

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – FIFTH SESSION, 2017

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF A PUBLIC PETITION ON IMPLEMENTATION OF
THE 2009 AKIWUMI TRIBUNAL REPORT ON MINIMUM LIVING PENSION FOR FORMER
MEMBERS OF PARLIAMENT WHO SERVED BETWEEN 1984 AND 2002 BY HON. (ENG.)

NICOLAS GUMBO, MP

DIRECTORATE OF COMMITTEE SERVICES

CLERKS CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

FEBRUARY 2017

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LIST OF ABBREVIATIONS

FOPAK	-	Former Members of Parliament Association
MPs	-	Members of Parliament
PE	-	Personal Emolument
UK	-	United Kingdom
SRC	-	Salaries and Remuneration Commission

CHAIRPERSON'S FOREWORD

The Public Petition on implementation of the 2009 Akiwumi tribunal report on minimum living pension for the former Members of Parliament was presented to the National Assembly by the Hon. (Eng.) Nicolas Gumbo, MP on 13th October 2016 pursuant to Standing Order 225(2) and the Petition to Parliament (Procedure) Act, 2012. The petition dated 10th October 2016 prays "that the National Assembly:

- (i) amends section 8 of the Parliamentary Pensions Act, Cap 196 to give legal effect to the proposed payment of a minimum Living Pension of Kshs 100,000 to former MPs by inserting the following new subsection immediately after subsection (2) –

"(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the year One thousand nine hundred and eighty four and Two thousand and two and is entitled to pension under this section, and whose whole monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July 2010, to a monthly pension of One hundred thousand shillings."

- (ii) makes any other order(s) deemed fit in mitigating the plight of the petitioners.

In considering the petition, the Committee invited the Hon. (Eng.) Nicolas Gumbo, MP to present the petition on behalf of the former Members of Parliament. The Committee also received a written submission from the National Treasury. The views of the petitioner and those of the National Treasury are incorporated in this report.

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

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules, which enabled us to complete the tasks within the stipulated period. The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Finance, Planning & Trade to present this report to the House pursuant to the provisions of Standing Order 227 (2).

Hon. Benjamin Langat, CBS, M.P.

EXECUTIVE SUMMARY

This report contains the Committee's proceedings during the hearing of the Public Petition on implementation of the 2009 Akiwumi tribunal report on minimum living pension for the former Members of Parliament. The petition was presented to the National Assembly by the Hon. (Eng.) Nicolas Gumbo, MP on 13th October 2016. While considering the petition, the Committee noted the following:

1. On 23rd January 2009, Parliament appointed the Akiwumi tribunal to review terms and conditions of service for Members of Parliament and Staff of the National Assembly. This was in response to the plight and sorry state of living conditions of majority of former Members of Parliament.
2. The current pension payment for the former Members of Parliament who served between 1984 and 2002 of between Kshs 2700 and Kshs 14000 per month were due to low salaries that were paid before the year 2002 before the general review of salaries. These low pensions are a clear mismatch of the current economic realities.
3. In recognition of the plight of former Members and in keeping with the international best practices, the Akiwumi tribunal recommended payment of US \$ 1000 as living and minimum monthly pension for each of the estimated five hundred (500) former Members of Parliament who served between 1984 and 2002. The number of these Members has since dropped to three hundred and seventy (370).
4. Parliament debated and adopted the Akiwumi report on 30th June 2010.
5. The 500 former Members of Parliament who served between 1984 and 2002 have not been paid their minimum living pension of USD 1000 per month to date as recommended by the Akiwumi report and adopted by the House.
6. The matter had been conversed and determined in a court of law (Judicial Review Application No 288 of 2014) that in order to vary Members of Parliament's pension, the law must be amended to effect the recommendations of the Akiwumi tribunal.

Having considered the petition, the Committee was satisfied with the petitioner's submission that the Parliamentary Pensions Act should be amended to provide for the minimum living pension of Kshs 100,000 monthly for the former Members of Parliament who served between the year 1984 and 2002.

1.1 MANDATE OF THE COMMITTEE

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental Committees of the National Assembly established under SO 216 and mandated to:-

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

1.2 COMMITTEE MEMBERSHIP

The committee comprises of the following members:-

Chairperson	The Hon. Benjamin Langat, MP
Vice Chairperson	The Hon. Nelson Gaichuhie, MP
<u>Members</u>	The Hon. Dr. Oburu Oginga, MP
	The Hon. Jimmy Nuru Angwenyi, MP
	The Hon. Eng. Shadrack Manga, MP
	The Hon. Ahmed Shakeel Shabbir, MP
	The Hon. Sammy Koech, MP
	The Hon. Sammy Mwaita, MP
	The Hon. Tiras N. Ngahu, MP
	The Hon. Hezron Awiti, MP
	The Hon. Abdullswamad Sheriff, MP
	The Hon. Abdul Rahim Dawood, MP
	The Hon. Alfred W. Sambu, MP
	The Hon. Anyanga Andrew Toboso, MP
	The Hon. Daniel E. Nanok, MP
	The Hon. Dennis Waweru, MP
	The Hon. Joash Olum, MP
	The Hon. Jones M Mlolwa, MP
	The Hon. Joseph Limo, MP
	The Hon. Kirwa Stephen Bitok, MP
	The Hon. Lati Lelelit, MP
	The Hon. Mary Emase, MP
	The Hon. Ogendo Rose Nyamunga, MP
	The Hon. Patrick Makau King'ola, MP
	The Hon. Ronald Tonui, MP
	The Hon. Sakaja Johnson, MP
	The Hon. Sakwa John Bunyasi, MP
	The Hon. Sumra Irshadali, MP

1.3 COMMITTEE SECRETARIAT

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Legal Counsel II	Emma Essendi
Research Officer III	Erick Ososi
Research Officer III	Sharon Rotino

1.4 RECOMMENDATION

Having considered the petition, the Committee recommends as follows, that:

- i. The National Assembly urgently amends section 8 of the Parliamentary Pensions Act, Cap 196 to give legal effect to the proposed payment of a minimum Living Pension of US \$ 1,000.00 to former Members of Parliament by inserting the following new subsection immediately after subsection (2) –

“(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the year One thousand nine hundred and eighty four and Two thousand and two and is entitled to pension under this section, and whose monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July 2010, to a monthly pension of One hundred thousand shillings.”

- ii. The Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for implementation the new subsection 8(3) of the Parliamentary Pensions Act, Cap 196.

2.0 INTRODUCTION

2.1 Background Information

Article 119(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. This Particular provision is operationalized by the Petitions to Parliament (Procedure) Act, 2012 and Standing Orders 219 and 220.

The Public Petition on implementation of the 2009 Akiwumi tribunal report on minimum living pension for the former Members of Parliament was presented to the House by the Hon. (Eng.) Nicolas Gumbo, MP on 13th October 2016 pursuant to Standing Order No. 225 (2)(a). In accordance with Standing Order 227, the petition was referred to the Departmental Committee on Finance, Planning & Trade for consideration and preparation of a report.

2.2 The Petition

The petitioners wished to draw the attention of the House to the following:-

- i) **THAT**, both Sitting and former Members of Parliament (MPs) are the face of national leadership outside Parliament and that circumstances impose inescapably heavy burden and unpremeditated social responsibility on them;
- ii) **THAT**, the scheme of service for MPs did not secure their livelihoods upon leaving Parliament, thus subjecting majority of them to economic hardships and sorry state of living conditions;
- iii) **THAT**, the Parliamentary Service Commission appointed a Tribunal led by Justice Akilano Akiwumi to review the terms and conditions of MPs and staff of Parliament *vide* Gazette Notice No. 699 of 2009;
- iv) **THAT**, the Tribunal recommended ~~payment of~~ a monthly Living Pension equivalent to US \$ 1,000.00 each to former MPs who served from 1984 to 2002, who were then estimated to be five hundred (500) but have since reduced to about three hundred and seventy (370);
- v) **THAT**, the said report adopted by the House on 30th June 2009 obligated the relevant Committee of the House to institute necessary amendments to the Parliamentary Pensions

Act, Cap 196, to give effect to the recommendations of the Akiwumi Tribunal on Living Pension;

- vi) **THAT**, to date, the said recommendations have not been given force of law, thereby subjecting former MPs to continue earning between Kshs. 2,700.00 and Kshs. 40,000.00, which is a huge mismatch with the current economic circumstances in general but cost of living in particular;
- vii) **THAT**, failing to pay former MPs the recommended Living Pension of US \$ 1,000.00 is in violation of their inherent right to a dignified life as guaranteed in Article 28 of the Constitution;
- viii) **THAT**, efforts, including judicial mechanisms, to have Parliamentary Pensions Act, Cap 196 reviewed so as to accord with the recommendations of the Akiwumi Tribunal and address the plight of the affected former MPs have not yielded satisfactory action;
- ix) **THAT**, the issues in respect of which this Petition is made are not pending before any court of law, tribunal, constitutional or legal body;
- x) **THAT**, the National Assembly, through the Departmental Committee on Justice and Legal Affairs:-
 - (i) amends section 8 of the Parliamentary Pensions Act, Cap 196 to give legal effect to the proposed payment of a minimum Living Pension of US \$ 1,000.00 to former MPs by inserting the following new subsection immediately after subsection (2) –

“(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the year One thousand nine hundred and eighty four and Two thousand and two and is entitled to pension under this section, and whose monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July 2010, to a monthly pension of One hundred thousand shillings.”
 - (ii) makes any other order(s) deemed fit in the mitigating the plight of the petitioners.

3.0 SUBMISSIONS AND EVIDENCE

3.1 Hon. (Eng.) Nicolas Gumbo, MP

Having been seized of the Petition, the Committee invited the Hon. Gumbo, MP, for a briefing session on 22nd November 2016. During the meeting, the Hon. Gumbo, MP informed the Committee as follows:

1. He was presenting the petition on behalf of the Former Parliamentarian Association of Kenya (FOPAK) who had approached him to do so.
2. Thirty (30) Members of the Association had signed the petition.
3. Despite Parliament adopting the Akiwumi report on 30th June 2010 proposing a minimum living pension for the former Members of Parliament, it has not been implemented to date.
4. Most of the former Members of Parliament have been living under abject poverty.
5. The Government should urgently implement the Akiwumi report recommendations and address the plight of former Members of Parliament.

3.2 Former Parliamentarians Association of Kenya (FOPAK)

Through his written submission to the Committee dated 22nd November 2017, the Secretary General of the Former Parliamentarians Association of Kenya (FOPAK) presented the following regarding the following:

1. The issues touching on the plight and welfare of the former Parliamentarians has been conversed in the past that culminated into a tribunal that was chaired by Justice Cockar. The tribunal recommended in part that former MPs who served between 1963 and 1983 be paid an Ex-Gratia of Kshs 1 million.
2. To address the matter of pension and welfare of Members of Parliamentarians once and for all, Parliament appointed a tribunal chaired by Akiwumi that concluded its work in 2009. Part of the recommendations of this tribunal that were debated and adopted by the House in June 2010 was that a minimum living pension equivalent to USD 1000 per month be paid to all Kenyan former members of Parliament whose current pension is either none or less than USD 1000.
3. The Akiwumi tribunal concurred with the view of many of those who appeared before it that the amount that was being paid to former Parliamentarians was inadequate and could not meet the basic needs of the concerned former Members of Parliament.

4. Part of the recommendations of the Akiwumi report, especially that that provides for the provision of minimum living pension of USD 1000 to former Parliamentarians have not been implemented to date.
5. Most of the former Parliamentarians continue to sink deeper into the abyss of deprivation, helplessness and endless pain.
6. The former Parliamentarians therefore request that the National Assembly amends the Parliamentary Pensions Act, Cap 196 to effect the living pensions as recommended by the Akiwumi tribunal.

3.3 The National Treasury

Through his letter to the Committee dated 27th November 2016, the Principal Secretary for the National Treasury opposed the proposed amendment to the Parliamentary Pensions Act in the petition. The PS highlighted the following in his letter:

- a) **Empirical evidence** collected by the Actuary indicates that none of the eight countries (Uganda, Tanzania, Rwanda, South Africa, Singapore, India and UK) benchmarked, except India which offers a low guaranteed pension of KShs.20,000 per month, has a provision for living pension. Singapore allows a minimum lumpsum but after a required period of contribution.
- b) **The Parliamentary Pension Scheme** is a contributory scheme governed by the Parliamentary Pensions Act Cap. 196. Members contribute at the rate of **12.6%** of their pensionable emoluments (PE) **while the Government** contributes (notional) at the rate of **25.2%**, which is twice the MPs' contributions rate. A review of benefits would therefore require ~~that~~ both the sitting and the retired MPs contribute at a higher rate as determined by the Actuary at **16% and 32.1% for MPs and Government respectively**. Retired MPs in particular are no longer earning a pensionable emolument as required under the Act and therefore cannot contribute. Any proposed recovery from the proposed pension would attract interest at 15% resulting in a large sum that may take many years to pay. The Government's notional contribution would also go up, at a time when the Government has many demands on limited budgetary resources.

The Parliamentary Pension Scheme provides for higher rates of contribution compared to a maximum of 10% for employee and 20% for employer in all other public service schemes

as stated in Treasury Circular No. 18 of November 2010. The structure was meant to keep in check the contingency government liability.

- c) **Payment of Benefits is based on salary:** The Scheme contributions are paid into the Consolidated Fund (CFS) using a generous factor of 1/300th of pensionable emoluments, compared to 1/480th for the majority of public servants, and higher than other countries benchmarked. The Actuary's simulations indicate that, under the current provision for pensions after two terms, a retired MP would earn a monthly pension of **KShs.127, 800** with a lumpsum of **Kshs. 7.7 million**. This is based on a pensionable emolument of KShs.426, 000 (SRC final salary rising from a current level of 319,500). Consequently, the low pensions currently earned by some retired MPs are due to the low salaries that were paid before the year 2002 before the general review of salaries.
- d) **Are Retired MPs' pensions low?** Yes, in some cases the pension is low. MPs who retired in the early years before salaries were greatly enhanced are the only ones earning low pensions. The Actuary's Report indicates that only 52 out of 371 pensioners at the date of the Report were earning more than KShs.100,000. However, it would be inequitable to increase pensions only for one cadre of public servants when all pensioners who retired in the early years are earning low pensions – see (e) below.
- e) **Harmonisation and Equity:** This is a requirement under the Constitution of Kenya 2010. Two points can immediately be noted: -
- i. While it is quite true that the lower pensions need a review, the same argument is true for **all other retirees** including Judges, Permanent Secretaries and other senior public servants who can use the same arguments presented by the former Members, about leadership and their role in the community, to justify such an increase.
 - ii. If the minimum Parliamentary pensions are increased to KShs.100,000, there would be **pressure from those retired MPs earning higher pensions** that they also be considered for a similar increase, for equity. For example, a former MP currently earning KShs.101,415 would feel aggrieved that he had served for a long time (about three terms) and is now earning the same as those who had served for only one or two terms. The same would apply to current MPs once they retire.

- f) **Pension Increase Policy:** Pension increase is the right of every retired public servant including retired members of Parliament, and is captured in the Pensions Increase Act Cap. 190, which provides for a biennial increase (every 2 years) at a rate of 3%. The last increase was done w.e.f. 1 July 2015 and the next one will be implemented w.e.f. 1 July 2017.
- g) **SRC Proposed Pension Review:** It is notable that the Salaries and Remunerations Commission has recently undertaken an actuarial study to guide the review of all low pensions and the MPS will benefit from the same. This is a better approach, which takes all retirees into consideration.
- h) **Budgetary implications:** The requested amendment to the Act has a major immediate financial implication, and as discussed in the foregoing sections, a higher budgetary ripple effect should other retirees require equal treatment, including possible litigations. **The National Treasury has indicated on many occasions the need to address the Wage Bill,** which also includes the pension Bill. Further, there are many pressures on budgetary resources as the Country implements the Constitution of Kenya 2010 and related devolution activities.
- i) **Should the law be applied retrospectively?** From the foregoing, it is clear that Cap.196 stipulates how pensions are calculated for retired MPs. For an amendment to the Act to apply to retired MPs, it would need to be applied retrospectively. Further, as noted above, the MPs would need to contribute for their higher pensions, while on retirement and without an income.
- j) In view of the above, the National Treasury recommends that there should be no amendment to the Act to allow for a minimum living pension of Kshs 100,000 to former MPS.

4.0 COMMITTEE'S OBSERVATIONS

Upon analyzing the petition and through interaction with the Petitioner, the Committee made the following observations:

7. On 23rd January 2009, Parliament appointed the Akiwumi tribunal to review terms and conditions of service for Members of Parliament and Staff of the National Assembly. This was in response to the plight and sorry state of living conditions of majority of former Members of Parliament.
8. The current pension payment for the former Members of Parliament who served between 1984 and 2002 of between Kshs 2700 and Kshs 14000 per month were due to low salaries that were paid before the year 2002 before the general review of salaries. These low pensions are a clear mismatch of the current economic realities.
9. In recognition of the plight of former Members and in keeping with the international best practices, the Akiwumi tribunal recommended payment of US \$ 1000 as living and minimum monthly pension for each of the estimated five hundred (500) former Members of parliament who served between 1984 and 2002. The number of these Members has since dropped to three hundred and seventy (370).
10. Parliament debated and adopted the Akiwumi report on 30th June 2010.
11. The 500 former Members of Parliament who served between 1984 and 2002 have not been paid their minimum living pension of USD 1000 per month to date as recommended by the Akiwumi report and ~~adopted by~~ the House.
12. The matter had been conversed and determined in a court of law (Judicial Review Application No 288 of 2014) that in order to vary Members of Parliament's pension, the law must be amended to effect the recommendations of the Akiwumi tribunal.

5.0 COMMITTEE RECOMMENDATIONS

Having considered the Petition keenly and the prayers sought, the Committee recommends, that:

- i. The National Assembly urgently amends the Parliamentary Pensions Act, Cap 196 to provide for the following:
 - a) To give legal effect to the proposed payment of a minimum Living Pension of US \$ 1,000.00 to former Members of Parliament by inserting the following new subsection immediately after section 8(2) –

“(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the year One thousand nine hundred and eighty four and Two thousand and two and is entitled to pension under this section, and whose monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July 2010, to a monthly pension of One hundred thousand shillings.”
 - b) To align it with the new constitutional dispensation by recognizing the bicameral nature of Parliament in the definition of a “Member”.
- ii. The Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for implementation of the new subsection 8(3) of the Parliamentary Pensions Act, Cap 196.

Signed:

Date: 2nd Feb 2017

(THE HON. NELSON RIBUTHI GAICHUHIE, M.P.)

VICE CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING
& TRADE

**MINUTES OF THE 85TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 22ND NOVEMBER, 2016 IN
MEDIA CENTRE, PARLIAMENT BUILDINGS AT 10.00AM**

PRESENT

- | | |
|-------------------------------------|-------------------------|
| 1. Hon. Nelson Gaichuhie, MP | Vice-Chairperson |
| 2. Hon. Eng. Shadrack Manga, MP | |
| 3. Hon. Ronald Tonui, MP | |
| 4. Hon. Jones Mlolwa, MP | |
| 5. Hon. Mary Emase, MP | |
| 6. Hon. Abdul Rahim Dawood ,MP | |
| 7. Hon. Lati Lelelit, MP | |
| 8. Hon. Sammy Mwaita, MP | |
| 9. Hon. Joseph Limo, MP | |
| 10. Hon. Patrick Makau King'ola, MP | |
| 11. Hon. Sakwa John Bunyasi, MP | |
| 12. Hon. Abdikadir Ore Mohammed, MP | |
| 13. Hon. Sammy Koech, MP | |
| 14. Hon. Abdullswamad Shariff, MP | |
| 15. Hon. Anyanga Andrew Toboso, MP | |
| 16. Hon. Daniel Epuyo Nanok, MP | |

APOLOGIES

- | | |
|----------------------------------|--------------------|
| 1. Hon. Benjamin Langat, MP | Chairperson |
| 2. Hon. Jimmy Nuru Angwenyi, MP | |
| 3. Hon. Dr. Oburu Oginga, MP | |
| 4. Hon. Shakeel Shabbir, MP | |
| 5. Hon. Sumra Irshadali, MP | |
| 6. Hon. Joash Olum, MP | |
| 7. Hon. Ogendo Rose Nyamunga, MP | |
| 8. Hon. Kirwa Stephen Bitok, MP | |
| 9. Hon. Alfred Sambu, MP | |
| 10. Hon. Tiras Ngahu, MP | |
| 11. Hon. Dennis Waweru, MP | |
| 12. Hon. Sakaja Johnson, MP | |

KENYA NATIONAL ASSEMBLY

1. Mr. Nicodemus Maluki - Third Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Eric Ososi - Research Officer
4. Mr. Ayub - Media Relations Officer

FRIENDS OF THE COMMITTEE

1. Hon. Eng. Nicholas Gumbo, MP

MIN.NO. DCF/321 /2016: PRELIMINARIES

The Vice- Chairperson called the meeting to order at 10. 30 am and prayed.

MIN.NO. DCF/322 /2016: CONFIRMATION OF MINUTES

The minutes of the previous meetings were confirmed as follows:-

1. Minutes of the 70th Sitting held on Tuesday 9th August , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Mary Emase, MP respectively.
2. Minutes of the 71st Sitting held on Thursday 11th August , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Sammy Koech, MP and Seconded by the Hon. Patrick Makau MP respectively.
3. Minutes of the 72nd Sitting held on Tuesday 16th August , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Lati Lellit, MP and Seconded by the Hon. Anyanga Andrew Toboso, MP respectively.
4. Minutes of the 73rd Sitting held on Tuesday 23rd August, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emase, MP and Seconded by the Hon. Ronald Tonui, MP respectively.
5. Minutes of the 74th Sitting held on Wednesday 24th August , 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Lati Lellit,MP and Seconded by the Hon. Mary Emase, MP respectively.
6. Minutes of the 75th Sitting held on Thursday 25th August, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emase, MP and Seconded by the Hon. Anyanga Andrew Toboso, MP respectively.
7. Minutes of the 76th Sitting held on Thursday 1st September 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Eng. Shadrack Manga, MP and Seconded by the Hon. Patrick Makau MP respectively.

8. Minutes of the 77th Sitting held on Tuesday 11th October, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Ronald Tonui, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively.
9. Minutes of the 78th Sitting held on Friday 14th October, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emase, MP and Seconded by the Hon. Lati Lellit, MP respectively.
10. Minutes of the 79th Sitting held on Friday 14th October, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Anyanga Andrew Toboso, MP and Seconded by the Hon. Lati Lellit, MP respectively.
11. Minutes of the 80th Sitting held on Tuesday 18th October, 2016 were confirmed as a true record of the proceedings after being proposed by Hon. Ronald Tonui, MP the and Seconded by the Hon. Mary Emase, MP respectively.
12. Minutes of the 81st Sitting held on Tuesday 18th October, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Anyanga Andrew Toboso, MP and Seconded by the Hon. Ronald Tonui, MP respectively.
13. Minutes of the 82nd Sitting held on Tuesday 5th July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Sammy Koech, MP and Seconded by the Hon. Anyanga Andrew Toboso, MP respectively.
14. Minutes of the 83rd Sitting held on Tuesday 19th July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Hon. Lati Lellit, MP and Seconded by the Hon. Eng. Shadrack Manga, MP respectively.
15. Minutes of the 84th Sitting held on Thursday 17th November, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Daniel Nanok, MP and Seconded by the Hon. Eng. Shadrack Manga, MP respectively.

MIN.NO. DCF/323/2016: CONSIDERATION OF THE PETITION ON IMPLEMENTATION OF THE 2009 AKIWUMI TRIBUNAL REPORT ON MINIMUM LIVING PENSION FOR FORMER MEMBERS OF PARLIAMENT WHO SERVED BETWEEN 1984 TO 2002

The Hon. (Eng.) Nicolas Gumbo, MP on behalf of former Members of Parliament appeared before the Committee and briefed on the petition as follows:-

On 23rd January, 2009 the Parliament by virtue of Kenya Gazette Notice No. 699, appointed the Akiwumi Tribunal to review terms and conditions of service for Members of Parliament and staff of the National Assembly and because of the plight and state of living conditions of the majority of Former Members of Parliament, strong presentations by former MPs and Members of the public, the tribunal considered and recommended a monthly payment of the equivalent of US\$ 1,000 as living pension for former Mps.

The petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade:-

i) Amends section 8 of the Parliamentary Pension Act. Cap 196 to give legal effect to the proposed payment of a minimum Living Pension of US\$ 1,000 to former Mps by inserting the following new subsection immediately after subsection (2) -

(3) Notwithstanding subsection (2), former Members of Parliament who having served in Parliament between 1984 to 2002 is entitled to pension under this section and whose monthly pension to less than Kshs. 100,000, shall be entitled to, with effect from 1st July 2010, to a monthly Pension of Kshs. 100,000.

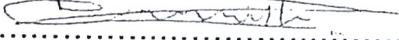
ii) Makes any other order(s) deemed fit in the mitigating the plight of the petitioners.

Committee Resolutions

While appreciating the service rendered by the former Members of Parliament to this Country, the Committee felt that there was urgent need for implementation of the Living Pension as set by the Akiwumi Tribunal Report. It was further resolved that the Act should also be amended to include One Term Members of Parliament.

MIN.NO. DCF/324 /2016: ADJOURNMENT

The Chairperson adjourned the meeting at 12.05pm

Signed.....

Date.....
20 Feb 2017
Vice Chairperson

**MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON THURSDAY 2ND FEBRUARY, 2017 IN
COMMITTEE ROOM 12, PARLIAMENT BUILDINGS AT 1.35PM**

PRESENT

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Nelson Gaichuhie, MP - Vice - Chairperson
3. Hon. Eng. Shadrack Manga, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Abdul Rahim Dawood ,MP
7. Hon. Mary Emase, MP
8. Hon. Ronald Tonui, MP
9. Hon. Jones Mlolwa, MP
10. Hon. Sumra Irshadali, MP
11. Hon. Lati Lelelit, MP
12. Hon. Daniel Epuyo Nanok, MP
13. Hon. Anyanga Andrew Toboso, MP
14. Hon. Kirwa Stephen Bitok, MP
15. Hon. Hezron Awiti Boro, MP

APOLOGIES

1. Hon. Dr. Oburu Oginga, MP
2. Hon. Shakeel Shabbir, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Ogendo Rose Nyamunga, MP
5. Hon. Alfred Sambu, MP
6. Hon. Dennis Waweru, MP
7. Hon. Sammy Koech, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Joseph Limo, MP
10. Hon. Patrick Makau King'ola, MP
11. Hon. Abdullswamad Shariff, MP
12. Hon. Joash Olum, MP
13. Hon. Tiras Ngahu, MP

KENYA NATIONAL ASSEMBLY

- | | | |
|--------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Mr. Omar Abdirahim | - | Fiscal Analyst |
| 6. Ms. Catherine Mukunyi | - | Sergeant At Arm |

MIN.NO. DCF/013/2017: PRELIMINARIES

The Chairperson called the meeting to order at 1.35pm and requested Members to spare a few minutes allow the Committee adopt the reports on some petitions that have been pending before the Committee.

MIN.NO. DCF/014/2017: CONSIDERATION AND ADOPTION OF THE REPORT ON A PUBLIC PETITION ON IMPLEMENTATION OF THE 2009 AKIWUMI TRIBUNAL REPORT ON MINIMUM LIVING PENSION FOR FORMER MEMBERS OF PARLIAMENT WHO SERVED BETWEEN 1984 AND 2002 BY HON. (ENG.) NICOLAS GUMBO, MP

The Committee considered and unanimously adopted the following recommendations:

1. The National Assembly urgently amends section 8 of the Parliamentary Pensions Act, Cap 196 to give legal effect to the proposed payment of a minimum Living Pension of US \$ 1,000.00 to former Members of Parliament by inserting the following new subsection immediately after subsection (2) –
 - i. *“(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the year One thousand nine hundred and eighty four and Two thousand and two and is entitled to pension under this section, and whose monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July 2010, to a monthly pension of One hundred thousand shillings.”*
2. The Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for implementation the new subsection 8(3) of the Parliamentary Pensions Act, Cap 196.

MIN.NO. DCF/015/2017: CONSIDERATION AND ADOPTION OF THE REPORT ON A PUBLIC PETITION ON PAYMENT OF TERMINAL DUES TO THE FORMER EMPLOYEES OF THE PAN PAPER COMPANY LTD BY HON. PATRICK WANGAMATI, MP

The Committee considered and unanimously adopted the following recommendations:

1. The Government of Kenya, through the Ministry of Industrialization, Investment & Trade in conjunction with the National Treasury expedites compilation of an authentic list of all the former employees of the Pan Paper Mills Company Limited within the next three months after the tabling of this report.
2. The Government of Kenya, through the Ministry of Industrialization, Investment & Trade and the National Treasury computes the final dues of the former employees of Pan Paper Mills Company limited with a view to paying them as provided for under Section 66 of the employment Act 2012 and other related legislations.
3. The Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for payment of terminal dues to the former employees of the pan paper Mills Company limited

MIN.NO. DCF/016/2017: ANY OTHER BUSINESS

There being no other business, the Chairperson adjourned the meeting at 2.10pm.

Signed.....

Chairperson


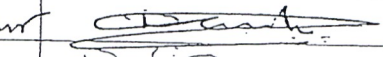

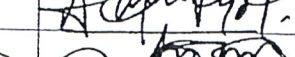



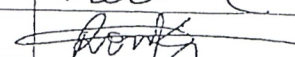
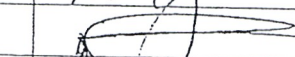
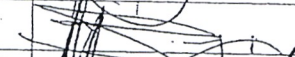


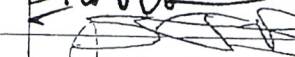
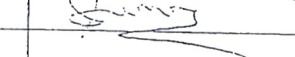

Date.....

DEPARTMENTAL COMMITTEE ON-FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 02/02/2017 TIME 1 35 PM
 AGENDA CONSIDERATION AND ADOPTION OF REPORTS ON PUBLIC PETITIONS BY HON. PATRICK WANGAMATI, MP AND HON

(ENG) NICHOLAS GUMBE MP.

	NAME	TITLE	SIGNATURE
1	Hon. B. K. Loyat	Chair	
2	Hon. Nelson Gueluha	Chair	
3	Hon. Jimmy Aramemi	Member	
4	Hon. Daniel E. Naron	member	
5	Hon. Mary Emaas	member	
6	Hon. Anuk Bolo	member	
7	Hon. A. RAHIM DAWOOD.	"	
8	Hon. Lati leleit	"	
9	HON RONALD TONDI	"	
10	HON JONG MLOLWA	"	
11	Hon. Eng S. Mangga	"	
12	Hon. Anyang Andrew Toboso	"	
13	Hon. Kinta S. Blotok	"	
14	HON- SAKWA BUNYAN	"	
15	Hon. J. S. Suning	"	
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Approved BT
SNA
12/10/16



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- FOURTH SESSION

=====

PUBLIC PETITION

Case 13/P0/1
Mr. Speaker
For your consideration.
12/10/16

BY FORMER PARLIAMENTARIANS ASSOCIATION OF KENYA (FOPAK) AND FORMER MEMBERS OF PARLIAMENT ON IMPLEMENTATION OF THE 2009 AKIWUMI TRIBUNAL REPORT ON MINIMUM LIVING PENSION FOR FORMER MEMBERS OF PARLIAMENT WHO SERVED BETWEEN 1984 AND 2002

I, THE UNDERSIGNED on behalf of Former Parliamentarians Association of Kenya (FOPAK) and former Members of Parliament;

DRAW the attention of the House to the following—

- 1) THAT, both Sitting and former Members of Parliament (MPs) are the face of national leadership outside Parliament and that circumstances impose inescapably heavy burden and unpremeditated social responsibility on them;
- 2) THAT, the scheme of service for MPs did not secure their livelihoods upon leaving Parliament, thus subjecting majority of them to economic hardships and sorry state of living conditions;
- 3) THAT, the Parliamentary Service Commission appointed a Tribunal led by Justice Akilano Akiwumi to review the terms and conditions of MPs and staff of Parliament *vide Gazette Notice No 699 of 2009*;
- 4) THAT, the Tribunal recommended payment of a monthly Living Pension equivalent to US \$ 1,000.00 each to former MPs who served from 1984 to 2002, who were then estimated to be five hundred (500) but have since reduced to about three hundred and seventy (370);
- 5) THAT, said report, adopted by the House 30th June 2009 obligated the relevant Committee of the House to institute necessary amendments to the Parliamentary Pensions Act, Cap 196, to give effect to the ~~recommendations of the~~ Akiwumi Tribunal on Living Pension;
- 6) THAT, to date, the said recommendations have not been given force of law, thereby subjecting former MPs to continue earning between Kshs. 2,700.00 and Kshs. 40,000.00, which is a huge mismatch with the current economic circumstances in general, and cost of living in particular;
- 7) THAT, failing to pay former MPs the recommended Living Pension of US \$ 1,000.00 is in violation of their inherent right to a dignified life as guaranteed in Article 28 of the Constitution;
- 8) THAT, efforts, including judicial mechanisms, to have Parliamentary Pensions Act, Cap 196 reviewed so as to accord with the recommendations of the Akiwumi Tribunal and address the plight of the affected former MPs have not yielded satisfactory action;
- 9) THAT, the issues in respect of which this Petition is made are not pending before any court of law, tribunal, constitutional or legal body;

BY FORMER PARLIAMENTARIANS ASSOCIATION OF KENYA (FOPAK) AND FORMER MEMBERS OF PARLIAMENT ON IMPLEMENTATION OF THE 2009 AKIWUMI TRIBUNAL REPORT ON MINIMUM LIVING PENSION FOR FORMER MEMBERS OF PARLIAMENT WHO SERVED BETWEEN 1984 AND 2002

THEREFORE your humble petitioners pray that the National Assembly, through the Departmental Committee on Justice and Legal Affairs:-

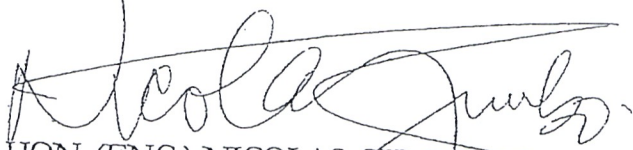
- (i) amends section 8 of the Parliamentary Pensions Act, Cap 196 to give legal effect to the proposed payment of a minimum Living Pension of US \$ 1,000.00 to former MPs by inserting the following new subsection immediately after subsection (2) –

“(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between the year One thousand nine hundred and eighty four and Two thousand and two and is entitled to pension under this section, and whose monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July 2010, to a monthly pension of One hundred thousand shillings.”

- (ii) makes any other order(s) deemed fit in the mitigating the plight of the petitioners.

And your humble Petitioners will ever pray.

PRESENTED BY:


HON. (ENG.) NICOLAS GUMBO M.P.
MEMBER FOR RARIEDA CONSTITUENCY

DATE:

10/10/2016

22nd October, 2016

The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842
NAIROBI

Dear Sir,

RE: PETITION TO PARLIAMENT TO IMPLEMENT LIVING PENSION
RECOMMENDED BY THE 2009 AKIWUMI TRIBUNAL

WE, the undersigned citizens of the Republic of Kenya and former members of parliament, humbly PETITION Parliament over the above and draw attention to the following:

1. THAT on 23rd January 2009, Parliament, by virtue of Kenya Gazette Notice No. 699, appointed the Akiwumi Tribunal to review terms and conditions of service for Members of Parliament and staff of the National Assembly and, *because of the plight and sorry state of the living conditions of the majority of former members of parliament, strong presentations by both the former MPs and members of the public*, the Tribunal considered and recommended a monthly payment of the equivalent of US \$ 1,000 as Living Pension for former MPs.
2. THAT as former members of parliament, we are the past of Parliament and, having served our motherland devoutly with dedication and contributed to its national wellbeing, we plead that Parliament shows understanding and appreciation for the same by implementing the Akiwumi Tribunal's recommendation on Living Pension for former members of parliament as spelt out in the said Tribunal's report.

3. THAT there being a resolution of Parliament on Akiwumi Tribunal report – Parliament considered, debated and adopted the report on 30th June, 2010 – Parliament should refer the matter to an appropriate Committee of the House to consider and introduce necessary amendments to the Parliamentary Pensions Act to give the Tribunal's recommendation on Living Pension legal effect and bring about the realization of the same. P-20
4. THAT for the majority of the now aged former members of parliament, pension is the only source of livelihood – food, medicare and all the other basic necessities - hence the urgent need for the implementation of the **Living Pension** as set out in the **Akiwumi Tribunal** report.
5. THAT the current pensions payment of between Ksh 2,700 and Ksh 14,000 per month for the majority of former members of parliament and Ksh 40,000 for a handful of others, are a mismatch with the current circumstances in general but the cost of living in particular.
6. THAT by failing to pay the Living Pension as set out in the Akiwumi Tribunal report, former members of parliament feel denied the right to a life with **Human Dignity** as commended in **Article 28 of the Constitution**;
7. THAT overwhelmed by unyielding hardships, former members of parliament, in 2008, presented their case to the Speaker of the National Assembly who, subsequently, appointed the Akiwumi Tribunal. The Tribunal acceded to the pleas for a Living Pension by both the **Former Parliamentarians Association of Kenya (FOPAK)** and former members of Parliament. In keeping with the international best practice, the Tribunal recommended payment of the equivalent of US \$1,000 as living and minimum monthly pension for each of then estimated 500 former members of parliament (the number has since dropped to about 370 and dropping further) who served in the period between 1984 and 2002. عيسى
8. THAT in its June 2010 report, the **Parliamentary Service Commission (PSC)**,

agreed with and **ADOPTED** the Akiwumi Tribunal report and its recommendations including payment of the equivalent of US \$ 1,000 Living Pension for living former members of parliament.

9. **THAT** by way of a Motion: *“THAT this House adopts the Report of the Tribunal appointed by the Parliamentary Service Commission (PSC) on 23rd January, 2009, vide Kenya Gazette Notice No 699, to review Terms and Conditions of Service of Members of Parliament and staff of the National Assembly and presented to the Commission on 12th November, 2009 together with comments and recommendations of the Commission laid on the Table of the House on Wednesday, 30th June, 2010 and further pursuant to section 48 of the Constitution.....”* Parliament considered, debated and **ADOPTED** the Akiwumi Tribunal report.
10. **THAT** subsequently, Parliamentary Service Commission appointed an Actuary whose May 2014 report on Living Pension, is a misrepresentation of facts as set out in the Akiwumi Tribunal report. The Actuarial report is about pension for **ALL former members of parliament** when the Akiwumi Tribunal recommendation is specific to 500 former members of parliament who served in the period between 1984 and 2002 and whose number has since dwindled to about **370** and dwindling further.
11. **THAT** given its scope of reference – **all former members of parliament (the past, present and the future)** – when the Akiwumi Tribunal report is about 500 former members of parliament, the Actuarial report is not and cannot be an accurate and realistic means for determining the viability or otherwise of Living Pension as spelt out in the Tribunal report.
12. **THAT** as the face of national leadership outside the two Houses of Parliament (**National Assembly and the Senate**), circumstances impose an inescapably heavy burden and unpremeditated social responsibility on former members of parliament, making the current monthly pension payment for the “Honourable” members awfully inadequate.

13. THAT in common with a set of Akiwumi Tribunal report-related bills, among them that of the National Assembly Remuneration (Amendment) Bill 2010, Parliamentary Service Commission, in a motion in Parliament on 30th June, 2010, CALLED for amendments to the Parliamentary Pensions Act to give legal effect and, consequently, the realization of the Akiwumi Tribunal recommendation on Living Pension for former members of parliament.
14. THAT *in situ* with the call by the Parliamentary Service Commission, a High Court Judge in the Judicial Review Application No 288 of 2014 – *Republic Vs Attorney General & Parliamentary Service Commission ex-parte Hon Wanyiri Kihoro and 5 others* - Justice Majanja, RULLED that legislation, a prerogative of Parliament (amendment to the Parliamentary Pensions Act) was required to effect the Akiwumi Tribunal recommendation on Living Pension for former members of parliament. Referring to an earlier case on parliamentary pension and the provisions of the Parliamentary Pensions Act, Justice Majanja concluded: *“These... leave no doubt that in order to vary the applicants’ pension, the law must be amended to effect the recommendation of the Akiwumi Tribunal...”*
13. THAT former members of parliament have, at different times, individually, collectively and through the Former Parliamentarians Association of Kenya (FOPAK), engaged and made presentations to authorities, among them Parliamentary Pensions Management Committee, urging for the Living Pension but without success; hence this PETITION.
14. THAT the issues in respect of which this petition is made are, to the best of our knowledge and information, not pending before any court of law as an initiative in which the Chief Justice was moved to constitute a tribunal to further interrogate the case by the former members in the case referred to herein above, appears to have fallen by the wayside.
15. THAT given the economic and social hardships they face, former members of parliament have only Parliament to turn to.

16. THAT Parliament has the capacity and it is within its powers to initiate and cause the requisite amendments to the Parliamentary Pensions Act to give legal effect to and, consequently, the realization of the Akiwumi Tribunal recommendation on Living Pension.

WHEREFORE, your humble petitioners PRAY that the National Assembly –

a) Amends Section 8 of the Parliamentary Pensions Act. Cap 196 to give legal effect to the payment of the equivalent of US \$ 1,000 recommended by the Akiwumi Tribunal on Living Pension by inserting a new subsection immediately after subsection (2) as hereunder :-

“(3) Notwithstanding subsection (2), a former Member of Parliament who having served in Parliament between the year One thousand nine hundred and eighty four and the year Two thousand and two and is entitled to pension under this section, and whose monthly pension amounts to less than One hundred thousand shillings, shall be entitled to, with effect from 1st July, 2010, to a monthly pension of One hundred thousand shillings.”

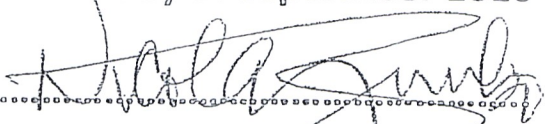
b) That the relevant Committee of the National Assembly takes up this proposal and introduces it to the House as a Committee Sponsored Bill for purposes of its enactment

c) That the National Assembly deliberates on this matter with a view to arriving at the proposed remedy or any other appropriate solution within its powers and that will resolve the matter once and for all.

AND YOUR PETITIONERS WILL EVER PRAY

PRESENTED ON BEHALF OF THE PETITIONERS BY HON NICHOLAS GUMBO, MEMBER OF PARLIAMENT FOR RARIEDA CONSTITUENCY

Dated this 2nd day of September 2016

Signature 

SIGNATURES

Jael Maruthi Mweithi	50228 NRS 00200	6832076	<i>[Signature]</i>
FRANCIS MUTWITI	850 Zoo KITALE	028782	<i>[Signature]</i>
HON. JOSEPH D. LOTODO	25-30404 NGINYANG	4290996	<i>[Signature]</i>
Hon. WILLY Kamuren	Box 10434 NAIROBI	0282678	<i>[Signature]</i>
HON. DWIND L IKOWA	M14021	0728993390	<i>[Signature]</i>
Hon Abdikadir H. Yussaf	P.O. Box 157 GARISSA	00384650	<i>[Signature]</i>
Hon. Robert Kipkorir	P.O. Box 85-30607 ^{Chebienit}	0713-693251	<i>[Signature]</i>
Hon. Mohamed A. Galgala	P.O. Box 56 BURU FURA	072845874	<i>[Signature]</i>
HON. MOHAMED D. WAIRAH	P.O. Box B MASALANIA	076204438	<i>[Signature]</i>
HON. Adams Karani	P.O. Box 69664 00400	07790000	<i>[Signature]</i>
HON. MOHAMED M. GALGALA	P.O. Box 47878-100	0070271	<i>[Signature]</i>
HON. JOHNS K. KARURUWA	Box 46333-00100 NRS	0247770	<i>[Signature]</i>
Hon. M. Sheikh Ade	Box 61159 00200	0974091	<i>[Signature]</i>
Hon. Otieno Makonyengo	Box 21164-00100	4439164	<i>[Signature]</i>
HON. MANI WANGAR	Box 39 ^{Saiti} KINANGA	1910600	<i>[Signature]</i>
Hon. Mohamed A Galgala	Box 56 BURU TANGA	3329589	<i>[Signature]</i>
Hon. Gerald Mulla	Box 51557 00200	3346200	<i>[Signature]</i>
" Abdi Aress Mohamed	Box 214 GARISSA	007543	<i>[Signature]</i>
" Robert I. Kochale	Box 1287 Nanyuki	0022746	<i>[Signature]</i>
" Azale H. Ahmed	Box 67123 00200	0042516	<i>[Signature]</i>
Hon. Mathews O. Midilo	Box 78, Mtwani	0249935	<i>[Signature]</i>
HON J. KAMAU ICHARIA	Box 47528-00100 NAIROBI	1913975	<i>[Signature]</i>
Hon Aloo J. Ogeka	Box 55780-00200 Nairobi	4436894	<i>[Signature]</i>
Hon Francis J. Wanyanga	Box 59953-00200 NAIROBI	0730970	<i>[Signature]</i>
Hon Gacumu wa Karenga	Box 1000-00618 Nairobi	4831565	<i>[Signature]</i>
Hon. Hussein H. Fayy	Box 36 ISIOLO	0009701	<i>[Signature]</i>
Hon. O. Mbotko	Box 268 NILEKA	0987180	<i>[Signature]</i>
Hon. John Barasa Munyasi	P.O. Box 2566-50200 BUNGOMA	2091309	<i>[Signature]</i>
HON. Bishop Joseph K. Kimani	P.O. Box 10096 NAKURU	5288752	<i>[Signature]</i>
Hon Mwangi, G. Gichuki	P.O. Box 1799, Nakuru	2504761	<i>[Signature]</i>



FORMER PARLIAMENTARIANS ASSOCIATION OF KENYA

6th Floor, Harambee Plaza, P.O. Box 41842, Tel: +254 20 2221291, Nairobi, Kenya

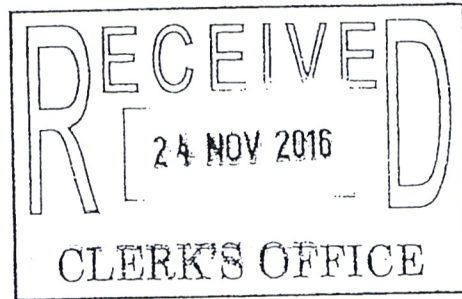
22nd November, 2016

① D/Committees

The Chairman ✓
Departmental Committee on Finance, Planning and Trade
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

② Evans
ple deal
FA 24/11

Throu:
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI



Dear Sir,

RE: PETITION TO PARLIAMENT ON LIVING PENSION BY FORMER
PARLIAMENTARIANS ASSOCIATION OF KENYA (FOPAK) AND FORMER MEMBERS
OF PARLIAMENT

The Former Parliamentarians Association of Kenya (FOPAK) and former members of parliament have pleasure addressing the Honourable committee on the subject matter which has been referred to you by the National Assembly. Both FOPAK and former members of parliament assure you, Mr. Chairman and your committee of our unswerving faith and confidence on your ability to deliver on the matter in respect of which we submit as hereunder.

We submit.

Hon. Otieno Mak'Onyango
Secretary.

Ecl: Copy of FOPAK and former members' submission
cc. Hon. Nic Gumbo

PRESENTATION TO THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING AND TRADE BY THE FORMER PARLIAMENTARIANS
ASSOCIATION OF KENYA (FOPAK) ON LIVING PENSION FOR FORMER
MEMBERS OF PARLIAMENT

The Subject:

This petition is about pension in general but the **Living Pension** for former members of parliament in particular.

Acknowledgment:

First and foremost, **Mr Chairman**, the **Former Parliamentarians Association of Kenya (FOPAK)** and the entire membership of the Association wish to humbly acknowledge the honour accorded to them by the Departmental Committee on Finance, Planning and Trade to appear before the Committee and present our case. We are truly grateful. This flows from the faith and confidence of both the Association and its entire membership that the Committee has what it takes and the wherewithal to bring a lasting solution to the issue of pension for former members of parliament once and for all.

FOPAK looks to the Committee and parliament to bring the many years of desperation and crushing pain among the aged and ageing former members of parliament to an end. We present our case fully convinced that the Committee is going to cause such amendments to the Parliamentary Pensions Act, Cap 196 of the Laws of Kenya that will guarantee honour and a dignified life to former members of parliament, respecting their unique contributions to their motherland and the national well-being of the same.

Historical Perspective of the Subject Matter:

The Parliamentary Service Commission (PSC) and Former Parliamentarians Association of Kenya (FOPAK) have, for years ~~now, engaged~~ engaged each other on the issue of pension and a host of other welfare matters for former members of parliament. FOPAK had, in part, been concerned over non-implementation of the 2002 Justice Cockar Tribunal recommendation that former MPs who served in the period between 1963 and 83 be paid an Ex-Gratia of Ksh 1.0 million. There was, besides, the issue of Justice Gicheru's ruling which made all former MPs, including those who had served for one term, pensionable.

Sticking Issues:

A close analysis of the issue of pension as relates to former members of parliament and the Parliamentary Pensions Act, Cap 196 of the Laws of Kenya, readily reveals five sticking issues. These are:

1. Amendment of Parliamentary Pensions Act and or enactment of elaborate and welfare-friendly sets of pension laws
2. Embrace of the spirit of the Cockar Tribunal recommendations
3. The imperative of Living Pension for living former members of parliament
4. Gratuity (Ex-Gratia) payment for all former members of parliament
5. Full implementation of Justice Gicheru ruling

Parliamentary Pension Act, Cap 196 of the Laws of Kenya:

Though welcome, the establishment of pension for retired members of parliament as captured in the Parliamentary Pensions Act, Cap 196 of the Laws of Kenya of 1984, had its own shortcomings. Though providing for future pension needs for former members of parliament with effect from that year, the law was overly inadequate.

Because the remunerations for members of parliament were low, so was the pension generated therefrom. That being the case and given that pension was the only source of income (for food, shelter, medicare and school fees) for the majority of former members of parliament, pension provided left these exposed.

Note must also be made here of the fact that the law made no provision whatsoever for the aged and ageing former members of parliament who served in the period between 1963 and 1983, considering the fact that once one has been to parliament, the tag "politician" makes it almost impossible for one to secure a job or do business.

The issue of the category of former members of parliament that include those of the First Parliament, among them those who fought for this country's independence from the colonial rule and helped mold the Kenyan nation at its formative ages were, as it were, left to perish in the "forget" dustbin. It took Justice Cockar's sense of humanity and compelling compassion in 2002 to make an ATTEMPT AT SALVAGING the concerned former parliamentarians from their unfortunate plight. Welcome and timely as the Cockar intervention may have been, the intervention was, by and large inadequate.

The Cockar Tribunal:

Stunned by the now thin and shabby-looking Hon. Joseph Otieno, the once powerful and bulky former Member of Parliament for Mbale, Kakamega, who appeared and presented his views to the Cockar Tribunal on the subject matter, Justice Cockar had this (Tribunal) recommend payment of Ksh 1.0 million Ex-Gratia to former members of parliament who served in the period between 1963 and 83 when there was no pension for former MPs in force.

The Akiwumi Tribunal – Living Pension:

Compared to most other modern democracies, monthly pensions of between Ksh 2,700 and Ksh 40,000 currently paid to Kenyan former members of parliament, is a pale shadow of what former members of parliament in the said other countries receive. Convinced there was an imperative to bring Kenya up-to-date with other modern democracies, the Akiwumi Tribunal recommended that **a minimum living pension equivalent to US\$ 1,000 per month be paid to all Kenyan former members of parliament whose current pension is either none or less than US\$ 1,000.**

Appointed by Parliament in 2009, Akiwumi Tribunal agreed with the view of many of those who appeared before it that the amount being paid to former members of parliament was awfully inadequate and could not meet the basic needs of the concerned former members of parliament. ***“The Tribunal received presentations from many Kenyans in all the provinces as well as presentations from officials of the Former Parliamentarians Association of Kenya recommending very strongly that all former members of parliament be granted pension due to the fact that most of them cannot afford basic livelihoods,”*** the Tribunal observed in its report.

The Tribunal further observed that in many of the other modern democracies, former members of parliament were paid a token tax-free pension equivalent to US\$ 1,000 and, accordingly, recommended that the same should apply to Kenyan former members of parliament. It stated: **“The Tribunal recommends that a minimum living pension equivalent to US\$ 1,000 per month be paid to all former members of parliament whose current pension is either none or less than US\$ 1,000.”**

Both the PSC and Parliament approved and adopted the Akiwumi Tribunal report in June 2010. With a Parliament resolution on the Akiwumi Report, the matter ought to, ideally, have gone to the appropriate committee of Parliament but this was not done, apparently because of oversight at that level. As a consequence Parliament has, to this day, not implemented the

Living Pension for former members of parliament, hence the petition at hand and the presentation herewith. The result is that former members of parliament continue to sink deeper and deeper into the abyss of deprivation, helplessness and endless pain.

Mr Chairman, the sorry state in which former members of parliament find themselves is well documented. The rate at which former MPs are passing on and the desperation won on the faces of those of them still alive who frequent the Parliamentary Lobby, speak to the foregoing.

Petition to Parliament:

FOPAK'S prayer to Parliament, through this Honourable Committee, is to amend the Parliamentary Pensions Act, Cap 196 of the Laws of Kenya such that all former members of parliament are brought under the pension cover. This is necessary, considering the unique call the position of a legislator is to the national well-being of our motherland.

At the heart of the petition is the deplorable state in which the majority of former members of parliament live, especially considering that as leaders they are role models to whom ordinary members of the society not only look for inspiration but for material, social and other forms of assistance. As leaders, former members of parliament have a social obligation and responsibility from which they cannot run away.

As things stand, the majority of former members of parliament feel they are, by circumstances beyond their control, denied the right to a life of human dignity as enshrined in **Article 28 of the Constitution**. The senior citizens believe and hold that nobody but Parliament can, by way of either amending existing laws or enacting new ones, will wipe out misery and replace this with hope and uplifting lives.

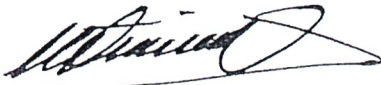
Our Prayer:

Former members of parliament who, in their day and time, served their motherland with unswerving commitment and devotion, petition Parliament, fully convinced that the House will show compassion to their plight and resolve the issue of pension once and for all. Mr Chairman, and Committee members, no doubt, appreciate that with a one-off payment of Ex-Gratia payment of Ksh 1.0 million paid to them seven or so years ago and, given the run-away cost of living, former MPs who served in the first four parliaments, are as badly off today as any of their other counterparts. Both the former members of parliament in the First four parliaments and those of the 1984 to 2002 period, find themselves in the crippling boat of deprivation.

It is, thus, our case and **Solemn Prayer** that though our petition to Parliament is on the basis of the Akiwumi Tribunal report which, as you will, no doubt appreciate, is restricted, IT IS OUR SOLEMN AND HUMBLE PRAYER THAT THE COMMITTEE AND, FOR THAT MATTER, PARLIAMENT, AMENDS THE PARLIAMENTARY PENSIONS ACT, CAP 196 OF THE LAWS OF KENYA TO EFFECT LIVING PENSIONS AS RECOMMENDED BY THE AKIWUMI TRIBUNAL - MAKE THE LAW ALL-EMBRACING, ALL-INCLUSIVE AND GLOBALISED IN NATURE - A LAW THAT COVERS ALL LIVING FORMER MEMBERS OF PARLIAMENT.

WE SUBMIT.

Nairobi, November, 2016



Otieno Mak'Onyango

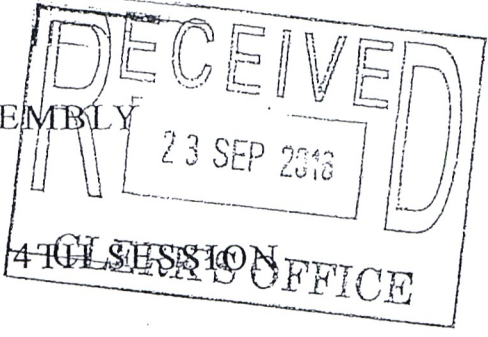
Secretary

~~11/11/16~~

PARLIAMENT OF KENYA

D/Committee
For Finance and
Saler

THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT - 4th SESSION

24/10

PETITION TO PARLIAMENT PURSUANT TO SECTIONS 28, 48, AND 119 OF THE CONSTITUTION OF KENYA AND STANDING ORDER NO 220 OF THE NATIONAL ASSEMBLY

BY THE FORMER PARLIAMENTARIANS ASSOCIATION OF KENYA
(FOPAK) AND FORMER MEMBERS OF PARLIAMENT

*PRESENTED BY THE MP FOR RARIEDA, HON. NICHOLAS
GUMBO FOR AND ON BEHALF OF THE ASSOCIATION
AND FORMER MEMBERS OF PARLIAMENT*

CONCERNING IMPLEMENTATION OF LIVING PENSION AS
RECOMMENDED BY THE 2009 AKIWUMI TRIBUNAL

September, 2016

EVANS
plb def
FA

24/10

September
Nithin
22nd October, 2016

**The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842
NAIROBI**

Dear Sir,

**RE: PETITION TO PARLIAMENT TO IMPLEMENT LIVING PENSION
RECOMMENDED BY THE 2009 AKIWUMI TRIBUNAL**

WE, the undersigned citizens of the Republic of Kenya and former members of parliament, humbly PETITION Parliament over the above and draw attention to the following:

- 1. THAT** on 23rd January 2009, Parliament, by virtue of **Kenya Gazette Notice No. 699**, appointed the Akiwumi Tribunal to review terms and conditions of service for Members of Parliament and staff of the National Assembly and, ***because of the plight and sorry state of the living conditions of the majority of former members of parliament, strong presentations by both the former MPs and members of the public***, the Tribunal considered and recommended a monthly payment of the equivalent of US \$ 1,000 as Living Pension for former MPs.
- 2. THAT** as former members of parliament, we are the past of Parliament and, having served our motherland devoutly with dedication and contributed to its national wellbeing, we plead that Parliament shows understanding and appreciation for the same by implementing the Akiwumi Tribunal's recommendation on Living Pension for former members of parliament as spelt out in the said Tribunal's report.

3. **THAT** there being a resolution of Parliament on Akiwumi Tribunal report – Parliament considered, debated and adopted the report on 30th June, 2010 – Parliament should refer the matter to an appropriate Committee of the House to consider and introduce necessary amendments to the Parliamentary Pensions Act to give the Tribunal’s recommendation on Living Pension legal effect and bring about the realization of the same.
4. **THAT** for the majority of the now aged former members of parliament, pension is the only source of livelihood – food, medicare and all the other basic necessities - hence the urgent need for the implementation of the **Living Pension** as set out in the **Akiwumi Tribunal** report.
5. **THAT** the current pensions payment of between Ksh 2,700 and Ksh 14,000 per month for the majority of former members of parliament and Ksh 40,000 for a handful of others, are a mismatch with the current circumstances in general but the cost of living in particular.
6. **THAT** by failing to pay the Living Pension as set out in the Akiwumi Tribunal report, former members of parliament feel denied the right to a life with **Human Dignity** as commended in **Article 28 of the Constitution**;
7. **THAT** overwhelmed by unyielding hardships, former members of parliament, in 2008, presented their case to the Speaker of the National Assembly who, subsequently, appointed the Akiwumi Tribunal. The Tribunal ~~acceded to~~ the pleas for a Living Pension by both the **Former Parliamentarians Association of Kenya (FOPAK)** and former members of Parliament. In keeping with the international best practice, the Tribunal recommended payment of the equivalent of US \$1,000 as living and minimum monthly pension for each of then estimated 500 former members of parliament (the number has since dropped to about 370 and dropping further) who served in the period between 1984 and 2002.
8. **THAT** in its June 2010 report, the **Parliamentary Service Commission (PSC)**,

agreed with and **ADOPTED** the Akiwumi Tribunal report and its recommendations including payment of the equivalent of US \$ 1,000 Living Pension for living former members of parliament.

9. **THAT** by way of a Motion: *“THAT this House adopts the Report of the Tribunal appointed by the Parliamentary Service Commission (PSC) on 23rd January, 2009, vide Kenya Gazette Notice No 699, to review Terms and Conditions of Service of Members of Parliament and staff of the National Assembly and presented to the Commission on 12th November, 2009 together with comments and recommendations of the Commission laid on the Table of the House on Wednesday, 30th June, 2010 and further pursuant to section 48 of the Constitution.....,”* Parliament considered, debated and **ADOPTED** the Akiwumi Tribunal report.
10. **THAT** subsequently, Parliamentary Service Commission appointed an Actuary whose May 2014 report on Living Pension, is a misrepresentation of facts as set out in the Akiwumi Tribunal report. The Actuarial report is about pension for **ALL former members of parliament** when the Akiwumi Tribunal recommendation is specific to 500 former members of parliament who served in the period between 1984 and 2002 and whose number has since dwindled to about **370** and dwindling further.
11. **THAT** given its scope of reference – **all former members of parliament (the past, present and the future)** – when the Akiwumi Tribunal report is about 500 former members of parliament, the Actuarial report is not and cannot be an accurate and realistic means for determining the viability or otherwise of Living Pension as spelt out in the Tribunal report.
12. **THAT** as the face of national leadership outside the two Houses of Parliament (**National Assembly and the Senate**), circumstances impose an inescapably heavy burden and unpremeditated social responsibility on former members of parliament, making the current monthly pension payment for the “Honourable” members awfully inadequate.

benchmarked, except India which offers a low guaranteed pension of KShs.20,000 per month, has a provision for living pension. Singapore allows a minimum lumpsum but after a required period of contribution.

- b. **The Parliamentary Pension Scheme** is a contributory scheme governed by the Parliamentary Pensions Act Cap. 196. Members contribute at the rate of **12.6%** of their pensionable emoluments (PE) while the Government contributes (notional) at the rate of **25.2%** which is twice the MPs' contributions rate. A review of benefits would therefore require that both the sitting and the retired MPs contribute at a higher rate as determined by the Actuary at **16% and 32.1% for MPs and Government respectively**. Retired MPs in particular are no longer earning a pensionable emolument as required under the Act and therefore cannot contribute. Any proposed recovery from the proposed pension would attract interest at 15% resulting in a large sum that may take many years to pay. The Government's notional contribution would also go up, at a time when the Government has many demands on limited budgetary resources.

The Parliamentary Pension Scheme provides for higher rates of contribution compared to a maximum of 10% for employee and 20% for employer in all other public service schemes as stated in Treasury Circular No. 18 of November 2010. The structure was meant to keep in check the contingency government liability.

- c. **Payment of Benefits is based on salary:** The Scheme contributions are paid into the Consolidated Fund (CFS) using a generous factor of $1/300^{\text{th}}$ of pensionable emoluments, compared to $1/480^{\text{th}}$ for the majority of public servants, and higher than other countries benchmarked. The Actuary's simulations indicate that, under the current provision for pensions after two terms, a retired MP would earn a monthly pension of **KShs.127, 800** with a lumpsum of **Kshs. 7.7 million**. This is based on a pensionable emolument of KShs.426, 000 (SRC final salary rising from a current level of 319,500). Consequently, the low pensions currently earned by some retired MPs are due to the low salaries that were paid before the year 2002 before the general review of salaries.

- d. **Are Retired MPs' pensions low?** Yes, in some cases the pension is low. MPs who retired in the early years before salaries were greatly enhanced are the only ones earning low pensions. The Actuary's Report indicates that only 52 out of 371 pensioners at the date of the Report were earning more than KShs.100,000. However, it would be inequitable to increase pensions only for one cadre of public servants when all pensioners who retired in the early years are earning low pensions – see (e) below.
- e. **Harmonisation and Equity:** This is a requirement under the Constitution of Kenya 2010. Two points can immediately be noted: -
- i. While it is quite true that the lower pensions need a review, the same argument is true for **all other retirees** including Judges, Permanent Secretaries and other senior public servants who can use the same arguments presented by the former Members, about leadership and their role in the community, to justify such an increase.
 - ii. If the minimum Parliamentary pensions are increased to KShs.100,000, there would be **pressure from those retired MPs earning higher pensions** that they also be considered for a similar increase, for equity! For example, a former MP currently earning KShs.101,415 would feel aggrieved that he had served for a long time (about three terms) and is now earning the **same** as those who had served for only **one or two terms**. The same would apply to current MPs once they retire.
- f. **Pension Increase Policy:** Pension increase is the right of every retired public servant including retired members of Parliament, and is captured in the Pensions Increase Act Cap. 190, which provides for a biennial increase (every 2 years) at a rate of 3%. The last increase was done w.e.f. 1 July 2015 and the next one will be implemented w.e.f. 1 July 2017.
- g. **SRC Proposed Pension Review:** It is notable that the Salaries and Remunerations Commission has recently undertaken an actuarial study to guide the review of all low pensions and the MPS will benefit from the same. This is a better approach which takes all retirees into consideration.

- h. Budgetary implications:** The requested amendment to the Act has a major immediate financial implication, and as discussed in the foregoing sections, a higher budgetary ripple effect should other retirees require equal treatment, including possible litigations. **The National Treasury has indicated on many occasions the need to address the Wage Bill**, which also includes the pension Bill. Further, there are many pressures on budgetary resources as the Country implements the Constitution of Kenya 2010 and related devolution activities.
- i. Should the law be applied retrospectively?** From the foregoing, it is clear that Cap.196 stipulates how pensions are calculated for retired MPs. For an amendment to the Act to apply to retired MPs, it would need to be applied retrospectively. Further, as noted above, the MPs would need to contribute for their higher pensions, while on retirement and without an income.

In view of the above, we recommend that there should be no amendment to the Act to allow for a minimum living pension of Kshs 100,000 to former MPS.



Dr. Kamau Thugge, CBS

Principal Secretary/ National Treasury