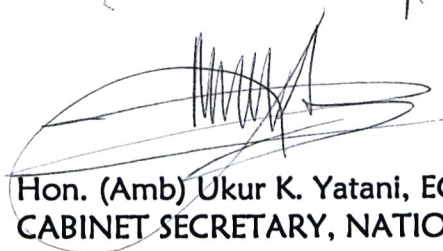
10 MAR 2022

	the Pensions Act, Cap 189 and the Pensions Increase Act Cap 190 to align them with the provisions of the Constitution of Kenya 2010 and enable it conform to the realities of the day. The review should consider in particular the issue of frequency of review of pension, minimum payable pension and the need for consideration of the cost of living adjustment	Pension Arrangement. One of the Taskforce's terms of reference is the review of the Pensions Act, Cap 189 and the Pensions Increase Act, Cap 190. The Taskforce has commenced its work and it is currently holding a workshop in Nakuru. (see Appendix i)
3.	The Cabinet Secretary for Health in consultation with The National Treasury should fast track the implementation of the post-retirement medical scheme to cater for the health needs of the pensioners in the interim and in cognizance of the current risks enhanced by the COVID-19 situation, to cushion current pensioners from the burden of the disease, it recommended that pensioners drawing less than Ksh.5,000 in monthly pension be granted free access to comprehensive healthcare services at all public health institutions country wide. All pensioners be granted subsidy to make premiums affordable to those who opt to purchase insurance cover under NHIF.	A Post-Retirement Medical Policy has been prepared by the State Department for Public Service in the Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes. A public participation forum on the medical policy was held at the Kenya School of Government on 2nd March, 2021. (see Appendix ii). The implementation of the policy will be preceded by an actuarial study that is proposed in the fourth quarter of the current Financial Year. Additionally, on 3rd March, 2021 the Cabinet Secretary/National Treasury requested the Cabinet Secretary for Health to consider any possible assistance, through the NHIF, for low earning pensioners. (see Appendix iii).
4.	The Cabinet Secretary for the National Treasury and Planning should implement the recommendations of the SRC on pensions increase policy as contained in the public sector remuneration and benefits policy 2015, launched by his Excellency the President in June 2015 and submitted to the National Treasury for implementation, should be executed in an equitable manner so as to ensure it does not perpetuate further disparity.	The National Treasury continues to effect the biennial 3% increase of pension in payment pursuant to the Pension Increase Act Cap 190. The most recent increment was done on 1st July, 2021. The National Treasury remains alive to the recommendations of the SRC with a view to embracing the spirit of the recommendations as and when the fiscal space allows.

5.	The Cabinet Secretary for Labour in consultation with the National Treasury should include Government pensioners currently earning less than Ksh. 4,000 in monthly pension in the next listing of beneficiaries of the cash transfer for the elderly as a stop gap measure pending review of pension to reflect the current cost of living.	On 3rd March, 2021 the National Treasury gave the Ministry of Labour a documentation of the pensioners earning less than Kshs.4,000 for their consideration in the planning for MTEP 4 and beyond. (see Appendix iv).
6.	The Cabinet Secretary for the National Treasury should initiate the transformation of the current Pensions Department into a Semi-Autonomous Government Agency (SAGA) To manage and administer pensions and with a wider mandate of developing and implementing the pension policy for the public service that would address the issues of fairness, adequacy, affordability and sustainability of pension benefits. In line with the ILO recognition of pensions as a form of social security, the Government should in the long run consider domiciling the management of retirement benefits sector under the State Department for Social Protection together with other social protection initiatives.	In improving the management of pensions, the National Treasury has enhanced the capacity of Pensions Department through: 1. Appointment and training of 100 new Pension Officers 2. Setting in motion the process of reinvigorating the electronic Pension Management System for enhanced efficiency 3. The invitation for bids of an end to end ERP solution for the Pensions Department was published on 25th January, 2022 4. Tender evaluation has since commenced following the opening of bids that was done on 1st March, 2022 5. On 29th October, 2021 The National Treasury constituted a Multi-Agency Taskforce on the Transformational Change in the Public Service Pension Arrangement with the main objective of realizing a transformed public service pension sector that is technologically driven 6. To enhance the administration of the public service pension arrangement, the National Treasury & Planning is working closely with the Public Service Commission to enable the deployment of technical Pension Officers to all MDAs 7. The National Treasury has deployed the PMIS to the Teachers Service

		Commission and the National Police Service for initial processing of the pension claims. Additionally a total of 32 pension officers have been posted to the two institutions. 8. The National Treasury has staffed all the 52 Huduma Centres with qualified personnel, and packed with a real time PMIS to attend to all customer enquiries
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Yours

Hon. (Amb) Ukur K. Yatani, EGH
CABINET SECRETARY, NATIONAL TREASURY & PLANNING



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

PENSIONS DEPARTMENT

TO : PS/NT *Signed J. N. Njoroge*

THRO' : DG/PI&PM

FROM : S/DOP

REF: : TNT/PENS/10/1/(88)

DATE: : 6TH DECEMBER, 2021

SUBJECT: APPOINTMENT OF TECHNICAL MEMBERS OF THE COMMITTEE
MANDATED TO TRANSFORM THE PUBLIC SERVICE PENSION
SCHEME

Sir, this is further to the memo at Folio 51.

The National Treasury and Planning has embarked on a comprehensive transformation agenda targeting the wider public service retirement benefits ecosystem.

The transformation is anchored on the following five strategies that inform the project:

1. Verification and authentication of all public service pensioners and a corresponding update of the records maintained in the pensioners database of the National Treasury
2. Incorporation of liveness certification of pensioners and dependants for an enhanced pensions payroll integrity
3. Integration of the Pensions Management Information System (PMIS) with relevant Government and Stakeholder IT systems accompanied with provision of reliable interactive IT-based platforms accessible to all pensioners
4. Review of the Pensions Department Organizational and Operational Structure
5. Formulation and implementation of a comprehensive and effective communication strategy on pension matters.

Following appointment of the Steering Committee by the Cabinet Secretary for National Treasury and Planning on the 29th October, 2021 the next logical step is the appointment of the Technical Committee members. Under the arrangement, the Steering Committee will provide strategic guidance and oversight to the Technical arm in the delivery of the Committee's mandate.

The proposed technical and secretariat members outlined herebelow, have been nominated by the respective stakeholder agencies for your consideration, upon which they may be formally appointed. Additionally, we propose you approve engagement of a lead expert to consult for the Committee in the execution of the assignment.

Table 1: Officers nominated by stakeholder agencies for appointment into the Committee.

a) Technical Officers

No.	Name	Designation	Nominating Organization
1.	Paul Famba, OGW	Director of Administration	Interior & Coordination of National Govt.
2.	Yussuf Ibrahim	Director of HRM & D	State Dept. for Public Service
3.	Mollet Sango	Deputy Director/Pensions	Teachers Service Commission
4.	Lucy Mitu	Deputy Director Human Capital Management	National Police Service
5.	Fred Mwachi	Deputy Chief Parliamentary Counsel	Office of the Attorney General & DOJ
6.	Emily Njue	Assistant Director/HRMD	The Public Service Commission
7.	Michael A. Kagika, EBS	Secretary/Director of Pensions	The National Treasury
8.	James Mungai	Personal Assistant	The National Treasury
9.	Wanjiku Njire	Executive Personal Assistant	The National Treasury
10.	Stanley Kamanguya	Director/IFMIS	The National Treasury
11.	Susan N. Mucheru	Director of HRM & D	The National Treasury
12.	Lynne Nyongesa, OGW	Director/ICT	The National Treasury
13.	Alice Nyariki	Snr. Deputy Director of Pension	The National Treasury
14.	Jacqueline M. Muindi	Deputy Chief State Counsel	The National Treasury
15.	Catherine Njoroge	Prin. Information Officer	The National Treasury

b) Secretariat

No.	Name	Designation	Nominating Organization
1.	Catherine Kioko	SHRMA	The National Treasury
2.	Anne G. Macharia	AD/OA	The National Treasury
3.	Nina K. Kabayo	PAOA	The National Treasury
4.	Paul Kiptrotich	Senior Pension Officer	The National Treasury

No.	Name	Designation	Nominating Organization
5.	Joan Adika	Pension Officer	The National Treasury
6.	Dominic Macharia	Pension Officer	The National Treasury
7.	Anne Nyaga	HRMA	The National Treasury
8.	Samuel Macharia	CO	The National Treasury

OUR REQUEST

The purpose of our memo therefore is twofold:

1. Request that you endorse the appointment of the technical members and secretariat through the attached letters of appointment; and
2. Seek your approval to procure a competent lead consultant to work with the Committee.



MICHAEL A. KAGIKA, EBS

Annex VIII (c)

**Submission by the Ministry of Health on the implementation status
of the Report of the Departmental Committee on Labour & Social
Welfare regarding the Petition by the Kenya Association of Retired
Officers on improved terms for pensioners in Kenya**



MINISTRY OF HEALTH

RESPONSE TO THE RECOMMENDATIONS BY NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE FOR LABOUR & SOCIAL WELFARE ARISING
FROM THE REPORT ON THE CONSIDERATION OF THE PETITION BY THE
KENYA ASSOCIATION OF RETIRED OFFICERS ON IMPROVED TERMS FOR
PENSIONERS IN KENYA

RECOMMENDATION NO.3: *The Cabinet Secretary for Health in consultation with The National Treasury should fast track the implementation of the Post-Retirement Medical Scheme to cater for the health needs of Government Pensioners. In the interim and in cognizance of the current risks enhanced by the COVID-19 situation, in order to cushion the current pensioners from the burden of disease, it is recommended that Pensioners drawing less than Kshs.5,000 in monthly pension be granted free access to comprehensive health care service at all public health institutions countrywide. In addition, all other pensioners be granted subsidy to make premiums affordable to those who opt to purchase insurance cover under NHIF. A progress report on this milestone be availed to Parliament by 30th June 2021*

Background and context

The National Hospital Insurance Fund (NHIF) is currently providing comprehensive medical covers to public servants under the Civil Service, County Governments, County Assemblies, National Police Service, Kenya Prisons Service, State Departments and Constitutional Commissions. In addition, NHIF is also currently providing comprehensive medical covers to retired public servants who opt to purchase such covers from the national health insurer upon retirement.

Comprehensive medical covers are enhanced by the National Health Scheme which is available for all NHIF beneficiaries.

Problem

Beneficiaries of the comprehensive medical covers are covered during their active service and up to the time of exit of the employee from the public service after which they revert to the National Health Scheme where they are expected to contribute to NHIF Ksh.6,000 per annum to access the NHIF National Health Scheme's Supa Cover. Supa Cover is not comprehensive for the whole range of healthcare needs offered by all healthcare providers, except in public health care providers where members can access comprehensive coverage to a great extent.

Retirees have to voluntarily enrol with NHIF upon retirement to access Supa Cover and currently there is no structured arrangement for such beneficiaries to be enrolled into comprehensive medical covers by their pension funds.

Solution

To ensure retired public servants maintain a quality of life as they had during employment and as envisaged in Article 43 of the Constitution, it will be prudent to establish a post-retirement medical scheme. A proposal is made for public servants to contribute while in service so that they can be covered comprehensively upon retirement. Through Legal Notice No.192 of 2018, Retirement Benefits Authority issued guidelines on Post-Retirement Medical Funds which guides the process of establishing post-retirement medical schemes for public servants both at the National and County Governments. For instance, a defined contribution scheme where an amount to be contributed to the post-retirement medical funds would be dependent on the number of years remaining to retirement and whether the Government would determine subsidies to the retirees.

A survey done for the Civil Servants Comprehensive Medical Scheme in 2017 showed that about 85% of the civil servants were in support of having a post-retirement medical cover.

Current Status

Currently NHIF is managing Comprehensive Medical Schemes for two retired public servants' associations namely: Kenya Association of Retired Officers (KARO) with 1,415 retired public servants and Former Parliamentarians Association (FoPA). Members of these schemes are required to pay annual premiums depending on the desired scope of coverage as illustrated in Table 1.0 below for the KARO Scheme:

Table 1.0: Kenya Association of Retired officers Benefits Limits and Premiums

Category	INPATIENT	OUTPATIENT	DENTAL	OPTICAL	LAST EXPENSE	Premium (Mem)	Premium (Mem)
	(Ksh.)	(Ksh. p.a)	(Ksh.)	(Ksh.)			
KARO 1	500,000	50,000	5,000	5,000	100,000	111,250	150,625
KARO 2	750,000	75,000	7,500	7,500	100,000	136,875	184,375
KARO 3	1,000,000	100,000	10,000	10,000	100,000	170,000	229,375
KARO 4	2,000,000	150,000	15,000	15,000	100,000	191,250	257,500
KARO 5	3,000,000	200,000	20,000	20,000	100,000	209,375	281,250
KARO 6	4,000,000	250,000	25,000	25,000	100,000	239,375	321,875

Previously, NHIF ran Comprehensive Medical Schemes for retired public servants under the Central Bank of Kenya Pensions Fund (CBK-PF), KenGen Pensions Fund and Kenya Power Pensions Fund, however, the three schemes were terminated following the restrictions in the Insurance Act.

Following Gazette Notice No. 4240 of 12th June 2020 through which exemptions were given allowing NHIF to offer Comprehensive Medical Schemes to public institutions and retired public servants, NHIF has received requests for renewal of these three schemes and two requests from the Kenya Ports Authority Pensions

Fund and the National Association of Retired Police Officers-Kenya as indicated in Table 2.0 below:

Table 2.0: Retired Public Servants Comprehensive Medical Schemes in process

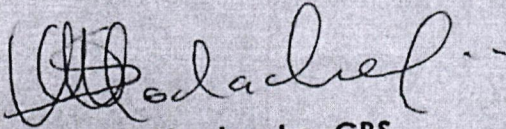
	Name of Scheme	No of Members	Status
1	CBK Pensions Fund	422	Renewal in process
2	Kenya Power Pensions Fund	437	Renewal in process
3	KenGen Pensions Fund	190	Renewal in process
4	Kenya Ports Authority Pensions Fund	5,300	Request received
5	National Association of Retired Police Officers - Kenya	1,000	Negotiations ongoing

Conclusion

NHIF has successfully been managing the Civil Servants Comprehensive Medical Schemes since 1st January 2012 and is also running 35 other comprehensive medical schemes for different public institutions including the National Police Service, Kenya Prisons Service, Office of Director of Public Prosecutions, eighteen (18) County Governments among others. With experience spanning over 50 years managing health insurance needs for more than 9.8 million members covered currently besides the dependants, NHIF has the experience and fully established structures and systems necessary to manage post-retirement medical schemes for all public servants in the Country.

In this regard, mechanisms need to be put in place in line with the Legal Notice No.192 of 2018 of Retirement Benefits Authority such that employees can make contributions during their active public service for comprehensive medical covers upon retirement. For the public servants already on retirement mechanisms need to be put in place for direct deduction from their monthly pensions by their pension funds and the same is remitted to NHIF for cover.

NHIF would be best suited to offer such a post-retirement medical cover due to affordable premiums, wide benefits coverage, vast network of service points and an extensive network of over 8,200 empanelled healthcare providers where the retirees can access quality healthcare services.



Susan N. Mochache, CBS

Principal Secretary

8th March, 2021

Annex IX a

Submission by the Ministry of Trade, Industrialization and Enterprise Development on the implementation status of the Report on Finance and National Planning (11th Parliament) on its consideration of the Petition on payment of terminal dues to the former employees of Pan Paper Mills Company

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REPUBLIC OF KENYA



MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT
STATE DEPARTMENT FOR INDUSTRIALIZATION
Office of the Principal Secretary

Fax No. +254-(0)-20-340700
Telephone +254-(0)20-315021/2-4-317761
Email: ps.moied@gmail.com
Url: www.industrialization.go.ke

Social Security House BLK 'A'
Bishops Road,
P.O. Box 30418-00100
NAIROBI

When replying please quote:

Ref. MITED/SDI/FIN/4/TNT/(21)

Date: 22nd March, 2022

Michael Sialai, EBS

Clerk of the National Assembly

P.O. Box 41842-00100

NAIROBI.

Dear Michael,

**IMPLEMENTATION OF HOUSE RESOLUTIONS ON COMPENSATION OF FORMER
EMPLOYEES OF PAN PAPER COMPANY LIMITED**

Reference is made to your letter Ref. No. NA/DAASC/CO1/2022/ (012) dated 16th February 2022 and the National Treasury & Planning letter Ref. No. RES 1/014 'A' (43) dated 1st March, 2022 and on the above subject (Copies attached).

Various Negotiations and correspondence between the Ministry of Industrialization Trade & Enterprise Development, the Receiver Manager representing the former employees and Pan Paper Company Limited as well as representatives of the former employees has established that the total amounts owed to the former employees (after reconciliation of payments) is as tabulated below: - (Detailed copy attached).

30 MAR 2022

Staff	Notice Pay	Leave Pay	Severance	Total
Senior Staff	994,700	1,150,310	6,665,220	8,810,230
Supervisory Staff	8,272,865	2,154,415	79,185,495	89,612,775
Unionisable Employees	12,168,570	1,460,160	94,032,861	107,661,590
Forestry Division Staff	2,057,027	285,408	16,112,434	18,454,869
Casuals	205,158	-	-	205,158
PPM High Sch. Staff	358,223	66,777	2,829,089	3,254,088
PPM Pri. Sch. Staff	63,680	-	489,544	553,224
Contract Staff	738,257	-	-	738,257
TOTAL	24,858,480	5,117,070	199,314,642	229,290,192

The State Department Recurrent allocation for the F.Y 2021/2022 and 2022/2023 is as tabulated below:-

NO.	Recurrent	Baseline 2021/2022	Allocation 2022-2023
1.	Transfers to SAGAs	2284.00	2341.55
2.	Personnel Emoluments - Headquarters	405.39	503.51
3.	Kenya Industrial Training Institute	126.04	126.04
4.	Rent	118.35	118.35
5.	Contracted services	9.57	9.57
6.	Utilities (HQ)	2.71	2.71
7.	AIE to county industrial Development offices	29.08	29.08
8.	Gratuity	0.54	0.54
9.	Training expenses	18.46	18.46
10.	Operations and Maintenance	118.2	118.09
	TOTAL	3,112.43	3,267.9

The State Department for Industrialization budget for all operations and maintenance is only at **Kshs.118.09 million** (as tabulated above) which is hardly enough to support our eight (8) Technical Directorates and five (5) Support Departments as well as coordination of 47 field offices in the delivery of the Industrialization mandate across the entire Country.

The National Treasury Circular on guidelines for the finalization of the Financial Year 2022/2023 and the Medium-Term Budget item No.37 requires accounting officers to provide adequate resources for Monitoring, Evaluation and reporting on the performance of projects throughout the year. The State Department requires at least **Kshs.116.8 million** for Monitoring and Evaluation to support the sixteen (16) Big Four Manufacturing projects being implemented whose annual budget is **Kshs.2,336.45 million** G.o.K component and **Kshs.1.332.00 million** Donor component.

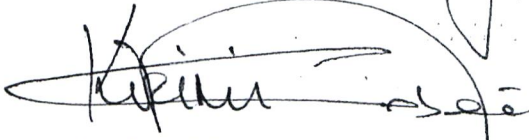
The State Department had also tabulated and requested a budgetary allocation of **Kshs.59.6 million** to cater for O&M expenses for the offices of The Cabinet Secretary, Chief Administrative Secretary and The Principal Secretary. The current allocation for O&M for Field Offices is only **Kshs.22.12 million** for all the forty-seven (47) Counties. The current allocation for operations and maintenance for our 47 field counties at only **Kshs.22.12 million** translates to an annual allocation of **Kshs.76, 275** per year per Sub-County and **Kshs.6,356** per month per Sub-County which is hardly enough to support operation and maintenance at the field stations. We had therefore also requested The National Treasury for an allocation of at least an additional **Kshs.69.6 million** translating to a budget of **Kshs.20,000** per month per Sub-County.

All the above request has not been availed. It is against this background that the State Department at the current budget of only **Kshs.118 million** for all operations and maintenance requires the above additional funds and also an additional **Kshs.229,290,192** to process compensation to the former employees of Pan Paper Company Limited.

We are therefore, requesting and appealing that the above funds be provided at the earliest opportunity possible to enable us immediately dispense with this long outstanding matter at the earliest possible opportunity either in FY 2021/2022 Revised Budget, FY 2022/2023 printed Estimates or FY 2022/2023 Supplementary Budget.

Yours

Sincerely,



Amb. Kiri P. Kaberia, CBS
PRINCIPAL SECRETARY

Encl.

Copy to: **Hon. (Amb.) Ukur K. Yatani, EGH**
Cabinet Secretary
The National Treasury & Planning
P.O. Box 30007-00100
NAIROBI.

Dr. Julius Muia, PhD, CBS
Principal Secretary
The National Treasury
P.O. Box 30007-00100
NAIROBI.

24 MAR 2022

REPUBLIC OF KENYA



MINISTRY OF INDUSTRIALIZATION, TRADE AND
ENTERPRISE DEVELOPMENT

OFFICE OF THE CABINET SECRETARY

Telephone: +254-(0)20-2731531/2-44
Web: www.industrialization.go.ke
Email: cs.moied@gmail.com
Email: cs@industrialization.go.ke

Social Security House, Block A
P.O. Box 30547 - 00100
NAIROBI, GPO
KENYA

Ref. MITED/SDI/FIN/4/TNT/(21)

Date: 17th March, 2022

Hon. (Amb.) Ukur Yatani, EGH
Cabinet Secretary
National Treasury & Planning
P.O. Box 30007 - 00100
NAIROBI.

Dear

IMPLEMENTATION OF HOUSE RESOLUTIONS ON COMPENSATION OF FORMER
EMPLOYEES OF PAN PAPER COMPANY LIMITED

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Yours

Sincerely



Betty C. Maina, EGH
CABINET SECRETARY

Encl.

Copy to: **Michael Sialai, EBS**
Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI.

Amb. Kiriimi P. Kaberia, CBS
Principal Secretary
State Department for Industrialization
NAIROBI.

Annex IX b

Submission by the Joint Receiver and Manager for the Pan African Paper Mills (East Africa) Limited (in Receivership) on the implementation status of the Report of the Departmental Committee on Finance and National Planning (11th Parliament) on its consideration of the Petition on payment of terminal dues to the former employees of Pan Paper Mills Company



Pan African Paper Mills (East Africa) Limited (in Receivership)
c/o Muniu Thoithi
PwC Tower, Waiyaki Way/Chiromo Road, Westlands
P O Box 43963 – 00100, Nairobi

Clerk's Chambers
The National Assembly
Parliament Buildings
P. O. Box 41842 - 00100
Nairobi, Kenya.

Attention: Michael Sialai, EBS

Your ref: NA/DAASC/COI/2021/(86)
Our ref: X21G30EO01

30 July 2021

Dear Sir

Subject: Pan African Paper Mills (East Africa) Limited (in Receivership) or "the Company") – Payment to former employees

We refer to your letter dated 14 July 2021, which was received on 23 July 2021 at our offices. The above subject refers.

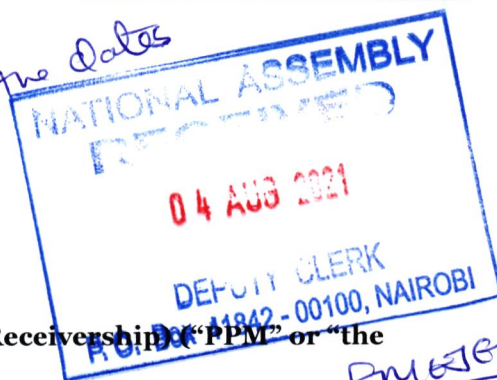
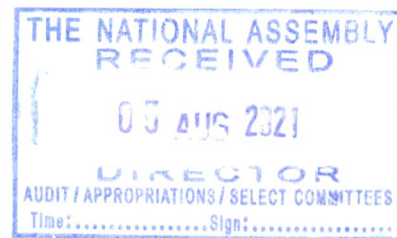
As you may be aware, the Company has been under receivership since 19 March 2009. Following a rigorous marketing exercise, the Receivers sold the assets of PPM to a new investor, Tarlochan Limited. The Receivers officially handed over the Company's assets to the new investor on 9 May 2016. The new management, trading as Rai Paper, is now in charge of the operation.

As you are also aware, in an insolvency scenario, as per the old Companies Act (chapter 486), creditors are paid from the proceeds of realization of company assets in the following order of priority:

1. Receivership expenses
2. Preferential Creditors – Which includes regulatory payments (taxes, NSSF dues, NHIF dues) accrued in the previous 12 months to the date of the appointment of the receiver, preferential element of the employees' dues. [Section 311 of the Act provides for the preferential payments discussed under section 95 and it stipulates that all employees in the Company's employment at the date of appointment are entitled to a preferential payment of salaries and wages in arrears for a period of four (4) months prior to the date of appointment. However, these amounts due to the employees are subject to a maximum limit of Kenya Shillings Twenty Thousand (KES.20,000.00).]
3. Secured creditors – based on the assets on which they have security. In the case of PPM, there were two classes of secured creditors, the Long-Term Lenders who had security over the fixed assets comprising the fixed charge on land and buildings and Short-Term Lenders (GoK) with security over the floating charge assets.
4. Unsecured creditors – The rest of the creditors including the non-preferential portions of the Preferential Creditors' debts, to which the unpaid dues of the employees fell.

As at 19 March 2009 when the receivers were first appointed, there were **1,349** employees on the payroll of the company. The final dues calculated as per the Employment Act amounted to **Kshs 229,0333,327**, of which the preferential portion was **Kshs 16,773,170**. The Receivers duly settled the preferential component of employees' claims in 2009 in accordance with the Companies Act and the applicable insolvency laws which amounted to **Kshs 16,773,170**. The unsecured component of employees' claims, like all PPM's unsecured claims, could not be paid as no funds were available from the proceeds of the sale of the Company's assets to settle any unsecured creditor claims.

However, in 2017, the Government of Kenya ("GoK") offered to make an ex-gratia payment to former employees of the Company that were in employment at the time it was placed in receivership, i.e. as at 19



Emmanuel
Please note
NA
05/8/21

March 2009. The ex-gratia payment was based on the former employees' three months' salary, net of PAYE, based on the records obtained from the Company's officers upon appointment of Receivers in 2009. It should be noted that this was not a legal obligation or requirement given the circumstances of the Company as is the case with all other insolvency cases.

The government made an ex-gratia payment of **Kshs 74,575,440**. The payments were made in 6 tranches to the employees between 12 June 2017 and 5 July 2018. To date, there are 18 employees who have not come forward to claim their ex-gratia payments, and a balance of **Kshs. 1,143,621** is awaiting disbursement from the original amounts set aside by GoK.

Below is a summary of the former PPM employee categories:

	STAFF CATEGORY	Staff Count
1	SENIOR STAFF	8
2	SUPERVISORY STAFF	279
3	UNIONISABLE STAFF	855
4	FORESTRY DIVISION STAFF	126
5	CASUALS	22
6	PPM HIGH SCHOOL STAFF	22
7	PPM PRIMARY SCHOOL STAFF	8
8	CONTRACT STAFF	29
	TOTAL	1349

The list of the 1,349 employees has been provided to the Ministry of Industrialisation, Trade and Enterprise Development.

We trust that the above clarifies the position regarding the issue of PPM employees claims.

Yours faithfully,

For and on behalf of

Pan African Paper Mills (East Africa) Limited (in Receivership)



Muniu Thoithi

**Joint Receiver and Manager
Without Personal Liability**

Cc: Dr Julius Muia, CBS
Principal Secretary
The National Treasury
Treasury Building,
Nairobi

Amb. Peter Kaberia, CBS
Principal Secretary
State Department for Industrialization
Ministry of Industrialization, Trade and Enterprise Development
Teleposta Building.