

Approved for tabling

BN  
SNA  
19/2/19

REPUBLIC OF KENYA

PARLIAMENT  
OF KENYA  
LIBRARY





THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION 2019

DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM

REPORT ON THE SPORTS (AMENDMENT) BILL, 2018

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
<b>DATE:</b> 19 FEB 2019	
<b>DAY:</b> TUESDAY	
<b>TABLED BY:</b>	CHAIRPERSON, SPORTS CULTURE & TOURISM HON. VICTOR MUNTAKA
<b>CLERK-AT THE-TABLE:</b>	

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY, 2019

## Table of Contents

ABBREVIATIONS .....	2
CHAIRPERSON'S FOREWORD .....	3
EXECUTIVE SUMMARY.....	4
1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE.....	5
1.1 COMMITTEE MEMBERSHIP .....	6
1.2 COMMITTEE SECRETARIAT .....	7
2.0 CONSIDERATION OF THE SPORTS (AMENDMENT) BILL, 2018.....	8
2.1 BACKGROUND INFORMATION .....	8
2.2 SUMMARY OF THE BILL.....	8
3.0 SUBMISSION BY THE STAKEHOLDERS .....	9
3.1 THE NATIONAL SPORTS FUND .....	9
3.2 THE MEMBERS OF STAFF OF THE NATIONAL SPORTS FUND .....	12
3.3 MR. ANDREW MUDIBO .....	14
3.4 THE NATIONAL TREASURY AND THE MINISTRY OF SPORTS AND HERITAGE .....	16
3.5 THE CREATIVE ECONOMY WORKING GROUP.....	31
4.0 COMMITTEE OBSERVATIONS .....	32
5.0 COMMITTEE STAGE AMENDMENTS.....	34
6.0 RECOMENDATIONS .....	35

## **ABBREVIATIONS**

NSF	-	National Sports Fund
CS	-	Cabinet Secretary
PS	-	Principal Secretary
AG	-	Attorney General
KRA	-	Kenya Revenue Authority
CBK	-	Central Bank of Kenya
KPA	-	Kenya Ports Authority

## **CHAIRPERSON'S FOREWORD**

This report contains the Committee's proceedings of the consideration of the Sports (Amendment) Bill, 2018 which was read a first time on 16<sup>th</sup> October, 2018 and subsequently committed to the Departmental Committee on Sports, Culture and Tourism for consideration and facilitation of public participation pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 19<sup>th</sup> October, 2018 pursuant to Article 118 of the Constitution. The committee received memoranda and views from institutions and members of the public and as a result organized a stakeholders' forum, that was held in Committee Room 12, Main Parliament Buildings on Thursday 22<sup>nd</sup> November, 2018.

In considering the Bill, the Committee noted that **the Sports (Amendment) Bill, 2018** seeks to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund and the National Sports Fund Board of Trustees in order to provide for a comprehensive approach to financing of the sports sector through a fund established and managed in accordance with the Public Finance Management Act, 2012.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury, Ministry of Sports and Heritage and all the other stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Sports, Culture and Tourism and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Sports (Amendments) Bill, 2018.

**The Hon. (Dr.) Victor Munyaka, MP**

## **EXECUTIVE SUMMARY**

The Sports (Amendment) Bill, 2018 was published on 25<sup>th</sup> September, 2018 and introduced in the National Assembly by the Leader of Majority on 16<sup>th</sup> October, 2018 and thereafter committed to the Departmental Committee on Sports, Culture and Tourism for consideration pursuant to Standing Order 127. The Sports (Amendment) Bill, 2018 seeks to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund and the National Sports Fund Board of Trustees in order to provide for a comprehensive approach to financing of the sports sector through a fund established and managed in accordance with the Public Finance Management Act, 2012.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday, 19<sup>th</sup> October, 2018 pursuant to Article 118 of the Constitution. By the time the Committee was conducting a stakeholders' forum on 22<sup>nd</sup> November, 2018 only four (4) stakeholders had submitted their memoranda for consideration by the Committee.

The Committee also submitted the memoranda to the National Treasury and the Ministry of Sports and Heritage for their input and views on the proposals as submitted by the stakeholders. The Committee during its retreat held on 15<sup>th</sup> February, 2019 at Hilton Garden Inn Hotel, Machakos County, invited the National Treasury and the Ministry of Sports and Heritage to present their comments on the stakeholder's proposals.

## **1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

The Departmental Committee on Sports, Culture and Tourism is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* and mandated to -

1. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
2. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
3. **To study and review all the legislation referred to it;**
4. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
7. To examine treaties, agreements and conventions;
8. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
9. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
10. To examine any questions raised by Members on a matter within its mandate.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters of; Sports, Culture, National Heritage, Betting and Lotteries, Tourism and Tourism Promotion and Management.

In executing its mandate, the Committee oversees the following government Ministries;

1. Ministry of Sports and Heritage
2. State Department for Tourism

### **1.1 COMMITTEE MEMBERSHIP**

The Committee on Sports, Culture and Tourism comprises of the following Members:-

<b>Chairperson</b>	The Hon. (Dr.) Victor Kioko Munyaka, M.P
<b>Vice Chairperson</b>	The Hon. (Dr.) Korei Ole Lemein, M.P
	The Hon. Christopher Omulele, M.P
	The Hon. (Dr.) Christine Ombaka, M.P
	The Hon. Cyprian Kubai Iringo, M.P
	The Hon. Jones Mlolwa, M.P
	The Hon. Daniel Wanyama Sitati, M.P
	The Hon. Benard Masaka Shinali, M.P
	The Hon. (Prof.) Jacqueline Oduol, M.P
	The Hon. (Dr.) Tecla Chebet Tum, M.P
	The Hon. Jane Jepkorir Kiptoo Chebaibai, M.P
	The Hon. Lydia Haika Mnene Mizighi, M.P
	The Hon. George Risa Sunkuyia, M.P
	The Hon. Annie Wanjiku Kibeh, M.P
	The Hon. Sylvanus Maritim, M.P
	The Hon. Jeremiah Lomurukai, M.P
	The Hon. Charles Ngusya Nguna, M.P
	The Hon. Titus Mukhwana Khamala, M.P
	The Hon. Charles Kamuren, M.P

## **1.2 COMMITTEE SECRETARIAT**

<b>Second Clerk Assistant</b>	-	<b>Helen Kina</b>
<b>Third Clerk Assistant</b>	-	<b>Fredrick Otieno</b>
<b>Legal Counsel II</b>	-	<b>Clara Kimeli</b>
<b>Research Officer III</b>	-	<b>Vitus Okech</b>
<b>Fiscal Analyst</b>	-	<b>Catherine Gati</b>
<b>Media Relations Officer</b>	-	<b>Martin Mutua</b>
<b>Sergeant At-Arms</b>	-	<b>Sheila Chebotibin</b>

## **2.0 CONSIDERATION OF THE SPORTS (AMENDMENT) BILL, 2018**

### **2.1 BACKGROUND INFORMATION**

The Sports (Amendment) Bill, 2018 was published on 25<sup>th</sup> September, 2018 and read a first time on 16<sup>th</sup> October, 2018 and thereafter committed to the Departmental Committee on Sports, Culture and Tourism for consideration pursuant to Standing Order 127.

Pursuant to Article 118 of the Constitution, the Committee invited comments from the stakeholders. The National Sports Fund, the Creative Economy Working Group, Mr. Andrew Mudibo and the members of staff of the National Sports Fund responded by sending their memoranda to the Committee. The Committee also held a stakeholders' forum on 22<sup>nd</sup> November, 2018 to consider stakeholders' memoranda pursuant to Article 118 of the Constitution.

### **2.2 SUMMARY OF THE BILL**

The Bill seeks to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund and the National Sports Fund Board of Trustees in order to provide for a comprehensive approach to financing of the sports sector through a fund established and managed in accordance with the Public Finance Management Act, 2012.

### **3.0 SUBMISSION BY THE STAKEHOLDERS**

Following the call for memoranda from the public as contained in an advert in the Daily Nation and Standard newspapers on 19<sup>th</sup> October, 2018, the Committee received memoranda from three entities. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:-

#### **3.1 THE NATIONAL SPORTS FUND**

The National Sports Fund, a State Corporation, established under the Sports Act 2013 submitted the following to the Committee-

The Preamble to the Sports Act 2013 states as follows:

*An Act of Parliament to harness sports for development, encourage and promote drug-free sports and recreation; to provide for the establishment of sports institutions, facilities, administration and management of sports in the country, and for connected purposes.*

By virtue of the above preamble, the objectives of the Sports Act cannot be achieved without adequate funding. The Sports Fund has the adequate staff, policies, procedure and guidelines to fund sports in Kenya and it should be accorded the opportunity to continue doing so by collecting taxes from betting and running a lottery as provided in the Sports Act.

The National Sports Fund has reviewed the Sports (Amendment) Bill, 2018 as well as the Sports, Arts and Social Welfare Regulations 2018 and wish to comment as follows:

- i. The Bill seeks to repeal part 3 of the Sports Act therefore ending the life of the National Sports Fund.
- ii. It would benefit the sports fraternity if the Sports institutions and National Sports Organizations who are key stakeholders were retained and represented on the Board.
- iii. The Bill seeks to transfer all staff, assets and liabilities to the Sports, Arts & Social Development Fund (hereinafter referred to as the new Fund) in tandem with the Public Finance Management Act (Sports, Arts and Social Development) Regulations 2018.
- iv. The Transfer of staff to the new Fund should be seamless as the staff have accumulated valuable experience and set up structures that would be of immediate utility and benefit to the new Fund.

## **1. Repeal of Part 3 of the Sports Act-2013**

Section 17(1) of the Sports Act sets out the functions of the Board of Trustees

There is a dual relationship between the Board and the intended beneficiaries on compliance levels prior to application, qualification and disbursement of funds.

Section 17(2) caps the amount the Fund may spend on administration expenses while section 17(3) provides that expenditure and commitments of the Fund shall not exceed its income. Section 17(4) allows the Cabinet Secretary to advance money to the Fund in the event of a shortfall. Section 17(5) mandates the Board to regularly inform the public of its activities and operations and ensure such activities are accessible to the public.

Section 13 is on Board composition. It provides 4 seats to sports organizations such as Paralympic sports, Deaflympic sports and recreational bodies thus creating inclusivity and adding that much needed expertise from our sportsmen who for the first time, an Act of Parliament gives them a say in sports funding.

NSF suggested that the National Assembly considers incorporating into the new Fund a clause similar to Section 17 and Section 13 of the Sports Act to enable all sports actors and beneficiaries give input to this key institution.

## **2. Corporate Governance & Accountability**

- a. There are 3 independent members namely the Chairman and 2 Board members. It would be helpful if the Board had an additional Board member to enable it have sufficient Board committees to run the Fund smoothly. This is the best practice in all State Corporations as provided in the Code of Governance for State Corporations (*Mwongozo*)
- b. The National Sports Fund is a State corporation. It is liable to additional checks and balances by the State Corporations Act and inspectorate of state corporations as well as the Code of Governance for State Corporations. It is assumed that the new Fund may very well be a State Corporation therefore it will be bound by the State Corporations Act.

### 3. Transition of Staff & Transfer of Assets

On transition of staff, NSF suggested that the transition be automatic and seamless and new clauses at clause 11 be added to read as follows:

- a. *Any person who has been assessed and appointed or employed as an officer of the Sports, Arts and Social Welfare Fund shall be deemed to be in continuous service for purposes of the pension.*
- b. *Any officer who is assessed and engaged by the Sports, Arts and Social Development Fund under subparagraph (4) who was on the date of the commencement of this Act a member of any statutory or voluntary pension scheme or provident fund, shall for the purpose of this Act, continue to be governed by the same regulations governing those schemes or funds and his service with the National Sports Fund shall be deemed to be eligible service for the purposes of the pension scheme or provident fund.*
- c. At paragraph 11(6) of the Bill, remove the word may and replace it with the word **SHALL**.
- d. The proposed requirement for vetting be removed.
- e. Add an additional paragraph stating as follows:

*Where the transfer of any property transferred to or vested in the National Sports Fund is required by any written law to be registered, the National Sports Fund shall, within six months from the commencement of these Regulations or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Fund or any person by way of registration fees, stamp or other duties—*

  - i. *make such entries in the appropriate register as shall give effect to the transfer;*
  - ii. *where appropriate, issue to the Fund a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.*

### **3.2 THE MEMBERS OF STAFF OF THE NATIONAL SPORTS FUND**

The Members of Staff of the National Sports Fund submitted that: -

The interests of members of staff of the National Sports Fund have not been adequately considered in the Transition Clause. The transition Clause as stipulated in the new Sports (Amendment) Bill 2018 states as follows;

#### **Transition of Staff**

*Section 11; (1) Subject to Paragraph (4) a person who immediately before the commencement of this Act, was an employee of the government serving in the National Sports Fund Board of Trustees shall serve in the Sports, Arts and Social Development Fund.*

*(4) Before appointing a person to whom (1) applies, the administrator in consultation with the Public Service Commission shall;*

*(a) Require such a person to make an application for employment or appointment to the Sports Arts and Social Development Fund; and*

*(b) Using the criteria determined by the Public service Commission, vet such a person to ensure that she or he is fit to serve in the position applied for as a member of staff of the Sports, Arts and Social Development Fund.*

*(6) A person who immediately before commencement of this Act was an employee of the Government in the National Sports Fund Board of Trustees immediately before the commencement of this Act who fails to meet the Vetting Criteria under Paragraph (4) **may** be deployed in the Public Service.*

#### **Noted Concerns**

Given the above,

1. Section 4 (a) provides that the employees of the existing National Sports Fund shall apply afresh in the new Sports, Arts and Social Development Fund. The current employees of the National Sports Fund had previously (less than 2 years ago) through a competitive and open recruitment process applied, been interviewed, vetted and duly appointed to their current

positions. Further, the same employees had before their appointment to the National Sports Fund, held good positions that they resigned from in the hope and promise of a good job and better benefits, the strength of their appointment letters and the belief that the Fund as currently established through legal statute, was bound to be a stable institution that guarantees security of tenure. In that regard, it is not fair, reasonable and justifiable to ask of the same employees, to apply afresh without surety that they will be absorbed in the new Sports, Arts and Social Development Fund.

2. Section (6) provides that those who fail to meet the vetting criteria **MAY** be deployed in the Public Service. The term '*may*' as used is not binding and as such does not give certainty that the employees of the National Sports Fund will be absorbed in the Sports, Arts and Social Development Fund or the Public Service in the event that they fail to meet the vetting criteria stated in the clauses. In that regard, the language at the bare minimum should state **SHALL** and not '**MAY**'.

3. **Precedence**

When the Sports Kenya succeeded the Sports Stadia management Board Order 2002, the following was the Transition Clause that was provided in the Sports Act, 2013:

*Section (3) Sports Kenya shall be the successor to the Sports Stadia Management Board established by the Sports Stadia Management Board Order, 2002.*

*(4) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the Sports Stadia Management Board existing immediately before the commencement of this Act shall be automatically and fully transferred to Sports Kenya.*

The import of this section is that the employees of the Sports Stadia Management Board being assets of the organization, had their interests catered for in the aforementioned clause and as such, were absorbed in the Sports Kenya established by the Sports Act, 2013. We are of the considered opinion that a similar transition clause should be adopted in the new piece of legislation.

### **Proposal**

It is with the backdrop of the above that the Members of Staff of the National Sports Fund propose the Transition Clause as provided for in the Sports (Amendment) Bill, 2018 to be relooked at and amended to address the above concerns and incorporate the suggestions herein mentioned.

### **3.3 MR. ANDREW MUDIBO**

Mr. Andrew Mudibo, a member of the public submitted the following:

#### **1. Sports Act,2013 & the Sports, Arts & Culture Regulations**

The Sports Act ,2013 is the key legislation governing sports and sports funding in Kenya.

- i. The objects of the Regulations are similar to the objects of the National Sports Fund as captured in Section 12 (2)(b). This is duplication of roles which is not allowed by the Constitution due to wastage of public funds.
- ii. Note that Section 12(2)(a) provides that the Sports Fund shall receive funding from taxes levied under the Betting, Lotteries and Gaming Act. Regulation 3 of the new Regulations also provides that the new Fund shall also receive all the proceeds required to be paid into the Fund under the Betting Lotteries and Gaming Act. Between the National Sports Fund and the new Fund, which Fund is due to receive the 35% tax levied against the betting companies?
- iii. There is a clear conflict which raises the concern that
  - a. The National Sports Fund shall be required to apply for funding from the new Fund yet the Sports Fund was created to fund sports from the lottery and taxes from betting. It has now been reduced from a financier to a borrower therefore weakening it and the sports federations represented on the Board by creating more layers of bureaucracy to seek for funds hence more delays and more harm to sports and athletes.
  - b. The national lottery to be run by the new Fund has now been eliminated by the Sports (Amendment Bill) 2018. Sports will never have an independent guaranteed revenue stream because of this development. Amending the sports Act does not help sports, giving it funds is what will help.

#### **2. Board of directors**

On appointment of the Board of directors of the new Fund, the following critical questions beg answers:

- i. Regulation 8(2) provides that the Board has 6 non-independent members and 3 independent members.

- ii. Unlike the Sports Fund where the Sports Federations have 4 guaranteed slots on the Board under Section 13(h)(i). This new Fund has no place for sports federations on its Board. Federations are once again locked out of sports matters yet they represent the country's image internationally and are Kenya's brand ambassadors.
- iii. Regulation 8(2)(f) provides that the CS-Sports shall appoint the 3 independent members while Regulation 8(3) provides that the President shall appoint one of the 3 independent members as a Chairman. The President has the right to appoint the Chair of a Board so why take away his power especially in subsidiary law that did not get the approval of Parliament, sports federations, athletes or even Kenyans?
- iv. The President has no power to appoint a Chairman. This power is with the CS-Sports. The President can only pick a chairman from any of the independent Board members appointed by the CS-Sports. This is unheard of in Boards of public bodies in Kenya.
- v. The Sports Ministry has no control of this Fund because the administrator of the Fund can be appointed by the CS-Treasury who has more power than the PS-Sports.
- vi. The Attorney General has no seat on the Board of this new Fund. The AG sits on almost all Boards of Government bodies from KRA, CBK, KPA etc A Fund with so much expectations and handling such huge money should not miss the AG on its Board because of oversight just like Treasury cannot miss from any Board.

### **3. The Constitution of Kenya-2010**

Article 118 on Public Access and Participation is clear that Parliament shall facilitate public participation. These Regulations were not tabled before Parliament and failure to do this means the Regulations should be declared null and void.

The Constitution provides that public funds shall be managed prudently so the logical thing to do is to have the sport's fund handle this issue as it has expertise instead of a new body that is structurally weak and may have loopholes that will not benefit sports.

### **4. Public Finance Management Act -2012**

Section 24 of the above law provides that The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.

Parliament did not debate and approve these Regulations and therefore they should be considered illegal.

Mr. Mudibo is of the view that the mandate of the existing fund should be enlarged by including for example the PS Health, PS Education and the percentage on funds to be allocated to the various sectors clearly spelt out giving timelines on release of funds. At this current moment Sports Federations are financially on their death bed and it is important that the funds being held by Treasury are released without delay to the Sports Fund so that Federations can start benefiting from the Fund.

Mr. Mudibo further noted that there was a lot of thought that was put into the Sports Act (2013), and the various bodies that were set up all had linkages in ensuring that Sports in Kenya will continue to shine in all spheres but if we are not careful with how changes are being made, then chances are that we may never recover.

### **3.4 THE NATIONAL TREASURY AND THE MINISTRY OF SPORTS AND HERITAGE**

The National Treasury and the Ministry of Sports appeared before the committee during its retreat on 15<sup>th</sup> February, 2019 and informed the Committee that they formed a joint task force to work on the proposals submitted by stakeholders as submitted by the Committee. The team led by the Cabinet Secretary Sports submitted comments against the memoranda submitted by the stakeholders as follows:

1. National Sports Fund

S/No.	Section	Proposed Amendment	Rationale	Task force Recommendation	Taskforce Rationale
1.	11	<p>The proposal is to amend Section 11 of the Sports Amendment Bill, 2018 by adding subsection 8 to provide for:-</p> <p>8. "Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall be deemed to be in continuous service for the purposes of the Pension"</p>	<p>This is to secure the pension of existing officers who were serving as employees of the National Sports Fund.</p>	<p>It is <b>accepted with amendments</b> to read as follows:-</p> <p>8. "Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall continue to contribute to the pension scheme, where he or she was contributing to and be deemed to be in continuous service for the purposes of the Pension"</p>	<p>The aim is to secure the pensions of staff who will have transitioned to the Sports, Arts and Social Development Fund. This is to provide for all serving officers to continue contributing to their existing pension schemes to secure their pension benefits as required by the Retirement Benefits Act,</p>
		<p>9. Any officer who was engaged the Sports, Arts and Social Development Fund under sub-paragraph (4), who was on the date of the commencement of this Act, a member of any statutory or voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by the same Regulations governing those</p>	<p>The aim to secure the pensions of staff members who have transitioned to the new Sports, Arts and Social Development Fund</p>	<p>It is <b>accepted with amendments</b> to read as follows:-</p> <p>9. Any officer who was assessed and engaged by the Sports, Arts and Social Development Fund under sub-paragraph (4), and who was on the date of the commencement of this Act, a member of any statutory or</p>	<p>This amendment is to secure the pension of the officers, who will transit within existing regulations governing the pension schemes or provident funds, where they were eligible.</p>

S/No.	Section	Proposed Amendment	Rationale	Task force Recommendation	Taskforce Rationale
		<p><i>schemes or funds and his service at the National Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund"</i></p>		<p><i>voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by the same Regulations governing those schemes or funds and his service at the National Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund, subject to meeting the requirements of the pension scheme of provident fund during the period they were serving as officers of the National Sports Fund"</i></p>	
2.	11 (6)	<p>The proposed amendment is to delete the word "may" appearing after the words "paragraph (4)" and replace therefore with the word "shall"</p>	<p>This will safeguard the employment status of staff by making it mandatory that any person who, immediately before the commencement of the Act was an</p>	<p><b>Rejected.</b></p>	<p><i>Public Officers who do not want to be deployed back in the Civil Service have a Constitutional Right to exit the service and be paid their service dues in accordance with the prevailing regulations governing their service.</i></p>

S/No.	Section	Proposed Amendment	Rationale	Task force Recommendation	Taskforce Rationale
3.	11 (4) (b)	The proposed amendment is to delete the entire sub-section 11(4)(b) to remove the vetting requirement and all wholesale transition of staff including those whose offices will not be required by the Sports, Arts and Social Development Fund.	employee of the National Sports Fund but fails to meet the vetting criteria is deployed in the public service  The requirement to vet officers without a guarantee that their jobs are assured is unreasonable.	Rejected	<i>Vetting of serving public officers is a standard government procedure during a transition process to ensure analysis and alignment of the qualifications and experience of various staff members to the existing positions and roles in the new organization structure.</i>
4.	New Section 10 (2)	The proposed amendment is to provide for an amendment in Section 10 to provide for sub-section (2) which states as follows:-  (2). Where a transfer of any property transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered, the National Sports Fund shall within six months from the commencement	This is to facilitate transfer of all property transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund.	This proposal is <b>accepted with amendments</b> to read as follows:-  (2). <i>Where a transfer of any property currently owned, transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered,</i> the	The proposed amendment is good. However, it gives the responsibility of registering the properties to be transferred to the non-existing institution upon repeal of this Act, which is National Sports Fund or any other person. Towards this end, our proposal is that this responsibility be assigned to the

S/No.	Section	Proposed Amendment	Rationale	Task force Recommendation	Taskforce Rationale
		of these Regulations or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Fund, or any other person by way of registration fees, stamp or other duties .....		<i>Administrator of the Sports, Arts and Social Development Fund shall within six months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Sports, Arts and Social Development Fund, by way of registration fees, stamp or other duties register such property in the name of the Sports, Arts and Social Development Fund</i>	Administrator of the Sports, Arts and Social Development Fund, who is accountable to the National Assembly, should there be misappropriation or delay in the transfer of the assets.

2. Mr. Andrew Mudipo (a citizen of the Republic)

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	Taskforce Rationale
1.	None	None	His views compares the Act with the proposed regulations-	Rejected	The rationale of the amendments proposed by the Government as

S/ N o	Section	Proposed Amendment	Rationale	Task force recommendation
			<p>The objects of the Regulations are similar to the objects of the National Sports Fund as captured in Section 12 (2)(b). This is duplication of roles which is not allowed by the Constitution due to wastage of public funds.</p>	<p>contained in the Sports (Amendment) Bill 2018 is to align the National Sports Fund to the provisions of the Public Finance Management Act 2012 regarding the establishment of national public funds.</p> <p>Therefore, there is no duplication of roles</p> <p>The objects of the Sports, Arts and Social Development are not the same. The Sports, Arts and Social Development Fund objectives relate to supporting programmes and initiative from sports, arts and social development, which are broader than the National Sports Fund's objective which is largely to support sports programmes and initiatives. Towards this end, this is the reason, why the Government is proposing amendments to repeal this Act and has established a broader Sports, Arts and Social Development Fund to</p>

S/N	Section	Proposed Amendment	Rationale	Task force recommendation	support the desired Government Agenda.
		None	Section 12(2)(a) provides that the Sports Fund shall receive funding from taxes levied under the Betting, Lotteries and Gaming Act. Regulation 3 of the new Regulations also provides that the new Fund shall also receive all the proceeds required to be paid into the Fund under the Betting Lotteries and Gaming Act. Between the National Sports Fund and the new Fund, which Fund is due to receive the 35% tax levied against the betting companies? <b>There is a clear conflict which raises the concern that</b>	Rejected	<p>The National Sports Fund as currently set up identifies its sources of funds as including all the proceeds of any sports lottery, investments and any other payments required by the Act to be paid into the Fund.</p> <p>Before the establishment of the Sports, Arts and Social Development Fund, in September, 2018, the Betting, Lotteries and Gaming Act provided that the proceeds under the Betting, Lotteries and Gaming the Income Tax Act and the Excise Duty Act shall be paid into the Consolidated Fund. The Finance Act, 2018 amended these provisions to direct specific targeted sources of revenues to the Sports, Arts and Social Development Fund.</p> <p>Therefore, the observations by Mr. Mudibo are allegations and therefore not factual.</p>

S/N	Section	Proposed Amendment	Rationale	Task force recommendation	
					Towards this end, there is no conflict between the sources of funds between the Sports, Arts and Social Development Fund and the National Sports Fund. It is the intention of Government to align all national public funds to the Public Finance Management Act, 2012, hence the proposal to repeal specific provisions of the Sports Act to remove any reference to any Fund under the Sports Act.
			The National Sports Fund shall be required to apply for funding from the new Fund yet the Sports Fund was created to fund sports from the lottery and taxes from betting. It has now been reduced from a financier to a borrower therefore weakening it and the sports federations represented on the Board by creating more layers of bureaucracy to seek for funds hence more delays and more	Rejected	The Sports Act, 2013 established the National Sports Fund from 2013. At no time that the National Sports Fund received the Betting, Lotteries and Gaming Taxes as alleged by Mr. Mudibo. However, the Finance Act 2018 amended various laws to ensure that taxes collected by the Commissioner under these laws are paid into the Sports, Arts and Social Development Fund. These

S/N	Section	Proposed Amendment	Rationale	Task force recommendation
0			harm to sports and athletes.	<p>includes proceeds collected by the Commissioner under Section 69A of the Betting, Lotteries and Gaming Act, proceeds collected under Section 35(5A) of the Income Tax Act as well as proceeds collected under Section 36(5) of the Excise Duty Act. The Sports (Amendment) Bill therefore seeks to align these provisions to the Public Finance Management Act 2012, the Betting, Lotteries and Gaming Act, the Excise Duty Act and the Income Tax Act as amended by the Finance Act 2018.</p> <p>Regarding the view by Mr. Mudipo that the National Sports Fund (NSF) shall be required to apply for funding from the Sports, Arts and Social Development Fund, it is important to note that after amendment of the Sports Act, there shall be no National Sports Fund to apply for funds from this Fund.</p>

S/N	Section	Proposed Amendment	Rationale	Task force recommendation
				<p>The sports federations and sportspersons shall be applying directly to the Sports, Arts and Social Development Fund and this has been expressly provided for in the Sports, Arts and Social Development Fund Regulations. This clearly indicates that Mr. Mudibo did not take time to read and understand the provisions of the Fund Regulations.</p> <p>With regard to delays due to additional layers, there are no layers under the Sports, Arts and Social Development Fund, the Ministries, State Departments, Agencies, Sports Organizations and Sports Persons, will apply directly to the Fund and receive the funds directly. Therefore, the assertion of creating more layers of bureaucracy shows that Mr. Mudibo did not take time to understand the Public Finance management (Sports, Arts and Social Development</p>

S/N	Section	Proposed Amendment	Rationale	Task force recommendation	
					Fund) Regulations, 2018. Therefore, these are wild allegations not based on any fact or provision of the Sports, Arts and Social Development Fund Regulations and should not be entertained.
			The national lottery to be run by the new Fund has now been eliminated by the Sports (Amendment Bill) 2018. Sports will never have an independent guaranteed revenue stream because of this development. Amending the sports Act does not help sports, giving it funds is what will help.	Rejected	The Regulations governing the Sports, Arts and Social Development Fund does not provide that National Lottery shall be run under this Fund.  It is important to appreciate that since 2013, the Government expected the National Sports Fund to establish the National Lottery and run to generate revenues for the sports sector. Apparently, it became clear that the National Sports Fund was unable to set up the National Lottery. Consequently, the Government changed strategy instead to tax the income of players who have set their own lotteries as well as income on winnings.

S/N	Section	Proposed Amendment	Rationale	Task force recommendation	
0					This proposition is also baseless and therefore should not be entertained.
			<p>Board of directors:-</p> <p>On appointment of the Board of directors of the new Fund, the following critical questions beg answers:</p> <p>Regulation 8(2) provides that the Board has 6 non-independent members and 3 independent members.</p> <p>Unlike the Sports Fund where the Sports Federations have 4 guaranteed slots on the Board under Section 13(h)(i). This new Fund has no place for sports federations on its Board. Federations are once again locked out of sports matters yet they represent the country's image internationally and are Kenya's brand ambassadors.</p>	<p>Rejected</p> <p>Rejected</p>	<p>This Fund is a financial model where institutions including the sports federations will applying for funds based on Government priority objectives. Towards this end, it is a conflict of interest to sit in a Board to determine your own allocation. The design and architecture of the Sports, Arts and Social Development Fund removes any conflicts. Clearly the Sports Federations should be more interested with facilitation to provide public services but not to sit in a Board, where they are conflicted.</p> <p>The Sports, Arts and Social Development Fund envisions a funding model with the expanded mandate of financing sports, arts and social development, including</p>

S/N	Section	Proposed Amendment	Rationale	Task force recommendation	
0			<p>Regulation 8(2)(f) provides that the CS-Sports shall appoint the 3 independent members while Regulation 8(3) provides that the President shall appoint one of the 3 independent members as a Chairman. The President has the right to appoint the Chair of a Board so why take away his power especially in subsidiary law that did not get the approval or Parliament, sports federations, athletes or even Kenyans?</p> <p>The President has no power to appoint a Chairman. This power is with the CS-Sports. The President can only pick a chairman from any of the independent Board members appointed by the CS-Sports. This is unheard of in Boards of public bodies in Kenya.</p>	<p>Rejected</p>	<p>universal health care.</p> <p>Therefore this argument is faulty.</p> <p>With regard to the view of Mr. Mudipo that the Cabinet Secretary / Sports will appoint 3 independent members is an allegation. The fact is that 1 person each shall be nominated by Cabinet Secretaries for Sports, health and finance and appointed by the Cabinet Secretary / Finance. Clearly this is due to the fact that the Fund is cross-cutting for Ministries namely, Sports and Heritage, Health, Education and Finance.</p>

S/N O	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>The Sports Ministry has no control of this Fund because the administrator of the Fund can be appointed by the CS-Treasury who has more power than the PS-Sports.</p> <p>The Attorney General has no seat on the Board of this new Fund. The AG sits on almost all Boards of Government bodies from KRA, CBK, KPA etc A Fund with so much expectations and handling such huge money should not miss the AG on its Board because of oversight just like Treasury cannot miss from any Board.</p>	<p>Rejected</p> <p>Rejected</p>	<p>As clearly provided for in the Regulations of the Sports, Arts and Social Development Fund, the President still retains the power and liberty to appoint any appointed member as the Chairperson of the Fund.</p> <p>It is necessary to appreciate that all national public funds should be established under Section 24 of the Public Finance Management (PFM) Act 2012. The Cabinet Secretary for National Treasury and Planning has delegated the administration of the Sports, Arts and Social Development Fund to the Accounting Officer responsible for Sports in the Regulations. Therefore, the allegation that the Cabinet Secretary / National Treasury shall appoint another person as the Administrator of the Fund, clearly is not factual</p>

S/ N O	Section	Proposed Amendment	Rationale	Task force recommendatio n	
				Rejected	<p>and should not be entertained.</p> <p>It is important to appreciate that the Hon. Attorney General does not sit in all Boards of Government entities. In any case the Hon. Attorney General is supposed to independently provide legal opinion on weighty matters to the Government Institutions, as and when necessary.</p> <p>Where Government finds value, the Hon. Attorney General, advises Government that it is important for that Office to be provided for expressly as a member of the Board.</p>

## **1.1 THE CREATIVE ECONOMY WORKING GROUP**

The Creative Economy Working Group is a network of practitioners in culture and creative industries. The group submitted the following:

### **The Fund:**

Established in the amendment to the Sports, Arts and Culture Fund because ‘social development’ is crosscutting and is catered for through other funding streams.

### **Memoranda of Objects and Reasons**

Rephrase ‘in order to provide a comprehensive approach to financing of sports, arts and culture sectors through a fund established and managed in accordance with the Public Finance Management Act, 2012.

## **2.0 COMMITTEE OBSERVATIONS**

The Committee observed the following during public participation and engagement with various stakeholders:

1. The National Sports Fund is established under section 12 of the Sports Act, No. 25 of 2013.
2. Pursuant to the provisions of section 24 of the Public Finance Management Act, 2012, the Cabinet Secretary to the National Treasury published the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 gazetted under Legal Notice 174 of 2018 on 10<sup>th</sup> August, 2018 which established the Sports, Arts and Social Development Fund.
3. Following the gazettelement, these Regulations were tabled in the House on 15<sup>th</sup> August, 2018 in compliance with the Statutory Instruments Act, 2013. The House then committed these Regulations to the Select Committee on Delegated Legislation for review and scrutiny and to ensure compliance with the Constitution and the law.

4. The Committee on Delegated Legislation annulled the Regulations on the grounds that they were inconsistent with an existing parent Act, namely, the Sports Act, 2013 contrary to the provisions of the Statutory Instruments Act that provides that no regulation can contravene a parent statute and the Finance Act 2018 insofar as it provided for the collector of taxes to pay all the proceeds of the tax paid under Betting Lottery and Gaming Act into the Sports, Arts and Social Development Fund before the Finance Act, 2018 had come into force.
5. The Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 were regazetted under Legal Notice 194 of 2018 on 25<sup>th</sup> October, 2018 and tabled before the House on 6<sup>th</sup> November, 2018 having addressed the issues that the Committee on Delegated Legislation had identified.
6. Thereafter, the Public Finance Management (Sports, Arts and Social Development Fund)(Amendment) Regulations, 2018 were gazetted under Legal Notice 236 of 2018 on 13<sup>th</sup> December, 2018 to address an issue related cross referencing.
7. Regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) provides that proceeds of the Fund shall be apportioned as follows:
  - a) an amount not exceeding 60% to social development including universal health care;
  - b) an amount not exceeding 35% to the promotion and development of sports;
  - c) an amount not exceeding 20% to the promote on and development of arts; and
  - d) an amount not exceeding 5% to the government strategic interventions.
8. The National Sports Fund was established to support the aims of the Sports Act which are to harness sports for development, encourage and promote drug-free sports and recreation; and to provide for the establishment of sports institutions, facilities, administration and management of sports in the country.
9. The amendments contained in the Sports (Amendment) Bill, 2018 would effectively abolish the National Sports Fund and the guaranteed funding model under the Sports Act therein.

10. It would be prudent to amend the regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) to provide that the Fund shall apportion from its proceeds, an amount of not less than 35% towards the promotion and development of sports upon enactment of the Sports (Amendment) Bill, 2018 with a view to preserving the original aims of the National Sports Fund.
11. It would be prudent that during the appointment of staff to the Sports, Arts and Social Development Fund under clause 11 of the Bill, that staff from the National Sports Fund are not disadvantaged in process of vetting and placement within the structure of the staff of the Sports, Arts and Social Development Fund.
12. It would be prudent that rregulation 11 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) to provide expressly that the Cabinet Secretary of the National Treasury may appoint a person to act as an administrator in the absence of the Principal Secretary.

### **3.0 COMMITTEE STAGE AMENDMENTS**

Having considered the memoranda on each of the Clauses, the Committee wishes to propose the following amendments:

#### **CLAUSE 10**

**THAT** clause 10 of the Bill be amended in the proposed:

- (a) new paragraph 10–
  - (a) renumbering paragraph 10 to sub-paragraph (1)
  - (b) by inserting the following new sub-paragraph-

“(2)Where a transfer of any property currently owned, transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered, the Administrator shall within six months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Sports, Arts and Social Development Fund, by way of registration fees, stamp or other duties register such property in the name of the Sports, Arts and Social Development Fund.”

#### **JUSTIFICATION**

The proposed amendment is good. It gives the responsibility of registering the properties to be transferred to the non-existing institution upon repeal of this Act, which is National Sports Fund or any other person. Responsibility is assigned to the Administrator of the Sports, Arts and Social Development Fund, who is accountable to the National Assembly, should there be misappropriation or delay in the transfer of the assets.

- (c) new paragraph 11
- (d) under sub-paragraph (4) by inserting the following new sub-paragraph immediately after sub-paragraph (b)-

- “(c) A person vetted under clause (b) shall not be placed in a position within the employment structure of the Sports, Arts and Social Development Fund on terms lower than those they enjoyed under the National Sports Fund;

### **JUSTIFICATION**

The aim is to secure the position and terms of staff who will have transited to the Sports, Arts and Social Development Fund and ensure that the staff are not disadvantaged in the process of vetting and placement within the structure of the staff of the Sports, Arts and Social Development Fund.

- (e) under sub-paragraph (7) by inserting the following new sub-paragraphs–

“(8) Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall continue to contribute to the pension scheme, where he or she was contributing to and be deemed to be in continuous service for the purposes of the Pension”

### **JUSTIFICATION**

The aim is to secure the pensions of staff who will have transited to the Sports, Arts and Social Development Fund. This is to provide for all serving officers to continue contributing to their existing pension schemes to secure their pension benefits as required by the Retirement Benefits Act,.

“(9) Any officer who was assessed and engaged by the Sports, Arts and Social Development Fund under sub-paragraph (4), and who was on the date of the commencement of this Act, a member of any statutory or voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by the same Regulations governing those schemes or funds and his service at the National Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund, subject to meeting the requirements of the pension scheme of provident fund during the period they were serving as officers of the National Sports Fund.”


## **JUSTIFICATION**

This amendment is to secure the pension of the officers, who will transit within existing regulations governing the pension schemes or provident funds, where they were eligible.

## **RECOMENDATIONS**

The Committee recommends that:

1. The Bill proceeds for second reading with the proposed amendments.
2. Regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) be amended to provide that the Fund shall apportion from its proceeds, an amount of not less than 35% towards the promotion and development of sports upon enactment of the Sports (Amendment) Bill, 2018 with a view to preserving the original aims of the National Sports Fund.
3. Staff from the National Sports Fund should not be disadvantaged in the process of vetting and placement within the structure of the staff of the Sports, Arts and Social Development Fund during the appointment of staff to the Sports, Arts and Social Development Fund under clause 11 of the Bill.
4. It would be prudent that regulation 11 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) to provide expressly that the Cabinet Secretary of the National Treasury may appoint a person to act as an administrator in the absence of the Principal Secretary.

SIGNED.......... DATE.....*18/02/2019*.....

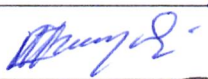

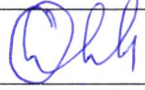
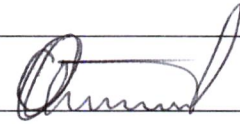
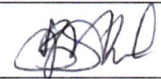

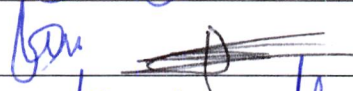
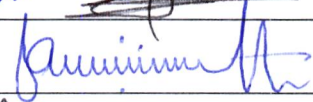
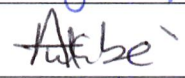
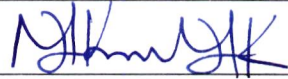

**THE HON. (DR.) VICTOR MUNYAKA, MP**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM**

**DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND  
TOURISM ADOPTION LIST FOR THE REPORT ON CONSIDERATION  
OF SPORTS (AMENDMENT) BILL, 2018**

DATE 18/02/2019 VENUE COMMITTEE ROOM 12

1.	The Hon. (Dr.) Victor Kioko Munyaka, MP.	
2.	The Hon. (Dr.) Korei Ole Lemein, MP.	
3.	The Hon. Christopher Omulele, MP.	
4.	The Hon. (Dr.) Christine Ombaka, MP.	
5.	The Hon. Cyprian Kubai Iringo, MP.	
6.	The Hon. Jones Mlolwa, MP.	
7.	The Hon. Daniel Wanyama Sitati, MP.	
8.	The Hon. Benard Masaka Shinali, MP.	
9.	The Hon. (Prof.) Jacqueline Oduol, MP.	
10.	The Hon. (Dr.) Tecla Chebet Tum, MP.	
11.	The Hon. Jane Jepkorir Kiptoo Chebaibai, MP.	
12.	The Hon. Lydia Haika Mnene Mizighi, MP.	
13.	The Hon. George Risa Sunkuyia, MP.	
14.	The Hon. Annie Wanjiku Kibeh, MP.	
15.	The Hon. Sylvanus Maritim, MP.	
16.	The Hon. Jeremiah Lomurukai, MP.	
17.	The Hon. Charles Ngusya Nguna, MP.	
18.	The Hon. Titus Mukhwana Khamala, MP.	
19.	The Hon. Charles Kamuren, MP	

MINUTES OF THE 3<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
SPORTS, CULTURE AND TOURISM HELD ON FRIDAY 15<sup>TH</sup> FEBRUARY, 2019 IN  
PARVILION SUITE CONFERENCE HALL, HILTON GARDEN INN HOTEL,  
MACHAKOS COUNTY AT 9:30 AM

**PRESENT**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
3. The Hon. Christopher Omulele, MP
4. The Hon. Dr. Christine Ombaka, MP.
5. The Hon. Benard Masaka Shinali, MP.
6. The Hon. Kubai Iringo, MP.
7. The Hon. George Risa Sunkuyia, MP.
8. The Hon. Titus Mukhwana Khamala, MP.
9. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
10. The Hon. Charles Ngusya Nguna, MP.
11. The Hon. Lydia Haika Mnene Mizighi, MP.
12. The Hon. Sylvanus Maritim, MP.

**APOLOGY**

1. The Hon. Jones Mlolwa, MP.
2. The Hon. (Prof.) Jacqueline Oduol, MP.
3. The Hon. (Dr.) Tecla Chebet Tum, MP.
4. The Hon. Daniel Wanyama Sitati, MP.
5. The Hon. Annie Wanjiku Kibeh, MP.
6. The Hon. Jeremiah Lomorukai, MP.
7. The Hon. Charles Kamuren, MP.

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Ms. Helen Kina - Second Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Sydney Okumu - Legal Counsel II

- 4. Mr. Vitus Okech - Research Officer III
- 5. Ms. Sheila Chebotibin - Sergeant – At-Arm

**THE NATIONAL TREASURY**

- Hon. Nelson Gaichuhie - CAS National Treasury
- Mr. Geoffrey Malombe - SDAG National Treasury
- Mr. Bernard Amuno - Economist National Treasury

**MINISTRY OF SPORTS AND HERITAGE**

- Mr. Rashid E. Mohamed - Cabinet Secretary
- Amb. Peter K. Kaberia - Principal Secretary
- Mr. Isaac Nyang'aya - PA Cabinet Secretary
- Mr. Peter Mbugua - PA Principal Secretary

**MIN.NO.NA/SCT/2018/11: PRELIMINARIES**

The Chairperson called the meeting to order at forty minutes past nine O'clock followed by a prayer. He then welcomed everyone to the meeting and requested for self-introduction. The Chairperson then informed the meeting that the Committee retreated to consider the Sports (Amendment) Bill 2018 which has been reschedule for second reading in the following week to give the Committee time to complete considering the Bill and table its report.

**MIN.NO.NA/SCT/2018/12: CONSIDERATION OF THE SPORTS (AMENDMENT) BILL, 2018**

**Presentation by the National Treasury and the Ministry of Sports**

The Cabinet Secretary Ministry of Sports and Heritage, Principal Secretary Sports Development, CAS National Treasury accompanied with the Ministries Officials appeared before the Committee and informed it that they formed a taskforce to work on the proposed amendments by the stakeholders. The following comments were presented before the Committee:

**1. National Sports Fund**

S/No.	Section	Proposed Amendment	Rationale	Task force Recommendation	Taskforce Rationale
1.	11	The proposal is to amend Section 11 of the Sports Amendment Bill, 2018 by adding subsection 8 to provide for:-			

		8. "Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall be deemed to be in continuous service for the purposes of the Pension"	This is to secure the pension of existing officers who were serving as employees of the National Sports Fund.	It is <i>accepted with amendments</i> to read as follows:- 8. "Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall continue to contribute to the pension scheme, where he or she was contributing to and be deemed to be in continuous service for the purposes of the Pension"	The aim is to secure the pensions of staff who will have transited to the Sports, Arts and Social Development Fund. This is to provide for all serving officers to continue contributing to their existing pension schemes to secure their pension benefits as required by the Retirement Benefits Act,
		9. Any officer who was assessed and by the engaged the Sports, Arts and Social Development Fund under subparagraph (4), who was on the date of the commencement of this Act, a member of any statutory or voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by the same Regulations governing those schemes or funds and his service at the National Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund"	The aim to secure the pensions of staff members who have transited to the new Sports, Arts and Social Development Fund	It is <i>accepted with amendments</i> to read as follows:- 9. Any officer who was assessed and engaged by the Sports, Arts and Social Development Fund under subparagraph (4), and who was on the date of the commencement of this Act, a member of any statutory or voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by the same Regulations governing those schemes or funds and his service at the National Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund, subject to meeting the requirements of the pension scheme of provident fund during the period they were serving as officers of the National Sports Fund"	This amendment is to secure the pension of the officers, who will transit within existing regulations governing the pension schemes or provident funds, where they were eligible.
2.	11 (6)	The proposed amendment is to delete the word "may" appearing after the words "paragraph (4)" and replace therefore with the word "shall"	This will safeguard the employment status of staff by making it mandatory that any person who, immediately before the commencement of the Act was an employee of the National Sports Fund but fails to meet the vetting criteria is deployed in the public service	Rejected.	Public Officers who do not want to be deployed back in the Civil Service have a Constitutional Right to exit the service and be paid their service dues in accordance with prevailing regulations governing their service.
3.	11 (4) (b)	The proposed amendment is to delete the entire sub-	The requirement to vet officers	Rejected	Vetting of serving public officers is a

		section 11(4)(b) to remove the vetting requirement and all wholesale transition of staff including those whose offices will not be required by the Sports, Arts and Social Development Fund.	without a guarantee that their jobs are assured is unreasonable.		<i>standard government procedure during a transition process to ensure analysis and alignment of the qualifications and experience of various staff members to the existing positions and roles in the new organization structure.</i>
4.	New Section 10 (2)	The proposed amendment is to provide for an amendment in Section 10 to provide for sub-section (2) which states as follows:-  (2). Where a transfer of any property transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered, the National Sports Fund shall within six months from the commencement of these Regulations or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Fund, or any other person by way of registration fees, stamp or other duties .....	This is to facilitate transfer of all property transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund.	This proposal is <i>accepted with amendments</i> to read as follows:-  (2). <i>Where a transfer of any property currently owned , transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered, the Administrator of the Sports, Arts and Social Development Fund shall within six months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Sports, Arts and Social Development Fund, by way of registration fees, stamp or other duties register such property in the name of the Sports, Arts and Social Development Fund</i>	The proposed amendment is good. However, it gives the responsibility of registering the properties to be transferred to the non-existing institution upon repeal of this Act, which is National Sports Fund or any other person. Towards this end, our proposal is that this responsibility be assigned to the Administrator of the Sports, Arts and Social Development Fund, who is accountable to the National Assembly, should there be misappropriation or delay in the transfer of the assets.

2. Mr. Andrew Mudipo (a citizen of the Republic)

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
1.	None	None	His views compares the Act with the proposed regulations-	Rejected	The rationale of the amendments proposed by the Government as contained in the Sports (Amendment) Bill 2018 is to align the National Sports Fund to the provisions of the Public

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			The objects of the Regulations are similar to the objects of the National Sports Fund as captured in Section 12 (2)(b). This is duplication of roles which is not allowed by the Constitution due to wastage of public funds.		Finance Management Act 2012 regarding the establishment of national public funds.
					Therefore, there is no duplication of roles  The objects of the Sports, Arts and Social Development are not the same. The Sports, Arts and Social Development Fund objectives relate to supporting programmes and initiative from sports, arts and social development, which are broader than the National Sports Fund's objective which is largely to supports sports programmes and initiatives. Towards this end, this is the reason, why the Government is proposing amendments to repeal this Act and has established a broader Sports, Arts and Social Developer Fund to support the desired Government Agenda.
		None	Section 12(2)(a) provides that the Sports Fund shall receive funding from taxes levied under the Betting, Lotteries and Gaming Act. Regulation 3 of the new Regulations also provides that the new Fund shall also receive all the proceeds required to be paid into the Fund under	Rejected	The National Sports Fund as currently set up identifies its sources of funds as including all the proceeds of any sports lottery, investments and any other payments required by the Act to be paid into the Fund.  Before the establishment of the Sports, Arts and Social Development Fund, in September, 2018, the Betting, Lotteries and Gaming Act provided that the proceeds under the Betting, Lotteries and Gaming the Income Tax Act and the Excise Duty Act shall be paid into the Consolidated Fund. The Finance Act, 2018 amended these provisions to direct specific targeted sources of revenues to the Sports, Arts and Social Development Fund.  Therefore, the observations by Mr. Mudibo are allegations and therefore not factual.

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>the Betting Lotteries and Gaming Act. Between the National Sports Fund and the new Fund, which Fund is due to receive the 35% tax levied against the betting companies?</p> <p><b>There is a clear conflict which raises the concern that</b></p>		<p>Towards this end, there is no conflict between the sources of funds between the Sports, Arts and Social Development Fund and the National Sports Fund. It is the intention of Government to align all national public funds to the Public Finance Management Act, 2012, hence the proposal to repeal specific provisions of the Sports Act to remove any reference to any Fund under the Sports Act.</p>
			<p>The National Sports Fund shall be required to apply for funding from the new Fund yet the Sports Fund was created to fund sports from the lottery and taxes from betting. It has now been reduced from a financier to a borrower therefore weakening it and the sports federations represented on the Board by creating more layers of bureaucracy</p>	Rejected	<p>The Sports Act, 2013 established the National Sports Fund from 2013. At no time that the National Sports Fund received the Betting, Lotteries and Gaming Taxes as alleged by Mr. Mudibo.</p> <p>However, the Finance Act 2018 amended various laws to ensure that taxes collected by the Commissioner under these laws are paid into the Sports, Arts and Social Development Fund. These includes proceeds collected by the Commissioner under Section 69A of the Betting, Lotteries and Gaming Act, proceeds collected under Section 35(5A) of the Income Tax Act as well as proceeds collected under Section 36(5) of the Excise Duty Act. The Sports (Amendment) Bill therefore seeks to align these provisions to the Public Finance Management Act 2012, the Betting, Lotteries and Gaming Act, the Excise Duty Act and the Income Tax Act as amended by the Finance Act 2018.</p>

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			to seek for funds hence more delays and more harm to sports and athletes.		<p>Regarding the view by Mr. Mudipo that the National Sports Fund (NSF) shall be required to apply for funding from the Sports, Arts and Social Development Fund, it is important to note that after amendment of the Sports Act, there shall be no National Sports Fund to apply for funds from this Fund.</p> <p>The sports federations and sportspersons shall be applying directly to the Sports, Arts and Social Development Fund and this has been expressly provided for in the Sports, Arts and Social Development Fund Regulations. This clearly indicates that Mr. Mudibo did not take time to read and understand the provisions of the Fund Regulations.</p> <p>With regard to delays due to additional layers, there are no layers under the Sports, Arts and Social Development Fund, the Ministries, State Departments, Agencies, Sports Organizations and Sports Persons, will apply directly to the Fund and receive the funds directly. Therefore, the assertion of creating more layers of bureaucracy shows that Mr. Mudibo did not take time to understand the Public Finance management (Sports, Arts and Social Development Fund) Regulations, 2018.</p> <p>Therefore, these are wild allegations not based on any fact or provision of the Sports, Arts and Social Development Fund Regulations and should not be entertained.</p>
			The national lottery to be run by the new Fund has now been eliminated by the Sports (Amendment Bill) 2018.	Rejected	<p>The Regulations governing the Sports, Arts and Social Development Fund does not provide that National Lottery shall be run under this Fund.</p> <p>It is important to appreciate that since 2013, the Government expected the National Sports Fund to establish the National Lottery and run to generate</p>

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>Sports will never have an independent guaranteed revenue stream because of this development. Amending the sports Act does not help sports, giving it funds is what will help.</p>		<p>revenues for the sports sector. Apparently, it became clear that the National Sports Fund was unable to set up the National Lottery. Consequently, the Government changed strategy instead to tax the income of players who have set their own lotteries as well as income on winnings.</p> <p>This proposition is also baseless and therefore should not be entertained.</p>
			<p>Board of directors:-</p> <p>On appointment of the Board of directors of the new Fund, the following critical questions beg answers:</p> <p>Regulation 8(2) provides that the Board has 6 non-independent members and 3 independent members.</p> <p>Unlike the Sports Fund where the Sports Federations have 4 guaranteed slots on the Board under Section</p>	<p>Rejected</p> <p>Rejected</p>	<p>This Fund is a financial model where institutions including the sports federations will applying for funds based on Government priority objectives. Towards this end, it is a conflict of interest to sit in a Board to determine your own allocation. The design and architecture of the Sports, Arts and Social Development Fund removes any conflicts. Clearly the Sports Federations should be more interested with facilitation to provide public services but not to sit in a Board, where they are conflicted.</p> <p>The Sports, Arts and Social Development Fund envisions a funding model with the expanded mandate of financing sports, arts and social development, including universal health care.</p> <p>Therefore this argument is faulty.</p>

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>13(h)(i). This new Fund has no place for sports federations on its Board. Federations are once again locked out of sports matters yet they represent the country's image internationally and are Kenya's brand ambassadors.</p>	<p>Rejected</p>	<p>With regard to the view of Mr. Mudipo that the Cabinet Secretary / Sports will appoint 3 independent members is an allegation. The fact is that 1 person each shall be nominated by Cabinet Secretaries for Sports, health and finance and appointed by the Cabinet Secretary / Finance. Clearly this is due to the fact that the Fund is cross-cutting for Ministries namely, Sports and Heritage, Health, Education and Finance.</p>
			<p>Regulation 8(2)(f) provides that the CS-Sports shall appoint the 3 independent members while Regulation 8(3) provides</p>	<p>Rejected</p>	<p>As clearly provided for in the Regulations of the Sports, Arts and Social Development Fund, the President still retains the power and liberty to appoint any appointed member as the Chairperson of the Fund.</p> <p>It is necessary to appreciate that all national public funds should be established under Section 24 of the Public Finance Management (PFM) Act 2012. The Cabinet Secretary for National Treasury and Planning has delegated the administration of the Sports, Arts and Social Development Fund to the Accounting Officer responsible for Sports in the Regulations. Therefore, the allegation that the Cabinet Secretary / National Treasury shall appoint another person as</p>

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>that the President shall appoint one of the 3 independent members as a Chairman. The President has the right to appoint the Chair of a Board so why take away his power especially in subsidiary law that did not get the approval or Parliament, sports federations, athletes or even Kenyans?</p>	Rejected	<p>the Administrator of the Fund, clearly is not factual and should not be entertained.</p> <p>It is important to appreciate that the Hon. Attorney General does not sit in all Boards of Government entities. In any case the Hon, Attorney General is supposed to independently provide legal opinion on weighty matters to the Government Institutions, as and when necessary.</p> <p>Where Government finds value, the Hon. Attorney General, advises Government that it is important for that Office to be provided for expressly as a member of the Board.</p>
			<p>The President has no power to appoint a Chairman. This power is with the CS-Sports. The President can</p>	Rejected	

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>only pick a chairman from any of the independent Board members appointed by the CS-Sports. This is unheard of in Boards of public bodies in Kenya.</p> <p>The Sports Ministry has no control of this Fund because the administrator of the Fund can be appointed by the CS-Treasury who has more power than the PS-Sports.</p>		

S/No	Section	Proposed Amendment	Rationale	Task force recommendation	
			<p>The Attorney General has no seat on the Board of this new Fund. The AG sits on almost all Boards of Government bodies from KRA, CBK, KPA etc A Fund with so much expectations and handling such huge money should not miss the AG on its Board because of oversight just like Treasury cannot miss from any Board.</p>		

### **MIN.NO.NA/SCT/2018/13: COMMITTEE OBSERVATIONS**

The Committee observed the following during its engagement with the two Ministries:

1. The National Sports Fund is established under section 12 of the Sports Act, No. 25 of 2013.
2. Pursuant to the provisions of section 24 of the Public Finance Management Act, 2012, the Cabinet Secretary to the National Treasury published the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 gazetted under Legal Notice 174 of 2018 on 10<sup>th</sup> August, 2018 which established the Sports, Arts and Social Development Fund.
3. Following the gazettment, these Regulations were tabled in the House on 15<sup>th</sup> August,

2018 in compliance with the Statutory Instruments Act, 2013. The House then committed these Regulations to the Select Committee on Delegated Legislation for review and scrutiny and to ensure compliance with the Constitution and the law.

4. The Committee on Delegated Legislation annulled the Regulations on the grounds that they were inconsistent with an existing parent Act, namely, the Sports Act, 2013 contrary to the provisions of the Statutory Instruments Act that provides that no regulation can contravene a parent statute and the Finance Act 2018 insofar as it provided for the collector of taxes to pay all the proceeds of the tax paid under Betting Lottery and Gaming Act into the Sports, Arts and Social Development Fund before the Finance Act, 2018 had come into force.
5. The Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 were regazetted under Legal Notice 194 of 2018 on 25<sup>th</sup> October, 2018 and tabled before the House on 6<sup>th</sup> November, 2018 having addressed the issues that the Committee on Delegated Legislation had identified.
6. Thereafter, the Public Finance Management (Sports, Arts and Social Development Fund)(Amendment) Regulations, 2018 were gazetted under Legal Notice 236 of 2018 on 13<sup>th</sup> December, 2018 to address an issue related cross referencing.
7. Regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) provides that proceeds of the Fund shall be apportioned as follows:
  - a) an amount not exceeding 60% to social development including universal health care;
  - b) an amount not exceeding 35% to the promotion and development of sports;
  - c) an amount not exceeding 20% to the promote on and development of arts; and
  - d) an amount not exceeding 5% to the government strategic interventions.
8. The National Sports Fund was established to support the aims of the Sports Act which are to harness sports for development, encourage and promote drug-free sports and recreation; and to provide for the establishment of sports institutions, facilities, administration and management of sports in the country,
9. The amendments contained in the Sports (Amendment) Bill, 2018 would effectively abolish the National Sports Fund and the guaranteed funding model under the Sports Act therein.

**MIN.NO.NA/SCT/2018/14: ADJOURNMENT**

There being no other business, the meeting was adjourned at twenty minutes past twelve O'clock.

SIGN: *[Handwritten Signature]* ..... DATE: *18/02/19* .....

**CHAIRPERSON**

~~MINUTES OF THE 4<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON~~  
~~SPORTS, CULTURE AND TOURISM HELD ON FRIDAY 15<sup>TH</sup> FEBRUARY, 2019 IN~~  
~~PARVILION SUITE CONFERENCE HALL, HILTON GARDEN INN HOTEL,~~  
~~MACHAKOS COUNTY AT 2:00 PM~~

**PRESENT**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
3. The Hon. Christopher Omulele, MP
4. The Hon. Dr. Christine Ombaka, MP.
5. The Hon. Benard Masaka Shinali, MP.
6. The Hon. Kubai Iringo, MP.
7. The Hon. George Risa Sunkuyia, MP.
8. The Hon. Titus Mukhwana Khamala, MP.
9. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
10. The Hon. Charles Ngusya Nguna, MP.
11. The Hon. Lydia Haika Mnene Mizighi, MP.
12. The Hon. Sylvanus Maritim, MP.

**APOLOGY**

1. The Hon. Jones Mlolwa, MP.
2. The Hon. (Prof.) Jacqueline Oduol, MP.
3. The Hon. (Dr.) Tecla Chebet Tum, MP.
4. The Hon. Daniel Wanyama Sitati, MP.
5. The Hon. Annie Wanjiku Kibeh, MP.
6. The Hon. Jeremiah Lomorukai, MP.
7. The Hon. Charles Kamuren, MP.

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Ms. Helen Kina - Second Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Sydney Okumu - Legal Counsel II

4. Mr. Vitus Okech - Research Officer III
5. Ms. Sheila Chebotibin - Sergeant – At-Arm

**MIN.NO.NA/SCT/2018/15: PRELIMINARIES**

The Chairperson called the meeting to order at two O'clock followed by a prayer.

**MIN.NO.NA/SCT/2018/16: CONSIDERATION OF THE COMMITTEE STAGE AMENDMENTS TO SPORTS (AMENDMENT) BILL, 2018**

The Committee considered the following proposed amendments:

**CLAUSE 10**

**THAT** clause 10 of the Bill be amended in the proposed:

- (a) new paragraph 10–
  - (a) renumbering paragraph 10 to sub-paragraph (1)
  - (b) by inserting the following new sub-paragraph-

“(2)Where a transfer of any property currently owned, transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered, the Administrator shall within six months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Sports, Arts and Social Development Fund, by way of registration fees, stamp or other duties register such property in the name of the Sports, Arts and Social Development Fund.”

**JUSTIFICATION**

The proposed amendment is good. It gives the responsibility of registering the properties to be transferred to the non-existing institution upon repeal of this Act, which is National Sports Fund or any other person. Responsibility is assigned to the Administrator of the Sports, Arts and Social

~~Development Fund, who is accountable to the National Assembly, should there be misappropriation or delay in the transfer of the assets.~~

(c) new paragraph 11

(d) under sub-paragraph (4) by inserting the following new sub-paragraph immediately after sub -clause (b)-

“(c) A person vetted under clause (b) shall not be placed in a position within the employment structure of the Sports, Arts and Social Development Fund on terms lower than those they enjoyed under the National Sports Fund;

#### JUSTIFICATION

The aim is to secure the pensions of staff who will have transited to the Sports, Arts and Social Development Fund are not disadvantaged in process of vetting a placement within the structure of the staff of the Sports, Arts and Social Development Fund.

(e) under sub-paragraph (7) by inserting the following new sub-paragraphs-

“(8) Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall continue to contribute to the pension scheme, where he or she was contributing to and be deemed to be in continuous service for the purposes of the Pension”

#### JUSTIFICATION

The aim is to secure the pensions of staff who will have transited to the Sports, Arts and Social Development Fund. This is to provide for all serving officers to continue contributing to their existing pension schemes to secure their pension benefits as required by the Retirement Benefits Act,

“(9) Any officer who was assessed and engaged by the Sports, Arts and Social Development Fund under sub-paragraph (4), and who was on the date of the commencement of this Act, a member of any statutory or voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by the same Regulations governing those schemes or funds and his service at the National

Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund, subject to meeting the requirements of the pension scheme of provident fund during the period they were serving as officers of the National Sports Fund.”

## **JUSTIFICATION**

This amendment is to secure the pension of the officers, who will transit within existing regulations governing the pension schemes or provident funds, where they were eligible.

While considering the amendments, the Committee noted that there were issues that needed further clarification from the two Ministries especially on the following areas:

1. Regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) provides that proceeds of the Fund shall be apportioned as follows:
  - a) an amount not exceeding 60% to social development including universal health care;
  - b) an amount not exceeding 35% to the promotion and development of sports;
  - c) an amount not exceeding 20% to the promote on and development of arts; and
  - d) an amount not exceeding 5% to the government strategic interventions.
2. Regulation 11(1) of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) that provides that the Administrator of the Fund shall be the accounting officer responsible for matters relating to sports or any other person designated by the Cabinet Secretary, in writing, for that purpose.

The Committee directed then that the Ministries officials be recalled to appear before the Committee and give clarifications on the issues.

## **MIN.NO.NA/SCT/2018/17: COMMITTEE RESOLUTIONS**

The Committee held elaborate deliberations on the issues with the Principal Secretary Sports Development and Mr. Malombe from the National Treasury and resolved that the Cabinet Secretary will forward and amendment to the regulations to take care of the two main issues. It was agreed that the letter to this effect be forwarded to Parliament by Monday 18<sup>th</sup> February, 2019 11:00am to enable the Committee dispense of the matter.

MIN.NO.NA/SCT/2018/18: ADJOURNMENT

There being no other business, the meeting was adjourned at half past six O'clock.

SIGN: *[Handwritten Signature]* DATE: *18/02/2019*

CHAIRPERSON

8

8

**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
SPORTS, CULTURE AND TOURISM HELD ON SATURDAY 16<sup>TH</sup> FEBRUARY, 2019  
IN PARVILION SUITE CONFERENCE HALL, HILTON GARDEN INN HOTEL,  
MACHAKOS COUNTY AT 9:30 AM**

**PRESENT**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
3. The Hon. Christopher Omulele, MP
4. The Hon. Dr. Christine Ombaka, MP.
5. The Hon. Benard Masaka Shinali, MP.
6. The Hon. Kubai Iringo, MP.
7. The Hon. George Risa Sunkuyia, MP.
8. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
9. The Hon. Charles Ngusya Nguna, MP.
10. The Hon. Lydia Haika Mnene Mizighi, MP.
11. The Hon. Sylvanus Maritim, MP.

**APOLOGY**

1. The Hon. Jones Mlolwa, MP.
2. The Hon. (Prof.) Jacqueline Oduol, MP.
3. The Hon. (Dr.) Tecla Chebet Tum, MP.
4. The Hon. Daniel Wanyama Sitati, MP.
5. The Hon. Annie Wanjiku Kibeh, MP.
6. The Hon. Jeremiah Lomorukai, MP.
7. The Hon. Charles Kamuren, MP.
8. The Hon. Titus Mukhwana Khamala, MP.

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Ms. Helen Kina - Second Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant

3. Mr. Sydney Okumu - Legal Counsel II
4. Mr. Vitus Okech - Research Officer III
5. Ms. Sheila Chebotibin - Sergeant – At-Arm

**MIN.NO.NA/SCT/2018/19: PRELIMINARIES**

The Chairperson called the meeting to order at forty minutes past nine O'clock followed by a prayer.

**MIN.NO.NA/SCT/2018/20: ADOPTION OF THE COMMITTEE STAGE AMENDMENTS AND RECOMMENDATIONS**

The Committee considered and adopted the following proposed amendments and recommendations:

**CLAUSE 10**

**THAT** clause 10 of the Bill be amended in the proposed:

- (a) new paragraph 10–
  - (a) renumbering paragraph 10 to sub-paragraph (1)
  - (b) by inserting the following new sub-paragraph-

“(2)Where a transfer of any property currently owned, transferred to or vested into the National Sports Fund to the Sports, Arts and Social Development Fund, and the transfer is required in any written law to be registered, the Administrator shall within six months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall at no cost to the Sports, Arts and Social Development Fund, by way of registration fees, stamp or other duties register such property in the name of the Sports, Arts and Social Development Fund.”

**JUSTIFICATION**

The proposed amendment is good. It gives the responsibility of registering the properties to be transferred to the non-existing institution upon repeal of this Act, which is National Sports Fund

or any other person. Responsibility is assigned to the Administrator of the Sports, Arts and Social Development Fund, who is accountable to the National Assembly, should there be misappropriation or delay in the transfer of the assets.

(c) new paragraph 11

(d) under sub-paragraph (4) by inserting the following new sub-paragraph immediately after sub-clause (b)-

“(c) A person vetted under clause (b) shall not be placed in a position within the employment structure of the Sports, Arts and Social Development Fund on terms lower than those they enjoyed under the National Sports Fund;

### **JUSTIFICATION**

The aim is to secure the pensions of staff who will have transited to the Sports, Arts and Social Development Fund are not disadvantaged in process of vetting a placement within the structure of the staff of the Sports, Arts and Social Development Fund.

(e) under sub-paragraph (7) by inserting the following new sub-paragraphs-

“(8) Any person who has been assessed and appointed by the Sports, Arts and Social Development Fund Oversight Board shall continue to contribute to the pension scheme, where he or she was contributing to and be deemed to be in continuous service for the purposes of the Pension”

### **JUSTIFICATION**

The aim is to secure the pensions of staff who will have transited to the Sports, Arts and Social Development Fund. This is to provide for all serving officers to continue contributing to their existing pension schemes to secure their pension benefits as required by the Retirement Benefits Act,

“(9) Any officer who was assessed and engaged by the Sports, Arts and Social Development Fund under sub-paragraph (4), and who was on the date of the commencement of this Act, a member of any statutory or voluntary pension contribution scheme or provident fund, shall for the purposes of this Act, continue to be governed by

the same Regulations governing those schemes or funds and his service at the National Sports Fund shall be deemed to be eligible service for the purposes of the Pension Scheme or the Provident Fund, subject to meeting the requirements of the pension scheme of provident fund during the period they were serving as officers of the National Sports Fund.”

## **JUSTIFICATION**

This amendment is to secure the pension of the officers, who will transit within existing regulations governing the pension schemes or provident funds, where they were eligible.

While considering the amendments, the Committee noted that there were issues that needed further clarification from the two Ministries especially on the following areas:

1. Regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) provides that proceeds of the Fund shall be apportioned as follows:
  - a) an amount not exceeding 60% to social development including universal health care;
  - b) an amount not exceeding 35% to the promotion and development of sports;
  - c) an amount not exceeding 20% to the promote on and development of arts; and
  - d) an amount not exceeding 5% to the government strategic interventions.
2. Regulation 11(1) of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) that provides that the Administrator of the Fund shall be the accounting officer responsible for matters relating to sports or any other person designated by the Cabinet Secretary, in writing, for that purpose.

The Committee directed then that the Ministries officials be recalled to appear before the Committee and give clarifications on the issues.

## **MIN.NO.NA/SCT/2018/21: COMMITTEE RECOMMENDATIONS**

The Committee recommends that:

1. It would be prudent to amend the regulation 4 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) to provide that the Fund shall apportion from its proceeds, an amount of not less than 35% towards the promotion

and development of sports upon enactment of the Sports (Amendment) Bill, 2018 with a view to preserving the original aims of the National Sports Fund.

2. It would be prudent that during the appointment of staff to the Sports, Arts and Social Development Fund under clause 11 of the Bill that staff from the National Sports Fund are not disadvantaged in process of vetting and placement within the structure of the staff of the Sports, Arts and Social Development Fund.
3. It would be prudent that regulation 11 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N 194/2018) to provide expressly that the Cabinet Secretary of the National Treasury may appoint a person to act as an administrator in the absence of the Principal Secretary Sports.
4. The Bill proceeds for second reading with the proposed amendments.

**MIN.NO.NA/SCT/2018/22: ADJOURNMENT**

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

SIGN: *[Signature]* DATE: 18/02/2019

**CHAIRPERSON**

8

8

**MINUTES OF THE 6<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
SPORTS, CULTURE AND TOURISM HELD ON SATURDAY 18<sup>TH</sup> FEBRUARY, 2019  
IN COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS AT 2:30  
PM**

**PRESENT**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
3. The Hon. Christopher Omulele, MP
4. The Hon. Dr. Christine Ombaka, MP.
5. The Hon. Benard Masaka Shinali, MP.
6. The Hon. Kubai Iringo, MP.
7. The Hon. George Risa Sunkuyia, MP.
8. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
9. The Hon. Charles Ngusya Nguna, MP.
10. The Hon. Lydia Haika Mnene Mizighi, MP.
11. The Hon. Sylvanus Maritim, MP.
12. The Hon. Annie Wanjiku Kibeh, MP.

**APOLOGY**

1. The Hon. Jones Mlolwa, MP.
2. The Hon. (Prof.) Jacqueline Oduol, MP.
3. The Hon. (Dr.) Tecla Chebet Tum, MP.
4. The Hon. Daniel Wanyama Sitati, MP.
5. The Hon. Jeremiah Lomorukai, MP.
6. The Hon. Charles Kamuren, MP.
7. The Hon. Titus Mukhwana Khamala, MP.

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Ms. Helen Kina - Second Clerk Assistant
2. Ms. Catherine Burure - Fiscal Analyst

3. Mr. Vitus Okech - Research Officer III
4. Ms. Sheila Chebotibin - Sergeant – At-Arm

**MIN.NO.NA/SCT/2018/23: PRELIMINARIES**

The Chairperson called the meeting to order at twenty minutes past two O'clock followed by a prayer.

**MIN.NO.NA/SCT/2018/24: CONFIRMATION OF MINUTES**

1. Minutes of the 1<sup>st</sup> sitting held on 12<sup>th</sup> February, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Kubai Iringo, MP and Seconded by the Hon. George Sunkuyia, MP.
2. Minutes of the 2<sup>nd</sup> sitting held on 14<sup>th</sup> February, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Charles Nguna, MP and Seconded by the Hon. George Sunkuyia, MP.
3. Minutes of the 3<sup>rd</sup> sitting held on 15<sup>th</sup> February, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Jane Chebaibai, MP and seconded by the Hon. Dr. Korei Lemein, MP.
4. Minutes of the 4<sup>th</sup> sitting held on 15<sup>th</sup> February, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Korei Lemein, MP and Seconded by the Hon. Kubai Iringo, MP.
5. Minutes of the 5<sup>th</sup> sitting held on 16<sup>th</sup> February, 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Lydia Haika, MP and Seconded by the Hon. Annie Kibeh, MP.

**MIN.NO.NA/SCT/2018/25: CONSIDERATION AND ADOPTION OF THE REPORT ON CONSIDERATION OF THE SPORTS (AMENDMENT) BILL, 2018**

The Committee considered and unanimously adopted the report. The Secretariat were directed to prepare the report for tabling.

**MIN.NO.NA/SCT/2018/26: ADJOURNMENT**

There being no other business, the meeting was adjourned at ten minutes past three O'clock.

SIGN: ..... *[Signature]* ..... DATE: *18/02/2019* .....

**CHAIRPERSON**

**MINUTES OF THE 69<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
SPORTS, CULTURE AND TOURISM HELD ON THURSDAY 22<sup>ND</sup> NOVEMBER, 2018  
IN THE COMMITTEE ROOM 12 MAIN PARLIAMENT BUILDINGS AT 11:30 AM**

**PRESENT**

1. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
2. The Hon. Christopher Omulele, MP
3. The Hon. Kubai Iringo, MP.
4. The Hon. Lydia Haika Mnene Mizighi, MP.
5. The Hon. George Risa Sunkuyia, MP.
6. The Hon. Jeremiah Lomorukai, MP.
7. The Hon. Sylvanus Maritim, MP.
8. The Hon. Jones Mlolwa, MP.
9. The Hon. Titus Mukhwana Khamala, MP.
10. The Hon. Charles Ngusya Nguna, MP.
11. The Hon. Daniel Wanyama Sitati, MP

**APOLOGY**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. Dr. Christine Ombaka, MP.
3. The Hon. Benard Masaka Shinali, MP.
4. The Hon. (Prof.) Jacqueline Oduol, MP.
5. The Hon. (Dr.) Tecla Chebet Tum, MP.
6. The Hon. Annie Wanjiku Kibeh, MP
7. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Mr. Salem Lorot - Legal Counsel II
2. Mr. Vitus Okech - Research Officer III
3. Ms. Catherine Ghati - Fiscal Analyst
4. Ms. Jane Serem - Audio Officer

## **IN-ATTENDANCE**

### **STAKEHOLDERS WITH REGARD TO THE SPORTS (AMMENDMENT) BILL, 2018**

1. Mr. Andrew Immanuel Mudibo - Chairman, Kenya Table Tennis Association
2. Martin Machira - Corporation Secretary, National Sports Fund
3. Wahoro Ndohho - Chairman, National Sports Fund

### **MIN.NO.NA/SCT/2018/344: PRELIMINARIES**

The Vice Chairperson called the meeting to order at five minutes to Twelve O'clock at noon followed by a prayer.

### **MIN.NO.NA/SCT/2018/345: SUBMISSIONS BY MR. ANDREW MUDIBO, THE CHAIRMAN OF THE KENYA TABLE TENNIS ASSOCIATION**

The Chairperson of the Kenya Table Tennis Association appeared before the Committee and below is the summary of the presentation:-

1. They fully support a Sports Fund by whatever definition because of its strategic importance to Sports and the Country.
2. The nullification of the Sports, Arts and Social Development Fund regulations 2018 means that a new Fund does not exist and therefore this should not mean sports funding cannot continue because the National Sports Fund is already established and it has a board and staff.
3. As Parliament seeks to solve the issue of Sports funding in the Country; in the meantime, there is an urgent need to make relevant legislation to channel the revenues from the betting, gaming and lottery to the National Sports Fund or whatever name it will be called to enable the funding of the Federations to aid their operations.
4. That a new regulations for the fund should be should be fast-tracked to allow federations slots on the new fund board and that there is need for the fund to provide their reports periodically to parliament for consideration.
5. The Sports fund should be allowed to run the lottery for long-term funding and development of Sports infrastructure in the Country.

### **MIN.NO.NA/SCT/2018/346: CONSIDERATION OF THE SPORTS (AMMENDMENT) BILL, 2018**

The Cabinet Secretary for Sports did not appear before the Committee and therefore this agenda item was not executed.

The Committee therefore resolved to invite the Cabinet Secretary for Sports to appear before Committee and make his final Submission regarding this Bill as agreed on the Sitting of the Committee held on 15<sup>th</sup> November, 2018.

The Committee further resolved that the Cabinet Secretary for the National Treasury is also required to attend the meeting during the Submission by the Cabinet Secretary for Sports so as to make their presentation regarding the Sports Fund in relation the Sports (Amendment) Bill, 2018

**MIN.NO.NA/SCT/2018/347: ADJOURNMENT**

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

SIGN: ..... *[Signature]* ..... DATE: *29/11/2018* .....

**CHAIRPERSON**

8

8

**MINUTES OF THE 68<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
SPORTS, CULTURE AND TOURISM HELD ON THURSDAY 15<sup>TH</sup> NOVEMBER, 2018  
IN THE BIG BOARD-ROOM ON 9<sup>TH</sup> FLOOR, HARAMBEE SACCO PLAZA,  
PARLIAMENT BUILDINGS AT 9:30 AM**

**PRESENT**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - Chairperson
2. The Hon. (Dr.) Korei Ole Lemein, MP. - Vice Chairperson
3. The Hon. Christopher Omulele, MP
4. The Hon. Jones Mlolwa, MP.
5. The Hon. Benard Masaka Shinali, MP.
6. The Hon. Kubai Iringo, MP.
7. The Hon. Daniel Wanyama Sitati, MP
8. The Hon. Charles Ngusya Nguna, MP.
9. The Hon. Annie Wanjiku Kibeh, MP
10. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
11. The Hon. George Risa Sunkuyia, MP.
12. The Hon. Lydia Haika Mnene Mizighi, MP.
13. The Hon. Dr. Christine Ombaka, MP.
14. The Hon. Sylvanus Maritim, MP.

**APOLOGY**

1. The Hon. (Prof.) Jacqueline Oduol, MP.
2. The Hon. (Dr.) Tecla Chebet Tum, MP.
3. The Hon. Titus Mukhwana Khamala, MP.
4. The Hon. Jeremiah Lomorukai, MP.

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Mr. Douglas Katho - Clerk Assistant III
2. Ms. Clarah Kimeli - Senior Legal Counsel
3. Mr. Vitus Okech - Research Officer III
4. Ms. Catherine Ghati - Fiscal Analyst

5. Ms. Jane Serem - Audio Officer

## IN-ATTENDANCE

### MINISTRY OF SPORTS CULTURE & HERITAGE AND OTHER STAKEHOLDERS

1. Mr. Rashid Mohamed - Cabinet Secretary
2. Amb. Peter Kaberia - Principal Secretary
3. Kassim Farrah - SA
4. John Ruga - Engineer
5. Peter K. Mbugua - PA to PS
6. Wahoro Ndoho - Chairman National Sports Fund
7. Martin Machira - Director Legal Service National Sports Fund
8. Andrew Mudibo - Chairman, Kenya Table Tennis

### MIN.NO.NA/SCT/2018/340: PRELIMINARIES

The Vice Chairperson called the meeting to order at five minutes to Ten O'clock in the morning followed by a prayer.

### MIN.NO.NA/SCT/2018/341: QUESTION ASKED BY HON. JOSEPH KIPKOSKEY TONUI, MP FOR KURESOI SOUTH CONSTITUENCY

The Hon. Member for Kuresoi Constituency appeared before the departmental Committee on Sports Culture and Tourism to ask the Cabinet Secretary for Sports Culture and Heritage why the construction of Olenguruone Stadium in Nakuru County funded by the National Government and inaugurated in 2014 stalled and when is it expected to be completed?

The Cabinet Secretary in his response informed the meeting that the Olenguruone Stadium was designed by the defunct Ministry of Local government in conjunction with the Ministry of Housing and Urban Development in 2012 and therefore the Ministry was not the implementing entity.

He however stated that the State Department of Sports is consulting with the State department of Housing and Urban Development to come up with a strategy on completion of the Stadium when finances will be provided by the treasury.

The Cabinet Secretary also informed the Members that the Operationalization of the Sports, Arts and Social Development Fund will help financing most of the stalled Stadia projects in the country.

**MIN.NO.NA/SCT/2018/342: CONSIDERATION OF THE SPORTS (AMMENDMENT) BILL, 2018**

The Cabinet Secretary for Sports appeared before Committee and informed the meeting that the object of the Bill was to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund and the National Sports Fund Board of Trustees.

It was further noted that the justification given is that the Provisions repealed will be re-established through the provisions of section 24 of the PFMA Act that gives powers to the Cabinet Secretary in charge of the National Treasury powers to establish a Fund.

The Committee was concerned that the Act if passed may put the fund in a limbo since the regulations were rejected by the Delegated Legislation Committee. Having extensively deliberated on the agenda, the Committee resolved that the Cabinet Secretary to appear before the Committee on the 22<sup>nd</sup> November to make his presentation which will not make any reference to the annulled regulations.

**MIN.NO.NA/SCT/2018/343: ADJOURNMENT**

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

SIGN: ..... *[Signature]* ..... DATE: *29/11/2018* .....

**CHAIRPERSON**

8

8

**MINUTES OF THE 67<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
SPORTS, CULTURE AND TOURISM HELD ON THURSDAY 8<sup>TH</sup> NOVEMBER, 2018  
IN NG-CDF BOARD ROOM, 10<sup>TH</sup> FLOOR, HARAMBEE PLAZA, PARLIAMENT  
BUILDINGS AT 12:00 NOON**

**PRESENT**

1. The Hon. (Dr.) Korei Ole Lemein, MP. - **Vice Chairperson**
2. The Hon. Jones Mlolwa, MP.
3. The Hon. Kubai Iringo, MP.
4. The Hon. (Prof.) Jacqueline Oduol, MP.
5. The Hon. (Dr.) Tecla Chebet Tum, MP.
6. The Hon. Charles Ngusya Nguna, MP.
7. The Hon. Annie Wanjiku Kibeh, MP
8. The Hon. George Risa Sunkuyia, MP.
9. The Hon. Sylvanus Maritim, MP.

**APOLOGY**

1. The Hon. (Dr.) Victor Kioko Munyaka, MP. - **Chairperson**
2. The Hon. Christopher Omulele, MP
3. The Hon. Benard Masaka Shinali, MP.
4. The Hon. Daniel Wanyama Sitati, MP
5. The Hon. Dr. Christine Ombaka, MP.
6. The Hon. Jane Jepkorir Kiptoo Chebaibai, MP
7. The Hon. Lydia Haika Mnene Mizighi, MP.
8. The Hon. Titus Mukhwana Khamala, MP.
9. The Hon. Jeremiah Lomorukai, MP.

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Mr. Fredrick Otieno - Third Clerk Assistant
2. Ms. Clarah Kimeli - Legal Counsel
3. Mr. Vitus Okech - Research Officer
4. Ms. Jane Serem - Audio Officer

**MIN.NO.NA/SCT/2018/336: PRELIMINARIES**

The Vice Chairperson called the meeting to order at sixteen minutes past twelve O'clock followed by a prayer. He then informed the meeting that the Committee was to be briefed by the Legal Counsel on the Sports (Amendment) Bill, 2018.

**MIN.NO.NA/SCT/2018/337: CONSIDERATION OF THE SPORTS (AMENDMENT) BILL, 2018**

Members were informed that the principal object of the Bill was to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund and the National Sports Fund Board of Trustees.

It was further noted that the justification given is that the Provisions repealed will be re-established through the provisions of section 24 of the PFMA Act that gives powers to the Cabinet Secretary in charge of the National Treasury powers to establish a Fund.

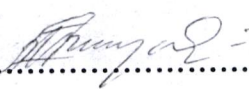
The Committee was concerned that the Act if passed may put the fund in a limbo since the regulations were rejected by the Delegated Legislation Committee. Having extensively deliberated on the agenda, the Committee resolved that the Members to go through the Bill and the analysis by the Legal Counsel and discuss the bill in the next meeting.

**MIN.NO.NA/SCT/2018/338: ANY OTHER BUSINESS**

Under this agenda, Members resolved that the proposed retreat to Nanyuki on Thursday 22<sup>nd</sup> November, 2018 be changed to Mombasa.

**MIN.NO.NA/SCT/2018/339: ADJOURNMENT**

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

SIGN:  ..... DATE: 29/11/2018 .....

**CHAIRPERSON**

SOCIETY

# Stop exalting the bipolar politicians

There are two statements the media should be better advised to keep off for the sake of public sanity. First, "never again shall Kenyans fight one another because of elections ... blah blah blah!" Second, "... We are focused on what we were elected to do braah braah braah..."

Politicians — specifically, many Kenyan politicians — are bipolar; they hold two opinions on anything. They propagate two extreme points at any one time. They have two natures on any given day.

In the morning, an elected leader is giving a gloriously thoughtful interview to the media on the state of the nation. That afternoon, the same "honourable" is busy tearing apart reports in Parliament. In the evening, "Mheshimiwa" is giving a nice treat to friends before returning home as possible parent.

In a sunny day, a politician is exhibiting great integrity in a written speech delivered to an attentive audience at Taifa Hall, University of Nairobi. On a rainy day, the same politician is lining up friends and relatives for lucrative jobs that less-connected Kenyans have no access to.

See the same person donating very generously for worthy causes on Sunday morning. Then the same 'cleansed' honourable is at a public rally that afternoon, breathing fire at any critic, any dissent and any contrary opinion — real or perceived. One moment they are aggrieved, another moment they are peacemakers.

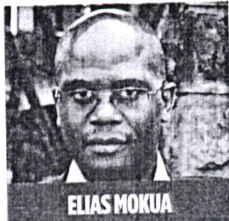
The Sunday ends with a blistering attack on fellow politicians for calling for secession (if there was a possibility of seceding from politicians, I would do it yesterday!)

On Monday afternoon, or let's say, Tuesday morning, the honourable is back to the office. Interesting what bipolar persons can do. Meet the honourable, if you are lucky to: Very good person one on one. The person in the media and the person you meet are diametrically different.

**One big joke**

Move to the next office. The very nice, articulate, attentive media-sensitive and seemingly patriotic public figure in the media is not just dismissive but simply a devil to encounter.

What makes us believe that because of bipolar



Most of our elected leaders lack political morality."

politicians, "... we will never again fight one another..." Really?

Another reason why it should bother the media less to feed us with the blah blah and braah braah braah is simple. We fought one another in 2007/2008. We regretted the event but learnt little in terms of holding better, fair and credible elections. That is why last year's General Election was, by and large, one big joke — except, of course, for people with bipolar tendencies.

It would not have hurt but built the credibility of the elected leaders if only they

gathered courage and lived their celebrated love for the country to implement the TJRC report, so that we lay a solid peaceful foundation for the younger generation.

Away from the bipolar politicians, the media, which I generally respect, never stop to amaze. The amount of corrosive corruption the same media so painstakingly report every other day, the mystery of public funds usage in the counties (without, of course, denying the many visible and most appreciated county developments since the advent of devolution) and the increasing taxes, some of which are not justified, should, ideally, prompt them not to take seriously political claims that "we are committed to what we were elected to do".

What is that, if not sensibly addressing, as a matter of priority, the challenges Kenyans of low income face, since they are the majority and form the economic base on which we draw our tax?

Governments are formed to deliver. If they deliver one tonne of sand instead of the five pledged, we should be angry and demand the other four. Unfortunately, the media are the first to

highlight the wonder of a one-tonne sand delivery!

The essence of being the 'Fourth Estate' is to make governments accountable, not cover up their failures. The 2017 presidential election reporting is a case in point. The institutions charged with overseeing the electoral process needed to convincingly account for their role in the election mess. The same energy, enthusiasm and creative imagination that is sometimes invested in media lynching of 'omena' ('small fish') should be used to 'watchdog' people who are paid by the omenas to deliver on their behalf.

Most of our elected leaders lack political morality. This is why the media ought to be aware that, in Kenya, statements such as "I promise, I commit, I assure ..." are to be interpreted differently from what they conventionally would mean.

It will be a great service to the public if the media simply stopped elevating political meaninglessness in the public discourse.

Dr Mokuia is the executive director, Jesuit Hakamani Centre. hakimanidirector@gmail.com

TRANSPORT

# Reward safe road users to end carnage

Kenyans are getting fatigued by the ever-increasing road carnage and the resultant blame games and inaction.

Authorities tend to concentrate on public service vehicles (PSVs) that flout the rules. And although they are many, of 100 inspected vehicles, two or three pass the compliance test. So, when we lump them together and continue to bash them as reckless, it creates no motivation nor the space to improve.

We should reward compliance. We could grant a special status to transporters in recognition of their compliance and attempts at increasing safety. The NTSA and other stakeholders would come up with the reward scheme rules.

One benefit would be not being stopped by traffic police throughout the route. Not only is it time-wasting it's an avenue for bribes and duplication of roles. If the insurance and licence, and all are okay on departure, surely they won't expire every few kilometres.

If the speed limiter is working, the vehicle won't speed. With modern technology, a vehicle's speed can be monitored from the office. Trains and aeroplanes don't stop for inspection.

Insurance firms would reduce premiums for them as they would cause fewer and less severe accidents.

Finally, such vehicles could be allowed to advertise the fare to be compliant. Travellers could check their pockets and this would encourage other PSVs to follow suit.

KARIUKI GATHUI, Nairobi

REPUBLIC OF KENYA



NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT – SECOND SESSION

In the Matter of consideration by the National Assembly –  
The Sports (Amendment) Bill, 2018

SUBMISSION OF MEMORANDA

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

The Sports (Amendment) Bill, 2018 seeks to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund Board of Trustees in order to provide for a comprehensive approach to financing of the sports sector through a fund established and managed in accordance with the Public Finance Management Act, 2012.

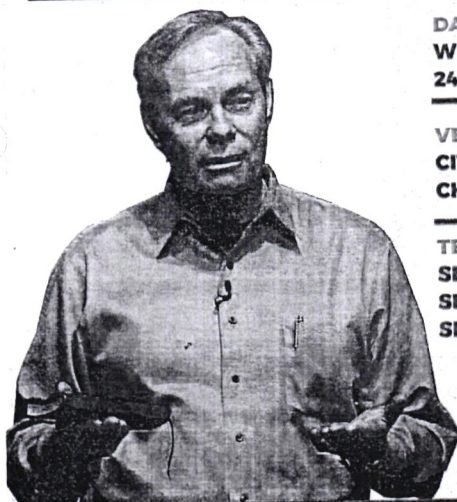
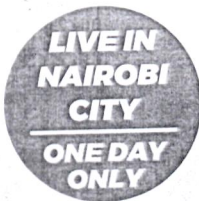
The Sports (Amendment) Bill, 2018 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Sports, Culture and Tourism for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 26<sup>th</sup> October, 2018 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

# ANDREW WOMMACK

Gospel Truth Seminar



DATE:  
WEDNESDAY  
24<sup>th</sup> OCTOBER

VENUE:  
CITAM VALLEY ROAD  
CHURCH

TEACHING SESSIONS:  
SESSION 1 - 9.30 AM  
SESSION 2 - 2.00 PM  
SESSION 3 - 5.00 PM

FREE ENTRY EVENT.  
ADVANCE REGISTRATION  
REQUIRED

SMS YOUR NAME TO  
0720 201 420

# ALL ARE WELCOME!

## ETHICS AND ANTI-CORRUPTION COMMISSION

P.O Box 61130-00200,  
Nairobi, Kenya  
Tel: 2717318/510722  
fax 254 (020) 2719757  
Email: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke)



INTEGRITY CENTRE  
Valley Rd/Jakaya Kikwete  
Rd Junction

### INVITATION TO TENDER

The Ethics and Anti-Corruption Commission (EACC) invites sealed tenders from eligible candidates for the listed Goods/Services.

NO.	TENDER	CLOSING/OPENING	RESERVATION
1	TENDER NO. EACC/06/2018-2019: PROVISION OF CATERING SERVICES (FRAMEWORK CONTRACT FOR ONE (1) YEAR) (RE-ADVERTISEMENT) NEGOTIATION NO.691790-2	5 <sup>th</sup> November 2018 at 11.00 AM	OPEN
2	TENDER NO. EACC/11/2018-2019: SUPPLY AND DELIVERY OF PETROLEUM PRODUCTS AND ITS RELATED SERVICES NEGOTIATION NO.694888	5 <sup>th</sup> November 2018 at 11.00 AM	OPEN
3	TENDER NO. EACC/12/2018-2019: PROVISION OF CLEANING, FUMIGATION & PEST CONTROL SERVICES FOR EACC OFFICES NEGOTIATION NO.694830	5 <sup>th</sup> November 2018 at 11.00 AM	YOUTH, WOMEN AND PEOPLE LIVING WITH DISABILITIES (PWD)
4	TENDER NO. EACC/23/2018-2019: SUPPLY AND DELIVERY OF WATER AND DISPOSABLE CUPS, HIRE OF HOT AND COLD WATER DISPENSERS, HIRE OF WATER REFILL BOTTLES AND MAINTENANCE OF WATER DISPENSERS NEGOTIATION NO.694868	5 <sup>th</sup> November 2018 at 11.00 AM	OPEN

Interested eligible candidates may download a complete set of tender documents at the Ethics and Anti-Corruption Commission website [www.eacc.go.ke](http://www.eacc.go.ke), and/or the IFMIS tender portal: [supplier.treasury.go.ke](http://supplier.treasury.go.ke) using the unique IFMIS Negotiation Number indicated.

Completed tender documents must be submitted through the IFMIS SUPPLIER PORTAL: [supplier.treasury.go.ke](http://supplier.treasury.go.ke) as per the requirements contained in the document so as to be received on or before the date and time indicated in the IFMIS.  
All bid documents must be paginated in the format of (1, 2, 3, 4,.....)

**NOTE:** Bidders who may experience challenges in accessing and uploading their tenders in the IFMIS Tender Portal should contact the IFMIS helpdesk (Tel 0800721477) at the Treasury or contact Supply Chain Management Office on the Ground Floor of Integrity Centre for assistance.

**MANUAL SUBMISSIONS** will not be accepted. All tenders must be submitted through the IFMIS platform.

THE SECRETARY/CEO  
ETHICS AND ANTI-CORRUPTION COMMISSION.

REPUBLIC OF KENYA



## NATIONAL ASSEMBLY TWELFTH PARLIAMENT – SECOND SESSION

In the Matter of consideration by the National Assembly –  
The Sports (Amendment) Bill, 2018

### SUBMISSION OF MEMORANDA

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

The Sports (Amendment) Bill, 2018 seeks to amend the Sports Act, 2013 to repeal the provisions relating to the establishment and operation of the National Sports Fund and the National Sports Fund Board of Trustees in order to provide for a comprehensive approach to financing of the sports sector through a fund established and managed in accordance with the Public Finance Management Act, 2012.

The Sports (Amendment) Bill, 2018 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Sports, Culture and Tourism for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Friday, 26<sup>th</sup> October, 2018 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

① Dlcaans  
Please deal  
30/10/18

26<sup>th</sup> October 2018

REF: NSF/CHR/II/VOL 1(4)

The Clerk  
Kenya National Assembly  
P.O BOX 41842-00100  
**NAIROBI.**

② HERO  
pls def  
FA  
30/10/18

Dear Sir,

RE: **SUBMISSION OF MEMORANDA ON THE SPORTS (AMENDMENT) BILL 2018.**

The National Sports Fund is a State Corporation established under the Sports Act 2013. The Fund's core mandate includes raising funds to support sports development, preparation of funding criteria and disbursing of funds to deserving groups.

Further to the request by the National Assembly calling for the submission of Memoranda by interested members of the public on the above Bill, and as Chairman of the Board of Trustees, National Sports Fund, I am an interested party to the same.

Please find attached our submissions for your consideration.

Yours Faithfully,



**WOHORO NDOHHO**  
**CHAIRMAN-NATIONAL SPORTS FUND.**

Encls

Cc: THE CABINET SECRETARY  
MINISTRY OF SPORTS & HERITAGE  
KENCOM  
**NAIROBI.**

NATIONAL ASSEMBLY  
**RECEIVED**  
30 OCT 2018  
SENIOR DEPUTY CLERK  
LEGISLATIVE & PROCEDURAL SERVICES  
P. O. Box 41842 - 00100, NAIROBI

RECEIVED  
29 OCT 2018  
CLERK'S OFFICE

# NATIONAL SPORTS FUND

## PRESENTATION BY THE CHAIRMAN, NATIONAL SPORTS FUND BOARD OF TRUSTEES TO THE DEPARTMENTAL COMMITTEE ON SPORTS, CULTURE AND TOURISM ON THE SPORTS (AMENDMENT) BILL, 2018.

### 1. Background

The National Sports Fund is a State Corporation established under the Sports Act 2013. The Fund's core mandate includes raising funds to support sports development, preparation of funding criteria and disbursing of funds to deserving groups.

The Fund is in receipt of the Sports (Amendment) Bill, 2018 and the Fund wishes to submit this Memoranda to the National Assembly's Departmental Committee on Sports, Culture and Tourism for its consideration.

### 2. Mandate of the National Sports Fund

The National Sports Fund is a State Corporation established under Section 12 of the Sports Act 2013. Section 12 (1) & (2) state as follows

*12. (1) There is established a Fund to be known as the National Sports Fund, which shall vest in and be operated and managed by the Board of Trustees.*

*(2) There shall be paid—*

*(a) into the Fund all the proceeds of any sports lottery, taxes levied under the Betting, lotteries and Gaming Act investments and any other payments required by this Act to be paid into the Fund;*

Section 17 of the Sports Act 2013 provides that the mandate of the National Sports Fund includes, inter alia:

- i. Receive gifts, grants, donation or endowments made to the fund and other moneys and make disbursements therefrom
- ii. Raise funds through lotteries, investments and any other means and disburse the funds for the development of sports and recreation
- iii. Make recommendations relating to the provision of financial grants to national sports organizations

## **A recent history of the National Sports Fund**

After the inception of the Fund in 2013, independent members of the Board of Trustees were gazetted on 20<sup>th</sup> June 2014 for a 3-year term which has since expired and the Fund is currently awaiting the appointment of new independent Trustees.

On 12<sup>th</sup> July 2018, His Excellency the President appointed Mr. Wohoro Ndohho as Chairman of the National Sports Fund Board of Trustees for a 3-year term.

To date the Fund has achieved the following milestones:

- i. Employed 35 staff out of an establishment of 56.
- ii. Established a secretariat with fully operational offices at Flamingo Towers, 7<sup>th</sup> floor, Mara road-Upperhill.
- iii. Had a fully operational board since 2013 and is on its second board Chairman.
- iv. Developed voluminous operations documentation on processes and procedures including full guidelines for funding sports organizations and individuals.
- v. Developed a 7-point strategic plan to roll out detailed programs to implement its mandate upon funding.
- vi. Disbursed Kshs. **345 Million** of Ministry funds to various sports entities and events.
- vii. Received **Kshs. 1.3 Billion** worth of funding requests from various sports entities and events.

### **3. Revenue Streams.**

The Fund is cognizant of the Cabinet's decision to establish the Sports, Arts and Social Development Fund under the Public Finance Management Act-2012 and seeks to facilitate this decision in every way.

Consequently, the fund appreciates that under the new proposed arrangement its mandated revenue streams shall now flow to the new Sports Arts and Social Development Fund.

#### **A. Betting Taxes.**

It is therefore noted that the proposed Sports, Arts and Social Development Regulations (2018) and the Finance Act 2018 have intended the said taxes to flow to the new Fund.

#### **B. Income from the national lottery which is yet to be operationalized.**

Since inception, the Fund has requested funding from the National Treasury to enable it start a national lottery as the National Lottery is a Vision 2030 project. To date, the funds have not been granted thus limiting the Fund's ability to fulfil its mandate.

The Fund had projected at its inception that if it was to start a national lottery, the lottery could have generated Kshs 4,000,000 per day which would not only eliminate funding challenges to the sports fraternity by creating a reliable revenue stream but also provided taxes to the exchequer.

However, given the fast maturing nature of the betting industry, to date a full business proposal would now need to be developed to test and confirm its commercial viability.

#### **4. The Sports (Amendment) Bill, 2018.**

The Preamble to the Sports Act 2013 states as follows:

***An Act of Parliament to harness sports for development, encourage and promote drug-free sports and recreation; to provide for the establishment of sports institutions, facilities, administration and management of sports in the country, and for connected purposes.***

By virtue of the above preamble, the objectives of the Sports Act cannot be achieved without adequate funding. The Sports Fund has the adequate staff, policies, procedure and guidelines to manage sports funding in Kenya.

We have reviewed the Sports (Amendment) Bill 2018 as well as the Sports, Arts and Social Welfare Regulations 2018 and note the following:

1. The Bill seeks to repeal part 3 of the Sports Act and thus abolish the National Sports Fund. The fund recognizes this is consequent to the cabinet decision to establish the Sports, Arts and Social Development Fund.

- II. The sports fraternity is not represented on the new Fund's board as the current Sports Act does. It would be beneficial if it was.
- III. The Bill seeks to transfer all staff, assets and liabilities to the Sports, Arts & Social Development Fund (hereinafter referred to as the new Fund) in line with the Public Finance Management Act (Sports, Arts and Social Development) Regulations 2018.
- IV. The Transfer of staff from the National Sports Fund to the new Fund should be seamless as the staff have accumulated valuable experience and set up structures that would be of immediate utility and benefit to the new Fund.

We shall address the above issues below:

#### **(I) REPEAL OF PART 3 OF THE SPORTS ACT-2013.**

Section 17 (1) of the Sports Act sets out the functions of the Board of Trustees. There is a dual relationship between the Board and the intended beneficiaries on compliance levels prior to application, qualification and disbursement of funds.

Section 17(2) caps the amount the Fund may spend on administration expenses while section 17(3) provides that expenditure and commitments of the Fund shall not exceed its income. Section 17(4) allows the Cabinet Secretary to advance money to the Fund in the event of a shortfall. Section 17(5) mandates the Board to regularly inform the public of its activities and operations and ensure such activities are accessible to the public.

Section 13 is on Board composition. It provides 4 seats to sports organizations such as Paralympic sports, Deaflympic sports and recreational bodies thus creating inclusivity and adding much needed expertise from our sportsmen who for the first time, an Act of Parliament gives them a say in sports funding.

We would suggest that similar clause to section 13 and 17 of the Sports Act be incorporated to enable all sports actors and beneficiaries to continue to participate in the fund.

#### **(ii) Corporate Governance & Accountability.**

- a) There are 3 independent members namely the Chairman and 2 Board members. It would be helpful if the Board had an additional Board member to enable it have sufficient Board committees per best practice in all State

Corporations as provided in the Code of Governance for State Corporations (Mwongozo)

- b) The National Sports Fund is a State corporation and subject to additional checks and balances per the State Corporations Act; the inspectorate of state corporations; as well as, the Code of Governance for State Corporations. It is assumed that the new Fund will be a State Corporation and therefore bound by the State Corporations Act.

#### **6. Transition of Staff & Transfer of Assets.**

The staff of the National Sports Fund over the past two years developed indepth knowledge of the functioning of the Fund and created voluminous documentation of its operations. For reasons of economy of effort and optimizing a ready resource to the service of the new fund, it would be highly beneficial and of immediate utility to the new fund to retain the National Sports Fund staff. This way, the new fund can "hit the road running" by immediately embarking on executing the funds mandate with no loss in traction whatsoever. Consequently, we suggest that on transition of staff, this transition be automatic and seamless by adding new clauses at clause 11 to read;

- A. *Any person who on the date of commencement of this act was an employee of the National Sports Fund shall be deemed to be an officer of the new fund upon its creation and also for purposes of the pension.*
- B. *Any officer who is assessed and engaged by the Sports, Arts and Social Development Fund under subparagraph (4) who was on the date of the commencement of this Act a member of any statutory or voluntary pension scheme or provident fund, shall for the purpose of this Act, continue to be governed by the same regulations governing those schemes or funds and his service with the National Sports Fund shall be deemed to be eligible service for the purposes of the pension scheme or provident fund.*
- C. At paragraph 11 (6) of the Bill, remove the word **may** and replace it with the word **SHALL**.
- D. The proposed requirement for vetting be removed to the extent that current staff of the National Sports Fund were already vetted at the start of their current employment.

E. Add an additional paragraph stating as follows:

*Where the transfer of any property transferred to or vested in the National Sports Fund is required by any written law to be registered, the National Sports Fund shall, within six months from the commencement of these Regulations or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Fund or any person by way of registration fees, stamp or other duties—*

- (a) make such entries in the appropriate register as shall give effect to the transfer;*
  
- (b) where appropriate, issue to the Fund a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.*

165

① Dismissed  
25/10

Office of the Clerk of the National Assembly  
Main Parliament Buildings, 1st Floor  
P.O. Box 41842 - 00100  
NAIROBI  
Tel: 254- 020-2848300

**From:** "Andrew Mudibo" <andre.mudibo@gmail.com>  
**To:** clerk@parliament.go.ke  
**Sent:** Tuesday, October 23, 2018 12:24:56 PM  
**Subject:** Submission of Memoranda - The Sports (Amendment) Bill, 2018

Dear Sir,

I make reference to the newspaper advert calling for submission of memorandum from the public in the matter of consideration of the National Assembly - The Sports (Amendment) Bill, 2018.

I have attached my views on the same and would be happy if they can be considered among the contributions being received.

Kindly confirm receipt of this email.

Yours sincerely

**Andrew Mudibo**  
Mobile: 0722 389 831

② Hezler  
pls deaf  
FA  
29/10

8

NATIONAL ASSEMBLY  
**RECEIVED**  
25 OCT 2018  
SENIOR DEPUTY CLERK  
LEGAL & COMMITTEES  
P. O. Box 41842 - 00100, NAIROBI

8

8

ANDREW MUDIBO  
Email: andre.mudibo@gmail.com  
PO BOX 56196 – 00200  
NAIROBI  
MOBILE 0722 389 831

23<sup>rd</sup> October 2018

**CLERK OF THE NATIONAL ASSEMBLY  
PO BOX 41842 – 00100  
NAIROBI**

Dear Sir,

**RE: SUBMISSION OF MEMORANDUM ON SPORTS (AMENDMENT) BILL 2018.**

I make reference to the newspaper advert calling for submission of memoranda from the public in the matter of consideration of the National Assembly – The Sports (Amendment) Bill, 2018.

My views and contribution are as follows;

**1. Sports Act-2013 & The Sports, Arts & Culture Regulations.**

The Sports Act 2013 is the key legislation governing sports and sports funding in Kenya.

- i. The objects of the Regulations are similar to the objects of the National Sports Fund as captured in Section 12 (2)(b). This is duplication of roles which is not allowed by the Constitution due to wastage of public funds.
- ii. Please note that Section 12(2)(a) provides that the Sports Fund shall receive funding from taxes levied under the Betting, Lotteries and Gaming Act. Regulation 3 of the new Regulations also provides that the new Fund shall also receive all the proceeds required to be paid into the Fund under the Betting Lotteries and Gaming Act. Between the National Sports Fund and the new Fund, which Fund is due to receive the 35% tax levied against the betting companies?
- iii. There is a clear conflict which raises the concern that
  - i. The National Sports Fund shall be required to apply for funding from the

new Fund yet the Sports Fund was created to fund sports from the lottery and taxes from betting. It has now been reduced from a financier to a borrower therefore weakening it and the sports federations represented on the Board by creating more layers of bureaucracy to seek for funds hence more delays and more harm to sports and athletes.

- ii. The national lottery to be run by the new Fund has now been eliminated by the Sports (Amendment Bill) 2018. Sports will never have an independent guaranteed revenue stream because of this development. Amending the sports Act does not help sports, giving it funds is what will help.

## 2. Board of directors

On appointment of the Board of directors of the new Fund, the following critical questions beg answers:

- i. Regulation 8(2) provides that the Board has 6 non-independent members and 3 independent members.
- ii. Unlike the Sports Fund where the Sports Federations have 4 guaranteed slots on the Board under Section 13(h)(i). This new Fund has no place for sports federations on its Board. Federations are once again locked out of sports matters yet they represent the country's image internationally and are Kenya's brand ambassadors.
- iii. Regulation 8(2)(f) provides that the CS-Sports shall appoint the 3 independent members while Regulation 8(3) provides that the President shall appoint one of the 3 independent members as a Chairman. The President has the right to appoint the Chair of a Board so why take away his power especially in subsidiary law that did not get the approval of Parliament, sports federations, athletes or even Kenyans?
- iv. The President has no power to appoint a Chairman. This power is with the CS-Sports. The President can only pick a chairman from any of the independent Board members appointed by the CS-Sports. This is unheard of in Boards of public bodies in Kenya.

- v. The Sports Ministry has no control of this Fund because the administrator of the Fund can be appointed by the CS-Treasury who has more power than the PS-Sports.
- vi. The Attorney General has no seat on the Board of this new Fund. The AG sits on almost all Boards of Government bodies from KRA, CBK, KPA etc. A Fund with so much expectations and handling such huge money should not miss the AG on its Board because of oversight just like Treasury cannot miss from any Board.

### **3. The Constitution of Kenya-2010**

Article 118 on Public Access and Participation is clear that Parliament shall facilitate public participation. These Regulations were not tabled before Parliament and failure to do this means the Regulations should be declared null and void.

The Constitution provides that public funds shall be managed prudently so the logical thing to do is to have the sport's fund handle this issue as it has expertise instead of a new body that is structurally weak and may have loopholes that will not benefit sports.

### **4. Public Finance Management Act -2012**

Section 24 of the above law provides that The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.

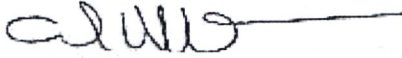
Parliament did not debate and approve these Regulations and therefore they should be considered illegal.

In my view, I do believe that mandate of the existing fund should be enlarged by including for example the PS Health, PS Education and the percentage on funds to be allocated to the various sectors clearly spelt out giving timelines on release of funds. At this current moment Sports Federations are financially on their death bed and it is important that the funds being held by Treasury are released without delay to the Sports Fund so that Federations can start benefiting from the fund.

There was a lot of thought that was put into the Sports Act (2013), and the various bodies that were set up all had linkages in ensuring that Sports in Kenya will continue to

shine in all spheres but if we are not careful with how changes are being made, then chances are that we may never recover.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Andrew Mudibo', with a long horizontal line extending to the right.

**Andrew Mudibo**

Mobile: 0722 389 831

26<sup>th</sup> October 2018

Michael R. Sialai, EBS

Clerk of the National Assembly

P.O Box 41842-00100

Nairobi, Kenya

① Williams

Please deal.

30/10/18

②

HB 2167  
pls deal  
FA

187

30/10/18

Dear Sir,

**RE: SUBMISSION OF MEMORANDA FOR THE SPORTS AMMENDMENT BILL 2018**

In reference to the Gazette notice dated 12<sup>th</sup> October 2018 by the National Assembly Twelfth Parliament- Second Session inviting members of the Public to submit representations they may have on the Sports (Amendment) Bill 2018, we wish to submit the below;

As members of staff of the National Sports Fund, we feel our interests have not been adequately considered in the Transition Clause. The transition Clause as stipulated in the new Sports (Amendment) bill 2018 states as follows;

**Transition of Staff**

*Section 11; (1) Subject to Paragraph (4) a person who immediately before the commencement of this act, was an employee of the government serving in the National Sports Fund Board of Trustees shall serve in the Sports, Arts and Social Development Fund.*

*(4) Before appointing a person to whom (1) applies, the administrator in consultation with the Public Service Commission shall;*

*(a) Require such a person to make an application for employment or appointment to the Sports Arts and Social Development Fund; and*

NATIONAL ASSEMBLY  
**RECEIVED**  
30 OCT 2018  
SENIOR DEPUTY CLERK  
LEGISLATIVE & PROCEDURAL SERVICES  
P. O. Box 41842 - 00100, NAIROBI

RECEIVED  
29 OCT 2018  
CLERK'S OFFICE

(b) Using the criteria determined by the Public service Commission, vet such a person to ensure that she or he is fit to serve in the position applied for as a member of staff of the Sports Arts and Social Development Fund.

(6) A person who immediately before commencement of this act was an employee of the Government in the National Sports Fund Board of Trustees immediately before the commencement of this act who fails to meet the Vetting Criteria under Paragraph (4) **may** be deployed in the Public Service.

### **Noted Concerns**

Given the above,

1. Section 4 (a) provides that the employees of the existing National Sports Fund shall apply afresh in the new Sports, Arts and Social Development Fund. The current employees of the National Sports Fund had previously (less than 2 years ago) through a competitive and open recruitment process applied, been interviewed, vetted and duly appointed to their current positions. Further, the same employees had before their appointment to the National Sports Fund, held good positions that they resigned from in the hope and promise of a good job and better benefits, the strength of their appointment letters and the belief that the Fund as currently established through legal statute, was bound to be a stable institution that guarantees security of tenure. In that regard, it is not fair, reasonable and justifiable to ask of the same employees, to apply afresh without surety that they will be absorbed in the new Sports, Arts and Social Development Fund.
2. Section (6) provides that those who fail to meet the vetting criteria **MAY** be deployed in the Public Service. The term '**may**' as used is not binding and as such does not give certainty that the employees of the National Sports Fund will be absorbed in the Sports, Arts and Social Development Fund or the Public Service in the event that they fail to meet the vetting criteria stated in the clauses. In that regard, the language at the bare minimum should state **SHALL** and not '**may**'.

### **3. Precedence**

When the Sports Kenya succeeded the Sports Stadia management Board Order 2002, the following was the transition Clause that was provided in the Sports Act 2013:

Section (3) Sports Kenya shall be the successor to the Sports Stadia Management Board established by the Sports Stadia Management Board Order, 2002.

(4) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the Sports Stadia Management Board existing immediately before the commencement of this Act shall be automatically and fully transferred to Sports Kenya.

The import of this section is that the employees of the Sports Stadia Management Board being assets of the organization, had their interests catered for in the aforementioned clause and as such, were absorbed in the Sports Kenya established by the Sports Act 2013. We are of the considered opinion that a similar transition clause should be adopted in the new piece of legislation.

### **Recommendation**

It is with the backdrop of the above that we propose the Transition Clause as provided for in the Sports (Amendment) bill 2018 to be relooked at and amended to address the above concerns and incorporate the suggestions herein mentioned.

Sincerely,

Quin Mwongera

John Deche

Job Aiyabei

Kelvin Mungasio

Dr Njogu Kimando

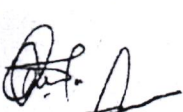
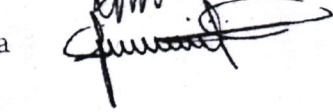
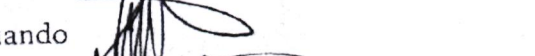
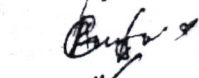
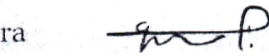
Charles Maina

David Musau

Guyo Kule

Namulen Billy

Vebry Githinji



\_\_\_\_\_

8

8

8

26<sup>th</sup> October 2018

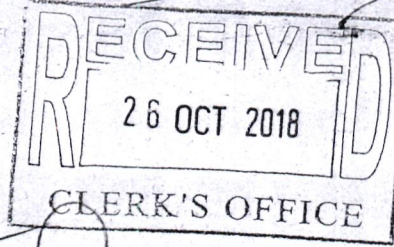
Michael R. Sialai, EBS

**Clerk of the National Assembly**

P.O Box 41842-00100

Nairobi, Kenya

① Dants/DLS



to present to the court. end

② HENGEWA  
pls do FA 29/10/18

Dear Sir,

**RE: SUBMISSION OF MEMORANDA FOR THE SPORTS AMMENDMENT BILL 2018**

In reference to the Gazette notice dated 12<sup>th</sup> October 2018 by the National Assembly Twelfth Parliament- Second Session inviting members of the Public to submit representations they may have on the Sports (Amendment) Bill 2018, we wish to submit the below;

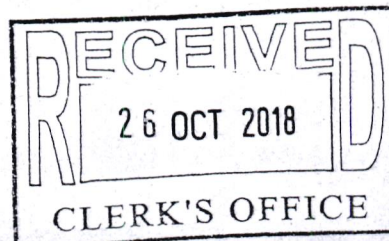
As members of staff of the National Sports Fund, we feel our interests have not been adequately considered in the Transition Clause. The transition Clause as stipulated in the new Sports (Amendment) bill 2018 states as follows;

**Transition of Staff**

*Section 11; (1) Subject to Paragraph (4) a person who immediately before the commencement of this act, was an employee of the government serving in the National Sports Fund Board of Trustees shall serve in the Sports, Arts and Social Development Fund.*

*(4) Before appointing a person to whom (1) applies, the administrator in consultation with the Public Service Commission shall;*

*(a) Require such a person to make an application for employment or appointment to the Sports Arts and Social Development Fund; and*



*(b) Using the criteria determined by the Public service Commission, vet such a person to ensure that she or he is fit to serve in the position applied for as a member of staff of the Sports Arts and Social Development Fund.*

*(6) A person who immediately before commencement of this act was an employee of the Government in the National Sports Fund Board of Trustees immediately before the commencement of this act who fails to meet the Vetting Criteria under Paragraph (4) **may** deployed in the Public Service.*

### **Noted Concerns**

Given the above,

1. Section 4 (a) provides that the employees of the existing National Sports Fund shall apply afresh in the new Sports, Arts and Social Development Fund. The current employees of the National Sports Fund had previously (less than 2 years ago) through a competitive and open recruitment process applied, been interviewed, vetted and duly appointed to their current positions. Further, the same employees had before their appointment to the National Sports Fund, held good positions that they resigned from in the hope and promise of a good job and better benefits, the strength of their appointment letters and the belief that the Fund as currently established through legal statute, was bound to be a stable institution that guarantees security of tenure. In that regard, it is not fair, reasonable and justifiable to ask of the same employees, to apply afresh without surety that they will be absorbed in the new Sports, Arts and Social Development Fund.
2. Section (6) provides that those who fail to meet the vetting criteria **MAY** be deployed in the Public Service. The term '**may**' as used is not binding and as such does not give certainty that the employees of the National Sports Fund will be absorbed in the Sports, Arts and Social Development Fund or the Public Service in the event that they fail to meet the vetting criteria stated in the clauses. In that regard, the language at the bare minimum should state **SHALL** and not '**may**'.

### **3. Precedence**

When the Sports Kenya succeeded the Sports Stadia management Board Order 2002, the following was the transition Clause that was provided in the Sports Act 2013:

*Section (3) Sports Kenya shall be the successor to the Sports Stadia Management Board established by the Sports Stadia Management Board Order, 2002.*

*(4) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the Sports Stadia Management Board existing immediately before the commencement of this Act shall be automatically and fully transferred to Sports Kenya.*

The import of this section is that the employees of the Sports Stadia Management Board being assets of the organization, had their interests catered for in the aforementioned clause and as such, were absorbed in the Sports Kenya established by the Sports Act 2013. We are of the considered opinion that a similar transition clause should be adopted in the new piece of legislation.

### **Recommendation**

It is with the backdrop of the above that we propose the Transition Clause as provided for in the Sports (Amendment) bill 2018 to be relooked at and amended to address the above concerns and incorporate the suggestions herein mentioned.

Sincerely,

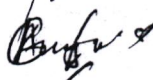
Quin Mwongera



John Deche



Job Aiyabei



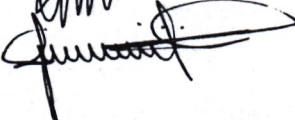
Kelvin Mungasio



Dr Njogu Kimando



Charles Maina



David Musau

Guyo Kule



Namulen Billy



Vebry Githinji



8

8

# THE ECONOMY OF creativity

DL Committee  
280  
3/1/10

Box 66872-00800  
Nairobi

② Heruor  
Pls defu  
PA  
3/1/10

OSDC (18)

## The Sports (Amendment) Bill, 2018

### Memorandum of Views

29/10

Prepared by  
The Creative Economy Working Group  
Box 66872-00800  
Nairobi

NATIONAL ASSEMBLY  
**RECEIVED**  
29 OCT 2018  
SENIOR DEPUTY CLERK  
LEGISLATIVE & PROCEDURAL SERVICES  
P. O. Box 41842 - 00100, NAIROBI

Submitted to:

The Departmental Committee on Sports, Culture and Sports  
On 26<sup>th</sup> October 2018

RECEIVED  
26 OCT 2018  
CLERK'S OFFICE

The Creative Economy Working Group makes reference to the Notice by the Clerk of the National Assembly inviting members of the public to submit representations on the Sports (Amendment) Bill, 2018 in line with Article 118(1)(b) of the Constitution of Kenya which provides that Parliament facilitates public participation and involvement in the legislative and other business of Parliament and its Committees” and Standing Order 127 (3) which provides that Departmental Committees take into account views and recommendations of the public in their reports to the Parliament.

We take note that the Sports (Amendment Bill), 2018 seeks to amend the Sports Act, 2013 in order to ‘provide for a comprehensive approach”. We also note that Legal Notice No. 174 (Legislative Supplement No. 58) provides the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018. These Regulations result from the Sports (Amendment Bill), 2018.

The Creative Economy Working Group, a network of practitioners in culture and creative industries, hereby submits the annexed Memorandum of Views for your consideration. Among other views, we propose that the fund to be established by the amendment be the **Sports, Arts and Culture Fund** because ‘social development’ is cross-cutting and is catered for through other funding streams.

We hope that our Memorandum will be given due attention and consideration.

Sincerely



**Prof. Kimani Njogu**  
**Chairman,**  
**Creative Economy Working Group.**

## **About The Creative Economy Working Group (CEWG)**

The Creative Economy Working Group (CEWG) was founded by thirteen institutions working in the culture and creative sector in 2012 in order to explore how a facilitative policy and legislative framework could be developed for the advancement of culture, arts and media in Kenya. Previously, members of the Working Group had been actively involved in entrenching rights related to artistic and cultural expression in the Constitution of Kenya. At that time the group met as the Consultative Committee on Culture and the Constitution and worked closely with the Ministry of Culture. With the promulgation of the Constitution in 2010, the Committee was disbanded and some members reconvened to form the Creative Economy Working Group to focus mainly on policy and legislative issues related to the creative sector in Kenya and within the East African Community through advocacy, knowledge sharing forums, publications and partnership building.

The following institutional members of the Creative Economy Working Group endorse the Memorandum of Views.

### **Institution:**

1. The GoDown Arts Centre
2. Twaweza Communications
3. Content Development & Intellectual Property Trust
4. Kenya Actors' Guild
5. The Creative Garage
6. Kwani Trust
7. The Book Bunk
8. GoSheng Services
9. Docubox - EADFF
10. Content House
11. The Nest Collective
12. Development Through Media
13. Trust for Indigenous Culture and Health

**VIEWS ON THE SPORTS (AMENDMENT) BILL, 2018**

<b>The Fund</b>	Establish in the Amendment <b>the Sports, Arts and Culture Fund</b> because 'social development' is cross-cutting and is catered for through other funding streams.
<b>Memoranda of objects and reasons</b>	Rephrase ' in order to provide a comprehensive approach to financing of sports, arts and culture sectors through a fund established and managed in accordance with the Public Finance Management Act, 2012

**VIEWS ON PUBLIC FINANCE MANAGEMENT (SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND)**

<b>Section</b>	<b>Issue</b>	<b>Summary</b>	<b>Request</b>	<b>Rationale</b>
Part I Citation	Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018	Memoranda of objects and reasons creates institutional mandate confusion and or complications	Rename as: "Public Finance Management (Sports, Arts and Culture Fund) Regulations, 2018	<ol style="list-style-type: none"> <li>1. Whereas Sports and Arts are specific siblings of one ministry, 'Social Development' (from Social, Economic and Political Development) is the overarching purpose of all national laws and regulations.</li> <li>2. 'social development' is cross-cutting and is catered for through many other funding streams, principally from consolidated taxes by KRA</li> </ol>
Part I Interpretation	"Board" means the Sports, Arts and Social Development Fund Oversight Board constituted in accordance with regulation 8;	Interpretation extends institutional mandate confusion and or complications	<b>Interpret:</b> "Board" means the <b>Sports, Arts and Culture Development Fund Oversight Board</b> constituted in accordance with regulation 8;	<ol style="list-style-type: none"> <li>1. Align interpretation to line ministry mandate</li> <li>2. Guide implementation clarity</li> </ol>
Part I Interpretation	"Fund" means the Sports, Arts and Social Development Fund established under	Interpretation extends institutional mandate confusion and or complications	<b>Rephrase:</b> in order to provide a comprehensive approach to	<ol style="list-style-type: none"> <li>1. Align interpretation to line ministry mandate</li> <li>2. Guide</li> </ol>

	regulation 3;		financing of sports, arts and culture sectors through a fund established and managed in accordance with the Public Finance Management Act, 2012	implementation clarity
Section 3 Establishment of the Fund	There is established a Fund to be known as the Sports, Arts and Social Development Fund.	Interpretation can lead to confusion in institutional mandate	<b>Rephrase:</b> There is established a Fund to be known as the Sports, Arts and Culture Fund.	1. Align interpretation to line ministry mandate 2. Guide implementation clarity
Section 4(2) The proceeds of the Fund	The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.	Approved expenditure needs to be directed to the purpose of established Fund.	<b>Rephrase:</b> The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate. The expenditure by the secretariat shall not exceed 30% of the total Fund	1. Enforce 70 % of expenditure to be directed to the purpose of the Fund 2. Prevent revenue to Development object 3. Prevent revenue being exhausted on recurrent /secretariat administrative overruns 4. Strengthen Fiscal discipline
Section 4(2) (a)	thirty five percent to the promotion and development of sports;	Allocation of Fund	<b>Rephrase:</b> Fifty percent to the promotion and development of sports;	Direct Fund to its core purpose
Section 4(2) (b)	forty percent to social development including universal health care;	Allocation of Fund	<b>Rephrase:</b> Fifty percent to the promotion and development of arts and culture;	Direct Fund to its core purpose
Section 4(2) (c)	twenty percent to the promotion and development of arts;	redundant	delete	Cater for under proposed rephrased (4(2)(a) and (4(2) (b)
Section 4(2) (d)	The proceeds of the Fund shall be apportioned... five percent to government-	Regulations creates expenditure oversight loophole	Delete 4(2) (d)	Undefined 'government strategic interventions' approved by Cabinet

	strategic interventions whose expenditure shall be subject to approval by Cabinet.			leaves the door wide open for 'unanimous cabinet concurrence on expenditure not scrutinized by established oversight institutions
Section 5(1) Expenditure on the Fund.	Section 4(2) (a-d)	They are Expenditures on the Fund	Move: Section 4(2) (a-d) to be included under Expenditures on the Fund	Disputatious/unauthorized expenditures unless they are expressly included under the category.
Section 7. (1) Objects and purpose of the Fund.	The object and purpose of the Fund is to provide funding to support the development and promotion of sports and arts and the promotion of social development including universal health care.	Additionally set out to provide 'universal health care'	<b>Rephrase:</b> "The object and purpose of the Fund is to provide funding to support the development and promotion of sports, arts and culture."	<ol style="list-style-type: none"> <li>1. The object and purpose of the Fund is to provide funding to support the development and promotion of sports, arts and culture</li> <li>2. All matters health are better exhaustively dealt under <u>Health Act, 2017</u></li> <li>3. Save State Corporations Advisory Committee future mandate overlaps and or expenditure disputes</li> </ol>
Section 7 (2)(a)	Without prejudice to the generality of paragraph (I), the Fund shall provide for financing the development of sports and recreation facilities including stadia, gymnasiums, buildings, tracks;	Undervaluing Culture contrary to Article 11 of the Constitution of Kenya	<b>Rephrase:</b> Without prejudice to the generality of paragraph (I), the Fund shall provide for financing the development of sports and the arts and recreation facilities including stadia, gymnasiums, buildings, tracks, social halls, theatres;	<ol style="list-style-type: none"> <li>1. Remedy historical undervaluing of culture promotion by implementing agencies</li> <li>2. Correct historical over prioritization of sports over culture by implementing agencies</li> </ol>
Section 7 (2)(b)	enhancing support and access to funding sportspersons and sports organizations to enable their participation in sporting events and competitions	Undervaluing Culture contrary to Article 11 of the Constitution of Kenya	<b>Rephrase:</b> enhancing support and access to funding for persons in sports, arts and culture and sports and arts	<ol style="list-style-type: none"> <li>1. Remedy historical undervaluing of Culture promotion by implementing agencies</li> <li>2. Correct historical</li> </ol>

<p>Section 7 (2)(c)</p>	<p>facilitation for the acquisition and provision of equipment to sports and recreation facilities;</p>	<p>Undervaluing the Arts contrary to Article 11 of the Constitution of Kenya on Culture</p>	<p>organizations to enable their participation in sporting and arts events and competitions;  <b>(NEW)</b> Establishment of a National Arts Gallery</p>	<p>over prioritization of sports over culture by implementing agencies</p>
				<p>1. The government is obliged by the <i>2005 UNESCO convention and 1980 UNESCO Recommendation Concerning the Status of the Artist</i> to establish a funding mechanism that directly supports development of the Arts.</p> <p>2. Remedy historical undervaluing of arts promotion by implementing agencies</p> <p>3. Correct historical over prioritization of sports over arts by implementing agencies</p>
<p>Section 7 (2)(d)</p>	<p>support for the identification, nurturing and development of talent in sports and arts;</p>	<p>Undervaluing the Arts contrary to Article 11 of the Constitution of Kenya on Culture</p>	<p><b>Rephrase:</b> facilitation for the acquisition and provision of equipment to sports, arts, events and recreation facilities;</p>	<p>1. Remedy historical undervaluing of Arts promotion by implementing agencies</p> <p>2. Correct historical over prioritization of sports over arts by implementing agencies</p>
<p>Section 7 (2)(e) -(1)</p>	<p>(e) facilitation of training and capacity building programmes for persons involved in sports and recreation, creative arts, artistic production, contemporary and cultural practitioners;  (f) facilitation for the identification,</p>	<p>Construction leaves out the promotion of Arts and Culture obligations of the implementing agencies contrary to Article 11 of the Constitution of Kenya on Arts and Culture.</p>	<p><b>Rephrase:</b> (d) facilitation for the acquisition and provision of equipment to sports, arts, events and recreation facilities;  (e) support for the identification, nurturing and development of</p>	<p>1. Align the expenditure of the Fund to object of the Fund</p> <p>2. 1. Remedy historical undervaluing of Arts promotion by implementing agencies</p>

development and capacity building of technical personnel and sports support personnel involved in sports and recreation;

(g) support for the promotion and development of artistic production of contemporary or cultural goods and services;

(h) facilitation for the marketing and promotion of artistic productions and contemporary or cultural goods and services;

(i) support linkages with domestic, regional and international markets for sports, artistic productions and contemporary or cultural goods and services;

(j) facilitation for exhibition and promotion of contemporary or cultural artistic production of goods and services for national identity and pride;

(k) financing the acquisition, development and preservation of, among others, heritage sites, cultural centres, national monuments, tangible and intangible heritage and culture and heritage equipment and tools;

talent in sports and arts;  
(f) facilitation of international co-productions, film incentives and audience development

(g) facilitation of training and capacity building programmes for persons involved in sports; cultural expressions and assets; performing arts; digital creative content; design; visual arts; cultural and archeological sites; creative services; publishing and printed media.

(h) facilitation for the identification, development and capacity building of technical and support personnel involved in sports and the arts;

(i) support for the promotion and development of creative and cultural goods and services;

(j) facilitation for the marketing and promotion of cultural and creative industries, goods and services

(k) support linkages with domestic, regional and international markets for sports, creative and cultural goods and services;

3. Correct historical over prioritization of sports over arts by implementing agencies

4. Align the Fund to the Constitution of Kenya

(l) facilitate innovation, research and documentation in arts, culture and the creative industry, sports and social development;

(l) facilitation for exhibition and promotion of creative and cultural goods and services for national identity and pride;

(m) financing the acquisition, development and preservation of, among others, heritage sites, cultural centres, national monuments, tangible and intangible heritage and culture and heritage equipment and tools;

(n) facilitate innovation, research and documentation in arts, culture and the creative industry, sports and social development; and

(o) promote social development through sports, arts and culture

7(2)(m)

Promote social development including universal health care.

Conflates purpose of the Fund

Delete 7(2)(m)

1. The object and purpose of the Fund is to provide funding to support the development and promotion of sports, arts and culture

2. All matters health are better exhaustively dealt under Health Act, 2017

3. Save State Corporations Advisory Committee future.SAGA's mandate overlaps and

Part III – 8(1) Management of the Fund	There is established a Board to be known as the Sports, Arts and Social Development Fund Oversight Board.	Renamed Fund to incorporate the Arts and Culture	<b>Rephrase:</b> There is established a Board to be known as the the Sports, Arts and Culture Fund Oversight Board.	or expenditure disputes 1. Align interpretation to line ministry mandate 2. Guide implementation clarity
Section (2)(f) Composition of the Board	The Board shall consist of three other persons appointed by the Cabinet Secretary responsible for matters relating to sports.	Excluded the Arts and Culture	<b>Rephrase:</b> The Board shall consist of four other persons appointed by the Cabinet Secretary responsible for matters relating to sports, arts and culture.	1. Remedy historical undervaluing of Arts promotion by implementing agencies 2. Correct historical over prioritization of sports over arts by implementing agencies
Section 9.(b) Board Appointment Eligibility	A person shall be eligible for appointment as a member of the Board under regulation 8(2) (f) if that person has knowledge and experience of not less than ten years in any of the following fields- (i) sports management; (ii) administration; (iii) finance; (iv) law; (v) accounting; Health; or economics	(a) Board lacks expertise on the Arts management, Arts and Culture  (b) Exclude requirement for knowledge on health	<b>Rephrase:</b> A person shall be eligible for appointment as a member of the Board under regulation 8(2) (f) if that person has knowledge and experience of not less than ten years in any of the following fields- (i) sports management; (ii) art management, arts and culture policy (iii) administration; (iv) finance; (v) law; (vi) accounting; (vii) economics.	1. Align Board expertise to the Arts management, Arts and Culture 2. Knowledge of Health is no longer necessary considering renamed Fund 3. Correct historical over prioritization of sports over arts by implementing agencies
Section 9.(c) Board Appointment Eligibility	Meets the requirements of Chapter Six of the Constitution.	Stating the obvious unnecessary wastage	Delete 9(c)	Redundant to restate fundamental requirement of every Public Officer to comply with (why just on one Chapter?) the Constitution of Kenya. Considering that violating any Article renders the appointee unfit for

				Public Office
Section 13. Funding Eligibility Criteria	A sports organization, professional sports person or government implementing agency shall be eligible to apply for funding from the Fund if-	Excludes Arts and Culture stakeholders benefiting from the Fund	<b>Rephrase:</b> A sports, arts or cultural organization, professional sports or arts person or government implementing agency shall be eligible to apply for funding from the Fund if-	<ol style="list-style-type: none"> <li>1. Remedy historical undervaluing of Arts promotion by implementing agencies</li> <li>2. Correct historical over prioritization of sports over the Arts and Culture by implementing agencies</li> </ol>
Section 13(a) (i)	in the case of a sports organization if the organization is registered under the Sports Act, 2013;	Restricts itself only to Funding Sports organisations	in the case of a sports or arts organization if the organization is <b>registered by the Government of Kenya</b>	<ol style="list-style-type: none"> <li>1. Fair Fund disbursement administration</li> <li>2. Remedy historical undervaluing of Arts promotion by implementing agencies</li> <li>3. Correct historical over prioritization of sports over the Arts and Culture by implementing agencies</li> </ol>
Section 13(a) (ii)	has an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;	Restricts itself only to Funding Sports organisations	<b>Delete the word "sports" to read as:</b> "has an annual work programme aligned to the strategic plan of the organization and the medium term plan approved by the governing body of the organization;"	<ol style="list-style-type: none"> <li>1. Avoid restricting funding to only Sports organisations</li> <li>2. Fair Fund disbursement administration</li> <li>3. Remedy historical undervaluing of Arts and Culture promotion by implementing agencies</li> <li>4. Correct historical over prioritization of sports over the Arts and Culture by implementing agencies</li> </ol>
Section 13 (b)(i)	for a professional sportsperson, he or she has a valid license	Discriminatory administrative bureaucracy	for a professional sports or arts person, he or she has a valid	<ol style="list-style-type: none"> <li>1. Avoid discriminatory administrative</li> </ol>

	issued under the Sports Act, 2013;	Exclusive to sports stakeholders	license issued by the Government of Kenya;	bureaucracy 2. Align to Objects of The Fund
Section 13 (b)(ii)	has met the criteria for participation for competition in the respective sport, nationally, regionally and internationally;	Discriminatory administrative bureaucracy Exclusive to sports stakeholders	has met the criteria for participation for competition in the respective <b>sports, arts or culture</b> event, nationally, regionally and internationally	1. Avoid discriminatory administrative bureaucracy 2. Align to Objects of The Fund 3. Remedy historical undervaluing of Arts and Culture promotion by implementing agencies 4. Correct historical over prioritization of sports over the Arts and Culture by implementing agencies
Section 14(1) Application for Funding	The Administrator of the Fund shall by the 30th August of each year issue a budget circular for the Fund to the eligible persons indicating the ceilings for funding under sports, arts and social development;	Delete "social development" substitute with the word "Culture"	The Administrator of the Fund shall by the 30th August of each year issue a budget circular for the Fund to the eligible persons indicating the ceilings for funding under sports, arts and Culture;	1. Avoid discriminatory administrative bureaucracy 2. Align to Objects of The Fund 3. Remedy historical undervaluing of Arts and Culture promotion by implementing agencies 4. Correct historical over prioritization of sports over the Arts and Culture by implementing agencies
Section 14(3)(a)(i)	An application for funding under paragraph (2) shall be accompanied by in case of a sports organization the certificate of registration issued	Discriminatory administrative bureaucracy Exclusive to sports stakeholders delete the words	"An application for funding under paragraph (2) shall be accompanied by in case of a sports organization the certificate of	As above

Entire Section 14	under the Sports Act,2013; Drafting undervaluing Arts and Culture contrary to Article 11 of the Constitution of Kenya.	“issued under the Sports Act,2013;” Drafting reflects a focus on promoting sports over and above the Arts and Culture	registration.” Redraft to include funding promotion of Arts and Culture and stakeholders	Criteria set should include practitioners in Sports, Arts and Culture sectors to align with Constitution of Kenya aspirations.
-------------------	---	--	---	--

**SUMMARY** These Regulations risk being nullified by Parliament on the grounds of (a) excluding and or undervaluing the promotion of the Arts and Culture contrary to Article 11 of the Constitution of Kenya, (b) overstepping mandate to include health (c) funding prior undefined (extended) undertakings (d) overly burdening bureaucratic requirements adequately catered for elsewhere, unless redrafted to be more inclusive and aligned to the realisation of the Constitution of Kenya.