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PARLIAMENT OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-FIFTH SESSION

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

REPORT ON THE CONSIDERATION OF A PUBLIC PETITION
REGARDING ESTABLISHMENT OF A RETIREMENT PACKAGE
FOR THE AUDITOR GENERAL

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	08 JUL 2021
	DAY: THURSDAY
TABLED BY:	CHAIR, CIOC HON. JEREMIAH KIONI, MP
CLERK-AT THE-TABLE:	Mannah Wanyiku

Directorate of Audit, Appropriations & Other Select Committees

Clerk's Chambers

Parliament Buildings

NAIROBI

JULY, 2021

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CHAIRPERSON'S FOREWORD

The Committee was seized of a Public Petition presented to the House by the Member of Parliament for Dagoretti South, Hon. John Kiarie Waweru, MP, whose main prayer was the establishment of a retirement package for the Auditor General. The Petition was referred to the Constitutional Implementation Oversight Committee (CIOC) for processing pursuant to Standing Order 227. The Member of Parliament while acting on behalf of several citizens of the Republic of Kenya, on Thursday, 19th November, 2020, presented a public petition in the National Assembly pursuant to Article 119 of the Constitution.

The Petitioners prayed that the National Assembly through the Constitutional Implementation Oversight Committee does the following:

- i) Enquires into the matter of the unavailability of a retirement package for the Auditor General with a view of recommending a retirement benefit package befitting the stature and risk of the office holder;
- ii) Legislates the Retirement benefits of the Auditor General through amendment of the Retirement Benefits (Deputy President and Designated State Officers) Act; and
- iii) Makes any other recommendations it deems appropriate in the circumstances of the Petition.

In considering the Petition, the Committee held meetings with the Petitioner, Hon. John Kiarie, M.P, the former Auditor General, FCPA. Edward Ouko and the Director of Pensions in the National Treasury. The Committee received written submissions from the former Controller of Budget, Mrs. Agnes Odhiambo, the Chairperson of the Salaries and Remuneration Commission and the Cabinet Secretary of the National Treasury.

Regarding Prayer 1 for recommending a retirement benefit package befitting the stature and risk of the Office Holder, the Committee established that indeed at the end of the 8 year term of office of the Auditor General, the holder is entitled to a service gratuity at the rate of 31% of annual basic salary for every year served and loses the other employment benefits like medical cover and provision of armed security. The Committee noting that the financial benefits alone did not cater for the retired office holder adequately, recommended that the Salaries and Remuneration Commission should establish a retirement package for the Auditor General that would befit the stature of the office holder. The retirement benefits recommended include a monthly pension and lump sum payment at rates to be determined by the Salaries and Remuneration Commission, medical cover and armed security to provided upon request.

Regarding prayer 2 on legislation of the Retirement benefits of the Auditor General, the Committee agreed with the petitioner that it was important that a law be enacted prescribing the retirement package of the Auditor General so that the package is protected in legislation and secured from variation. The Committee considered the proposal to incorporate the benefits in the Retirement Benefits (Deputy President & Designated State Officers) Act but found it unsustainable. It therefore recommended that a stand-alone legislation be enacted to provide for the retirement benefits of the Auditor General.

The Committee also recommended that considering that the Auditor General held an Independent Office established under Chapter 15 of the Constitution, which also provided that the office of Controller of Budget was the other Independent Office, the same retirement package that would be proposed for the Auditor General, should be prescribed for the Controller of Budget and the Director of Public Prosecutions as the responsibilities performed by the office of Director of Public Prosecutions (ODPP) were similar to those of the Independent Office holders.

The Committee is thankful to the Petitioners, the presenter of the Petition, Hon. John Kiarie, M.P, the former Auditor General, FCPA. Edward Ouko, the Director of Pensions in the National Treasury, the former Controller of Budget, Mrs. Agnes Odhiambo, the Chairperson of the Salaries and Remuneration Commission and the Cabinet Secretary of the National Treasury for the valuable submissions they made to the Committee.

The Committee also gives special appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Petition.

On behalf of the Constitutional Implementation Oversight Committee (CIOC) and pursuant to provisions of Standing Order 227, it is my pleasant duty to table the Report of the Committee on its consideration of the Petition presented by Hon. John Kiarie, M.P. on behalf of several citizens of the Republic of Kenya, regarding establishment of a Retirement package for the Auditor General.



Hon. Jeremiah Kioni, M.P.

**CHAIRMAN, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**

. CHAPTER 1

1.0 PREFACE

1.1. Establishment of the Committee

1. The Constitutional Implementation Oversight Committee (CIOC) is a Select Committee of the National Assembly established under section 4 of the Sixth Schedule to the Constitution of Kenya, 2010.

2. The Committee is responsible for overseeing the implementation of the Constitution and is mandated with among other things to-
 - i. Receive regular reports from the Commission on the Implementation of the Constitution on the implementation of the Constitution of Kenya, 2010 including reports concerning: -
 - (a) the preparation of the legislation required by the Constitution and any challenges in that regard;
 - (b) the process of establishing the new commissions;
 - (c) The process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff.
 - (d) The devolution of powers and functions to the counties under the legislation contemplated in section 15 of the sixth Schedule;
 - (e) Any impediments to the process of implementing the Constitution.

 - ii. Coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and

 - iii. Take appropriate action on the reports including addressing any problems in the implementation of the Constitution.

1.2. Committee Membership

3. The Constitutional Implementation Oversight Committee consists of the following Members:

- 1) The Hon. Jeremiah Kioni, M.P. - **Chairman**
- 2) The Hon. Peter Kaluma, M.P. - **Vice- Chairman**
- 3) The Hon. Yusuf Hassan Abdi, M.P.
- 4) The Hon. T.J Kajwang', M.P.
- 5) The Hon. (Dr.) Christine Ombaka, M.P.
- 6) The Hon. Raphael B. S. Wanjala, M.P.
- 7) The Hon. Peris Tobiko, M.P.
- 8) The Hon. Abdi Shurie, M.P.
- 9) The Hon. Simon Ng'ang'a King'ara, M.P.
- 10) The Hon. Anthony Oluoch, M.P.
- 11) The Hon. Benard Okoth, M.P.
- 12) The Hon. Purity Ngirici, M.P.
- 13) The Hon. (Dr.) Naomi Shaban, M.P.
- 14) The Hon. Charles Gimose, M.P.
- 15) The Hon. Daniel Rono, M.P.
- 16) The Hon. Halima Muccheke, M.P.
- 17) The Hon. Fabian K. Muli, M.P.
- 18) The Hon. Japheth Mutai, M.P.
- 19) The Hon. (Col.) Geoffrey Kingangi, M.P.
- 20) The Hon. Joash Nyamoko, M.P.
- 21) The Hon. Moses Kirima, M.P.
- 22) The Hon. Didmus Barasa, M.P.
- 23) The Hon. Catherine Wambilianga, M.P.

3.1. Committee Secretariat

4. The Committee is facilitated by the following secretariat:

- 1) Mr. Edward Libendi - Senior Legal Counsel/Committee Clerk
- 2) Ms. Mary Luka Lemerelle - Clerk Assistant II/Committee Clerk
- 3) Ms. Lynette Otieno - Legal Counsel I
- 4) Mr. Vitus Oketch - Research Officer
- 5) Ms. Deborah Mupusi - Media Relations Officer
- 6) Mr. Boniface Mushila - Sergeant At Arms

CHAPTER 2

2.0 INTRODUCTION AND BACKGROUND

2.1. The Public Petition

5. The Public Petition by several citizens of the Republic of Kenya seeking establishment of a retirement package for the Auditor General was presented to the House by the Member of Parliament for Dagoretti South, Hon. John Kiarie Waweru, MP, on 19th November, 2020.

6. The Petitioners wished to draw the attention of the House to the following:
 - (i) **THAT**, the Office of the auditor General is an Independent Office established under Article 229 of the Constitution and Section 4 of the Public Audit Act;

 - (ii) **THAT**, the Office of Auditor General is mandated to audit accounts of National and County Governments, courts, Commissions and Independent Offices, Parliament, Political Parties and accounts of any entity as required by law, and submit reports to Parliament and also to give assurance on the effectiveness of internal controls, risk management and overall governance at national and county government;

 - (iii) **THAT** the office can only serve as a tool in the checks and balances of public accountability and promote such accountability when it discharges the mandate independently and in a manner that inspires trust;

 - (iv) **THAT** the holders of the Office must be given constitutional safeguards beyond the fixed term of service of 8 years so that they are insulated from exigencies that may compromise their independence and integrity during their term in office, guarantee personal and financial security of outgoing Auditors General, protect them from potential retaliatory actions and safeguard the dignity of the Office;

- (v) **THAT**, legislation of post service benefits of the holder of the Office of the Auditor General is of utmost importance and necessity to enable and ensure the Auditor General's independence;
 - (vi) **THAT**, there is need for parity in treatment as per the structure of Government and the equivalent levels thereto by inclusion of the Auditor General's post service benefits in the Retirement Benefits (Deputy President and Designated State Officers) Act;
 - (vii) **THAT**, efforts to have this matter addressed by the relevant authorities have been futile;
 - (viii) **THAT**, the matter in respect of which this Petition is made, is not pending before any Court of Law or Constitutional body.
7. **THEREFORE**, the petitioners prayed that the National Assembly through the Departmental Committee on Finance and National Planning:
- (i) Enquires into the matter with a view of recommending a retirement benefit package befitting the stature and risk of the Office holder;
 - (ii) Legislates the Retirement benefits of the Auditor General through amendment of the Retirement Benefits (Deputy President and Designated State Officers) Act; and Makes any other recommendations it deems appropriate in the circumstances of the Petition.
8. The Public Petition was not referred to the Departmental Committee on Finance and National Planning as prayed but to the Constitutional Implementation Oversight Committee since it touched on an Independent office provided for in Chapter 15 of the Constitution and that it was likely to affect a broader group of constitutional organs.
9. The Committee embarked on processing of the Public Petition in accordance with Standing Order 227 by inviting and listening to the presenter of the petition and other parties affected and those likely to be affected by the petition.

CHAPTER 3

3.0 SUBMISSIONS

3.1. Submissions by the Petitioners

10. The Committee on 10th March, 2021 held a meeting with the Hon. John Kiarie, M.P for Dagoretti South who presented the petition to the House on behalf of several citizens of the Republic of Kenya. The purpose of the meeting was for the Member to formally present the petition to the Committee and explain the background of the petition and the reasons for the prayers sought.

11. During the meeting Hon. Kiarie, M.P. informed the Committee the following:

- (i) That he had been approached by several members of the public who held the view that the country had not given the office of the Auditor General the protection and safeguards it needed to perform its duties effectively;
- (ii) That the members of the public had presented to him a petition requesting for establishment of a retirement package for the Auditor General which he interrogated and presented to the House on their behalf;
- (iii) That before presenting the petition in the House, he had held a meeting with Mr. Edward Ouko, the former Auditor General to understand the veracity of the claims in the petition and what treatment or benefits the government had provided to him at the end of his tenure;
- (iv) That Mr. Ouko had told him that before retirement, he had discussed with several government officers responsible for establishment of a retirement package for public officers to consider establishing one for the Independent office holders but no verifiable action had been undertaken;
- (v) That upon retirement, his security was withdrawn and medical cover terminated;
- (vi) He reiterated the contents of the Petition that the Office of the Auditor General is an Independent Office established under Article 229 of the Constitution of Kenya;

- (vii) That the office of Auditor General can only serve as a tool in checks and balances of public accountability when it discharges the mandate independently and in a manner that inspires trust and therefore the holders of the Office must be given constitutional safeguards beyond the fixed term of service of 8 years so that they are insulated from exigencies that may compromise their independence and integrity during their term in office, including safeguarding their personal and financial security.;
- (viii) That due to the nature of the office, the holder makes decisions that are not favourable to many people and therefore if security of the holder is not guaranteed after the tenure ends, this is likely to compromise performance of work by the office holder during their tenure;
- (ix) That in some jurisdictions, the holder of the Office of Auditor General sits in Parliament as an Ex Officio Member since he is an officer of Parliament and is required to give a comprehensive brief to Parliament on the utilization of the government agencies' budgets before processing of the annual budgets.
- (x) That in some jurisdictions, upon retirement, the Auditor General is provided with security officers and a medical cover and in some the holder is nominated to the Legislature due to the wealth of experience and knowledge they would have gained in the course of their duties.
- (xi) When asked why the Petitioners had proposed amendment of the Retirement Benefits (Deputy President and Designated State Officers) Act, he explained that the Petitioners had thought that the Retirement Benefits (Deputy President and Designated State Officers) Act is the proper one to amend since it prescribed the retirement package for specific public officers; and
- (xii) When asked which other stakeholders he thought the Committee should engage to address the prayers in the petition, he mentioned the Salaries and Remuneration Commission since it is the body responsible for setting the remuneration and benefits of state officers and the Cabinet Secretary of the National Treasury.

3.2. Submissions by FCPA Edward Ouko, Former Auditor General

12. The Committee held a meeting with the former Auditor General, FCPA. Edward Ouko on 2nd December, 2020 since as the immediate former Auditor General and founder of the Independent Office, he was a likely beneficiary of the petition. The purpose of the meeting was to hear his opinion on the petition and any proposals that he would suggest to address the prayers therein.

13. During the meeting, the former Auditor General informed the Committee as follows:

- (i) That the Auditor General's office is established under Article 229 of the Constitution as an Independent Office alongside the Office of Controller of Budget which is established under Article 228 of the Constitution;
- (ii) That the United Nations (UN) General Assembly adopted resolution A/66/209 on the need to uphold the independence Supreme Audit Institutions (SAI) on 22nd December, 2011 of which Kenya is a signatory;
- (iii) That the above United Nations resolution recognizes the important role of SAIs in promoting the efficiency, accountability, effectiveness and transparency of public administration, which is conducive to the achievement of national development objectives and priorities;
- (iv) That the UN resolution further recognizes that SAIs can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence;
- (v) That the office of Auditor General plays a crucial role in protecting public funds and that over 65% of investigations that are undertaken by the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) emanate from reports of the Auditor General;
- (vi) That if the office of the Auditor General is not protected from outside influence, including by giving the holder financial security and security of his person during and after their tenure, this would compromise the integrity of the office during the tenure of the office holder.

- (vii) That the Auditor General in some advanced jurisdictions is an ex-officio Member of Parliament given that he is an office of Parliament.
- (viii) That speaking for himself, he left a well-paying job in an international organization to take up the job of the first Auditor General under the Constitution of Kenya, 2010 which he secured after a rigorous interview process and his service and dedication in the role was guided by the zeal to meet the aspirations of the people drawn from the Constitution of Kenya, 2010.
- (ix) That being the first Auditor General under the 2010 Constitution, he had a lot of work of establishing the office to be able to serve the expanded government that now involved 47 county governments and therefore during his eight year tenure, he sacrificed a lot and did not engage in any other economic activities in order to avoid conflict of interest and discharge his duties effectively;
- (x) That when he left office at the end of his 8 year tenure, his security and medical cover were withdrawn;
- (xi) That if at the beginning of his tenure as Auditor General, he had known that he would not have any financial security, security of his person and family or medical cover at the end of his tenure, this may have affected and compromised the independence of his office;
- (xii) That security for the holder of the office of Auditor General is critical mainly after the eight years of service since those who would wish to harm someone can do so when one leaves office; and
- (xiii) He therefore urged that Parliament enacts a law to protect the office of Auditor General and so that the holder performs his functions without fear or influence from anybody.

3.3. Submissions by Mrs. Agnes Odhiambo, Former Controller of Budget

14. The Committee received and considered a memorandum from the former Controller of Budget, Mrs. Agnes Odhiambo on 24th February, 2021. The Committee invited the former Controller of Budget because as a former holder of an Independent Office, she was likely to be affected by any decision the Committee would take on the petition.

15. Below is a summary of the memorandum from the former Controller of Budget:

- (i) That the Constitution of Kenya, 2010 established among others, oversight institutions to protect the sovereignty of the people of Kenya, secure observance by all State Organs of democratic values and principles and promote constitutionalism;
- (ii) That among the oversight institutions established are two independent offices namely, the Auditor-General and the Controller of Budget;
- (iii) That the Office of the Controller of Budget was established under Article 228 of the Constitution of Kenya to oversee implementation of the budgets of the national and county governments by authorizing withdrawals from the public funds, if satisfied that the withdrawals are authorized by law;
- (iv) That in addition to the basic salary and other remunerative allowances, the Controller of Budget is entitled to a government vehicle with a driver, a bodyguard and armed security at his/her residence while in office. At the end of the eight (8) year non-renewable tenure, the Controller of Budget is only entitled to gratuity at 31% of the basic salary;
- (v) That during the tenure of the Controller of Budget, he/she may have made decisions in his/her official capacity that did not go auger well with some people, which may result to threats on their personal security and that of their immediate family upon disengagement from active public service;
- (vi) That due to the important roles the Office performs as contained in the Constitution and the Controller of Budget Act, 2016, the position is a relatively senior position in the country and it is imperative that the holders of the position receive adequate pension to cushion them against the demands of life at the end of their tenure;
- (vii) That provision of physical security will ensure that the holders of the office discharge the mandate of the office during their tenure without fear or favour;

- (viii) That since the independence of the Office of Controller of Budget can be curtailed if the security of the holders is not guaranteed at the end of their tenure, it is imperative that any proposed retirement package be anchored in law to guard against interference.

3.4. Meeting with the Director of Pensions, National Treasury

16. The Committee met with the Director of Pensions, National Treasury, Mr. Michael Kagika on 3rd March, 2021. As the office of Treasury responsible for pensions, gratuities and other retirement benefits of civil servants, the Committee wanted to hear from him his views about the proposal in the petition to amend the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, the global practice on treatment of holders of independent offices like that of Auditor General and the available retirement package for the office, if any.

17. The Director of Pensions, National Treasury briefed the Committee as follows:

- (i) That there was a multi-agency technical committee comprising of the Director General in Charge of Budget, National Treasury and representatives from the Retirement Benefits Authority, Judiciary, Teachers Service Commission, and the National social Security Fund dealing with a review of the national retirement benefit policy. That once developed, the policy would help to guide both the public and private sector with regards to handling of retirement matters and shall also deal with matters related to retirement benefits of Commissions and Independent Offices. That the Technical Committee is set to complete its processes by May, 2021. He promised to submit the petition to the Technical Committee to consider alongside any other documents they may receive.
- (ii) That the principle behind issuance of pensions was to safeguard the dignity of the offices that the retired persons held. Pension was given to ensure that those persons who entered retirement would be able to maintain a lifestyle that was not divergent from that which they had whilst in office. He stated that holders of Independent Offices in the Constitution were senior officers and therefore their dignity and that of their office ought to be maintained pre and post retirement.
- (iii) As regards to amendment of the Retired Benefits (Deputy President and Designated State Officers) Act, 2015, he stated that the philosophy behind the law

ought to be interrogated as it was meant to provide retirement benefits for the leadership of the three arms of Government, and therefore an amendment to this Act to incorporate other persons would be inappropriate as it would open the law to many other actors which was not the intention of the Act. In this regard he concluded that it would be better for the Committee to propose amendment to other laws such as the Pensions Act or propose new legislation to deal with the issue of constitutional Independent Offices.

3.5. Submissions from the Chairperson, Salaries and Remuneration Commission

18. The Committee received and considered two memoranda (one dated 16th February, 2021 and another 10th March, 2021) from the Commission secretary of the Salaries and Remuneration Commission (SRC) responding on behalf of the Commission.

19. The memoranda contained the following:

- (i) That the Office of the Auditor General for which the petition seeks the intervention of the National Assembly is a State Office and therefore setting and review of the remuneration and benefits for the position is a responsibility reserved for the Salaries and Remuneration Commission (SRC) by Article 230 (4)(a) of the Constitution of Kenya;
- (ii) That the Constitution mandates SRC to regularly review remuneration and benefits for State Officers and that the SRC had set the retirement benefits for all State Officers including position of the Auditor General;
- (iii) That the Commission had vide its Gazette Notice of 7th July, 2017 on Remuneration and Benefits for State Officers guided on Retirement benefits for all State Officers in which it had provided that a State Officer serving or appointed to a fixed term of office shall be paid a service gratuity at the rate of 31% of the basic remuneration package for the term served and that the Auditor General, Controller of Budget and the Director of Public Prosecutions are State Officers covered under this provision;
- (iv) That the Commission had not been presented with a proposal on the matter for its review and setting as appropriate;

- (v) That if and when a request on the matter is presented to the SRC, the Commission will consider it in line with the principles set out in Article 230(5) of the Constitution, the Salaries and Remuneration Commission Act, 2011 and the factors that inform determination of remuneration and benefits;
 - (vi) That though respecting the oversight mandate of the National Assembly, as the body mandated with determination of remuneration and benefits of state officers, the petition ought to be referred to the Commission for consideration.
20. The Committee in considering the memorandum from SRC, observed that though the Commission has a mandate of determining the remuneration and benefits of State Officers, it cannot purport to assume the role of other constitutional organs especially Parliament since the Constitution in Article 119 gives Kenyans the right to petition Parliament on any matter within its authority.

3.6 Submissions from the Cabinet Secretary National Treasury and Planning

21. The Committee received and at its sitting held on 13th April, 2021, considered a memorandum from the Cabinet Secretary, National Treasury and Planning, Amb. Ukur Yatani, EGH.
22. The Committee had requested the Cabinet Secretary to respond to the issues below:
- a) Whether the Cabinet Secretary is aware of any retirement benefits that have been developed for the Independent Offices of the Auditor General and Controller of Budget and if so, whether the benefits of the immediate former holders of the two Independent offices have been settled;
 - b) The body or persons responsible for settling and or paying the retirement benefits due to State Officers upon leaving office;
 - c) The opinion of the Cabinet Secretary on the proposal in the Petition to amend the Retirement Benefits (Deputy President and Designated State Officers) Act to factor in the retirement benefits of the Auditor General and the Controller of Budget.

23. Below is a summary of the response from the Cabinet Secretary as contained in the memorandum:

- (i) That according to Article 229(3) and 230(4) of the Constitution of Kenya, the Auditor General and Controller of Budget shall hold office for a term of eight (8) years and shall not be eligible for reappointment. That the Salaries & Remuneration Commission (SRC) in exercise of the powers conferred by Article 230(4) had set the remuneration and benefits of State Officers in the Constitutional Commissions and Independent Offices through Gazette Notice No. 2887 dated 1st March, 2013. In the Gazette notice, the SRC provided that a State Officer serving on a fixed term shall serve on contract and will be paid a service gratuity at the end of the term at the rate of 31% of annual basic salary for every year served.
- (ii) That the body responsible for setting and paying the retirement benefits due to State Officers is the National Treasury;
- (iii) That the Retirement Benefits (Deputy President and Designated State Officers Act (DPDSO Act) was enacted to provide for the retirement benefits of the heads of the three arms of Government; the Legislature, Judiciary and the Executive. That in case the category of eligible persons under the Act was to be expanded, it would lead to huge budgetary commitments that may eventually become unsustainable;
- (iv) That the National Treasury has retained the services of a consultant to develop a National Retirement Benefits Policy whose main objective is to provide a policy framework that guides the coordination, good governance, development and growth of the retirement benefits sector to ensure security in old age for all workers. That the consultancy work would be carried out in 61 days and would involve stakeholder consultations as appropriate.

CHAPTER 4

4.0 COMMITTEE FINDINGS AND RECOMMENDATIONS

4.1. Committee Findings

24. The Committee made the following observations and findings:

- (i) That the Office of the Auditor General for which the petition seeks the intervention of the National Assembly is a State Office and therefore setting and review of the remuneration and benefits for the position is a responsibility reserved for the Salaries and Remuneration Commission (SRC) by Article 230 (4)(a) of the Constitution of Kenya;
- (ii) That the Commission had indeed vide its Gazette Notice of 7th July, 2017 (Gazette Notice No. 6516) on Remuneration and Benefits for State Officers determined the Retirement benefits for the Auditor General. The notice had provided that a State Officer serving or appointed to a fixed term of office shall be paid a service gratuity at the rate of 31% of the basic remuneration package for the term served;
- (iii) That the Committee agrees with the petitioners that the office of the Auditor General is a critical office to the economic development and prosperity of the country by virtue of the role of the Auditor General in watching over use of public funds and ensuring the funds are used for the purposes for which they have been appropriated.
- (iv) That the Committee agrees with the former Auditor General that if the office of the Auditor General is not protected from outside influence, including by giving the holder financial security and security of his person during and after their tenure, this would compromise the integrity of the office during the tenure of the office holder.
- (v) That the Committee therefore finds that the position of Independent Office holders are relatively senior positions in the country and it is imperative that the holders of the positions receive adequate retirement benefits to cushion them against the demands of life at the end of their tenure;

- (vi) That the service gratuity provided to the Independent Office holder at 31% of the basic salary for each year served was not adequate to cater for the needs of the Independent office holders;
- (vii) That with the propensity to illness of people as they age, huge medical bills are likely to be incurred, thus there is need for holders of Independent offices under the Constitution to be provided with medical cover during and after their tenure in office.
- (viii) That the Committee agrees with the former Controller of Budget that the holders of Independent Offices perform critical roles as mandated by chapter 15 of the Constitution of Kenya and that during their tenure they may have made decisions in their official capacity that offended some people, which may result to threats on their personal security and that of their immediate family upon disengagement from active public service and that therefore, there is need for the retired office holders to be provided with armed security according upon retirement.
- (ix) That though the Petition had sought for establishment of a retirement package for the Auditor General, the Committee finds that the job performed by the Controller of Budget and the Director of Public Prosecutions is also very important and that the three offices should fall in the same category and therefore be safeguarded adequately.
- (x) That if the benefits are provided and not anchored in the law, they could be interfered with by the implementers thus the need for a law to be enacted prescribing the retirement benefits of the Auditor General and other Independent Office holders.
- (xi) Whilst the petitioners requested for the retirement package for the holder of office of Auditor General to be incorporated under the Retirement Benefits (Deputy President and Designated State Officers Act (DPDSO Act), the Committee agrees with the Cabinet Secretary, National Treasury and Planning that the DPDSO Act was enacted to provide for the retirement benefits of the heads of the three arms of Government; the Legislature, Judiciary and the Executive and that if the category of eligible persons under the Act was to be expanded, it would open up the Act to

unintended office holders hence lead to huge budgetary commitments that may eventually become unsustainable;

(xii) That for instance, under the DPDSO Act, the lowest benefits prescribed which are due to the Deputy Chief Justice, are as enumerated below:

- a) a monthly pension equal to eighty per cent of the monthly salary of the entitled person's last monthly salary while in office;
- b) a lump sum payment on retirement, calculated as a sum equal to one year's salary paid for each term served in office;
- c) one saloon vehicle of an engine capacity not exceeding 2000 cc which shall be replaceable once every four years;
- d) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years;
- e) a fuel allowance equal to fifteen per cent of current monthly salary of the office holder;
- f) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse; and
- g) the following additional benefits set out in the Schedule:
 - i) Two drivers
 - ii) one personal assistant;
 - iii) one secretary;
 - iv) one house keeper;
 - v) one senior support staff;
 - vi) one gardener;
 - vii) one cleaner;
 - viii) two armed security guards who shall be provided on request by the entitled person;
 - ix) diplomatic passports for the entitled person and his spouse;

- x) maintenance expenses for the vehicles provided pursuant to this Act;
 - xi) access to the V.I.P. lounge at all airports within Kenya.
 - xii) office and office equipment
- (xiii) That the Committee finds that the retirement benefits provided for under the Retirement Benefits (Deputy President and Designated State Officers) (DPDSO), Act 2015 are excessive and unsustainable in the long run. The Committee finds that the said Act needs to be reviewed to ensure equity, sustainability and harmony of retirement benefits within the public service.
- (xiv) The Committee therefore found that the best solution would be to anchor the retirement benefits for holders of independent offices under the Constitution in a stand-alone legislation.

4.2. RECOMMENDATIONS

25. Pursuant to Standing Order 227, the Committee recommended as follows:

- (i) Regarding Prayer 1 for recommending a retirement benefit package befitting the stature and risk of the Office Holder, the Committee recommended that the Salaries and Remuneration Commission should establish a retirement package for the Auditor General that would benefit the stature of the office holder and secure their position upon retirement;
- (ii) The Committee recommends to the Salaries and Remuneration Commission (SRC) to include the following:
 - a) A monthly pension payment at a rate to be determined by the Salaries and Remuneration Commission;
 - b) a lump sum payment on retirement, calculated at a rate to be determined by the Salaries and Remuneration Commission;

- c) full medical cover, providing for local and overseas treatment for the retired office holder and their spouse;
 - d) one armed security who shall be provided on request by the retired office holder;
- (iii) Regarding prayer 2 on legislation of the Retirement benefits of the Auditor General, the Committee recommended that a stand-alone legislation be enacted to provide for the retirement benefits of the Auditor General, the Controller of Budget and the Director of Public Prosecutions considering the important nature of the functions performed by the said offices;
- (iv) The Committee also recommends that Parliament reviews the Retirement Benefits (Deputy President and Designated State Officers) (DPDSO), Act 2015 to rationalize and harmonize the retirement benefits under the Act with those granted to other offices in the public service and to ensure they are economically sustainable; and
- (v) The Committee recommends that Parliament also reviews the Parliamentary Pensions Act to provide for medical cover for state officers who qualify under the Act.

SIGNED.......... DATE..... 7/7/2021

HON. JEREMIAH KIONI, MP
CHAIRMAN, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

Annexure 1

The Public Petition presented by Hon. John Kiarie, M.P. on behalf of several citizens of Kenya regarding establishment of retirement benefits for the Auditor General.



Approved,
SNA
17/11/2020

Hon. Speaker,
You may approve.
DJK
17/11/20

REPUBLIC OF KENYA
TWELFTH PARLIAMENT (FOURTH SESSION)

THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No. 39 of 2020)

REGARDING ESTABLISHMENT OF A RETIREMENT PACKAGE FOR THE
AUDITOR GENERAL

I, the **UNDERSIGNED**, on behalf of several Citizens of the Republic of Kenya;

DRAW the attention of the House to the following: -

1. **THAT**, the Office of the Auditor General is an independent office established under Article 229 of the Constitution and Section 4 of the Public Audit Act;
2. **THAT**, the Office of the Auditor General is mandated to audit accounts of National and County governments, courts, Commissions and independent offices, Parliament, Political Parties and accounts of any entity as required by law, and submit reports to Parliament and also to give assurance on the effectiveness of internal controls, risk management and overall governance at national and county government;
3. **THAT**, the Office can only serve as a tool in the checks and balances of public accountability and promote such accountability when it discharges the mandate independently and in a manner that inspires trust;
4. **THAT**, the holders of the Office must be given constitutional safeguards beyond the fixed term of service of 8 years so that they are insulated from exigencies that may compromise their independence and integrity during their term in office, guarantee personal and financial security of outgoing Auditors General, protect them from potential retaliatory actions and safeguard the dignity of the Office;
5. **THAT**, legislation of post service benefits of the holder of the Office of the Auditor General is of utmost importance and necessity to enable and ensure the Auditor General's independence;

PUBLIC PETITION

(No.of 2020)

**REGARDING ESTABLISHMENT OF RETIREMENT PACKAGE FOR THE AUDITOR
GENERAL**

6. **THAT**, there is need for parity in treatment as per the structure of Government and the equivalent levels thereto by inclusion of the Auditor General's post service benefits in the Retirement Benefits (Deputy President and Designated State Officers) Act;
7. **THAT**, efforts to have this matter addressed by the relevant authorities have been futile;
8. **AND THAT**, the matter in respect of which this petition is made is not pending before any Court of Law or Constitutional body.

NOW THEREFORE, your humble petitioners pray that the National Assembly through the Departmental Committee on Finance and National Planning: -

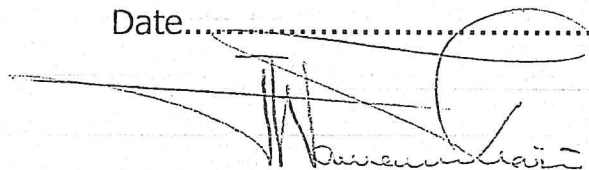
- (i) Enquires into the matter with a view of recommending a retirement benefit package befitting the stature and risk of the Office holder;
- (ii) Legislates the Retirement benefits of the Auditor General through amendment of the Retirement Benefits (Deputy President and Designated State Officers) Act; and
- (iii) Makes any other recommendations it deems appropriate in the circumstances of the Petition.

And your **PETITIONERS** will ever pray.

PRESENTED BY

HON. JOHN KIARIE WAWERU, MP
MEMBER FOR DAGORETTI SOUTH CONSTITUENCY

Date.....



9/11/20

PUBLIC PETITION
(No.of 2020)
REGARDING ESTABLISHMENT OF RETIREMENT PACKAGE FOR THE AUDITOR
GENERAL

We, the undersigned, hereby append our signatures in support of this Petition:

Name	I/D No.	Telephone No.	Signature
Kinyani Ndireru	23234452	0724169013	
PAUL CHAU	22535929	0721900190	
Simon Muthuri	23951254	0722503785	
F. Kamani	25087702	072180445	
Mohammed Chege	82850685	0707887887	
JAMES KIMADU	21994242	0722777160	
JAMES WABUHU	71458511	0725142004	
BRIAN MATHARA	29946853	0715677134	
Joleen Wangechi	34126177	0702332542	
George Wangari	225778	0722838797	
Kagira Cichwa	23128564	0721710602	
John M. Mageso	21962258	0721159122	
Fabian Muriuki	22831471	0720460484	
MARTIN KIMBOI	24576056	0720763863	
SOOLA KANGARI	25902345	0728855263	
ANNE W. NGECHI	26091042	0725822008	
WINNIE MUTHOKI	30724591	0717736423	
Anthony Kang'ethe	22961331	0723173663	



Annexure 2

Minutes of the Committee sitting on consideration and adoption of the report on the Petition.

MINUTES OF THE TENTH SITTING (FIFTH SESSION) OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY, 6TH JULY, 2021 IN THE 4TH FLOOR BOARDROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12.00P.M.

PRESENT

1. The Hon. Peter Kaluma, M.P. - Vice- Chairman
2. The Hon. Yusuf Abdi, M.P.
3. The Hon. T.J Kajwang', M.P.
4. The Hon. (Dr.) Christine Ombaka, M.P.
5. The Hon. Raphael B. S. Wanjala, M.P.
6. The Hon. Charles Gimose, M.P.
7. The Hon. Abdi Shurie, M.P.
8. The Hon. Peris Tobiko, M.P.
9. The Hon. Simon Ng'ang'a King'ara, M.P.
10. The Hon. Anthony Oluoch, M.P.
11. The Hon. (Col.) Geoffrey Kingangi, M.P.
12. The Hon. Moses Kirima, M.P

APOLOGIES

1. The Hon. Jeremiah Kioni, M.P. - Chairman
2. The Hon. (Dr.) Naomi Shaban, M.P.
3. The Hon. Halima Mucheke, M.P.
4. The Hon. Fabian K. Muli, M.P.
5. The Hon. Japheth Mutai, M.P.
6. The Hon. Daniel Rono, M.P.
7. The Hon. Benard Okoth, M.P.
8. The Hon. Purity Ngirici, M.P
9. The Hon. Joash Nyamoko, M.P
10. The Hon. Didmus Barasa, M.P
11. The Hon. Catherine Wambilianga, M.P.

SECRETARIAT

1. Mr. Edward Libendi - Senior Legal Counsel/CIOC Clerk
2. Ms. Mary Lemerelle - Clerk Assistant II
3. Mr. Vitus Owino - Research Officer
4. Ms. Lynette Otieno - Legal Counsel 1
5. Mr. Michael Chege - Senior ICT Officer

MIN.NO.CIOC/2021/034

PRELIMINARIES

The Vice Chairman called the meeting to order at fifteen minutes past twelve O'clock (12.15pm) and commenced it with a prayer. He welcomed the Members to the meeting and informed them that the purpose of the meeting was to adopt the report of the public petition by Hon. John Kiarie, M.P. of Dagoretti South constituency regarding establishment of a retirement package for the Auditor General. He stated that Committee had considered the Petition and deliberated on it exhaustively and that the Committee had little time left to table the report since the 60 days stipulated in the National Assembly's Standing Order (227) were almost over. He requested Members to make comments and give views on the report's findings and recommendations.

He also informed the meeting that he wanted to give insights on the Independent Electoral and Boundaries Commission legislative proposal which the Committee had considered at its retreat in Mombasa. He informed the meeting that he had developed the amendments to strengthen the electoral process and ensure that political parties which participate in the general elections are satisfied with the results and that he wished the Committee to take over the Bill and sponsor it.

MIN.NO.CIOC/2021/035

**ADOPTION OF THE REPORT ON THE PETITION
REGARDING THE RETIREMENT PACKAGE OF THE
AUDITOR GENERAL**

The Committee secretariat took Members through the Report on the Petition and Members made the following comments on the report:

- (i). That the Retirement Benefits (Deputy President and Designated State Officers) Act of 2015 which the petitioners had requested to be amended to incorporate the retirement package for the Auditor General needed to be reviewed to rationalize the benefits that are excessive and unsustainable.
- (ii). That the Committee should prepare a draft legislation to prescribe retirement benefits for the Auditor General and attach it to the Committee report for operationalization of the benefits.
- (iii). That the recommendations should be amended to give the Salaries and Remuneration Commission timelines to implement the Committee recommendations.

Members thereafter adopted the Report of the Committee on the petition regarding the retirement package of the Auditor General after it had been proposed by the Hon. (Dr.) Christine Ombaka, M.P and seconded by the Hon. Yusuf Abdi.

The Vice Chairman explained the following regarding the legislative proposal:

- i) That the main objective of the legislative proposal was to review the composition of Independent Electoral and Boundaries Commission in order to do away with the selection panel that was charged with recruiting the Commissioners and instead have the Commissioners appointed by the political parties;
- ii) That the process where the Selection Panel recruits the Commissioners was likely to be influenced by the Executive as the panel members are appointed by the President;
- iii) That it is not necessarily true that if political parties nominate Members of the Commission then they would be partisan. This is because if the commissioners are nominated by the political parties, they was less likelihood of collusion among the commissioners from the opposing party and hence the election results would be credible;
- iv) That the few times when elections were held in Kenya and the political parties agreed with the results was in 2002 and the 2005 Constitutional referendum which had commissioners who had been appointed by the political parties under the IPPG.
- v) That it is the trend in progressive democracies like the United States of America, United Kingdom and Australia to appoint electoral commissioners from the political parties that participated in the elections and in those countries, the electoral process has always been credible;
- vi) That in South Africa which has a selection panel to recruit the electoral commissioners, the panel consisted of eminent persons who were public officers who can be held responsible for their actions unlike in Kenya where the panel is *ad hoc* and therefore it cannot be held accountable after the recruitment exercise.

Members' interventions

Members present supported the initiative stating that there was need for establishment of institutions that are strong and capable of discharging their duties independently and without interference from the state and political actors so that the citizenry and the political players can have confidence in the electoral process.

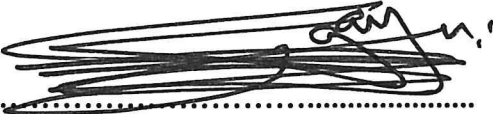
They said that elections are a political process and the best way to manage the process is to involve the political players themselves.

The Members therefore supported the idea of the Committee taking the legislative proposal and introducing it as a Committee Bill.

MIN.NO.CIOC/2021/37 ANY OTHER BUSINESS AND ADJOURNMENT

The meeting was informed that the Parliamentary Pensions (Amendment) Bill had been scheduled for consideration at Committee of the Whole House in Parliament that afternoon and that Members should be in the Chamber to discuss it.

There being no other business, the meeting was adjourned at ten minutes to one O'clock (12.50 pm).

SIGN.....

THE HON. JEREMIAH KIONI, M.P.

DATE
7/7/2021
CHAIRPERSON

Annexure 3

Signed list of Members who attended the sitting that considered and adopted the report on the Petition.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FOURTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ADOPTION LIST


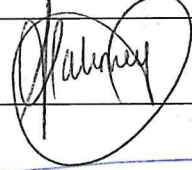


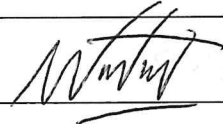






Date: 6/7/2021

Venue: 4TH FLOOR CONTINENTAL HOUSE

Time in: 12:15 am

Time Out: 12:50 pm

	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Peter Kaluma, M.P. (Vice-Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P.	
4.	Hon. Yusuf Abdi, M.P.	
5.	Hon. (Dr.) Christine Ombaka, M.P.	
6.	Hon. T.J Kajwang, M.P.	
7.	Hon. Charles Gimose, M.P.	
8.	Hon. Raphael B. S. Wanjala, M.P.	
9.	Hon. Abdi Shurie, M.P.	
10.	Hon. Peris Tobiko, OGW, M.P.	
11.	Hon. Simon Nganga Kingara, M.P.	
12.	Hon. Anthony Oluoch, M.P.	

	HON. MEMBER	SIGNATURE
13.	Hon. Japheth Mutai, M.P.	
14.	Hon. Halima Mucheke, M.P.	
15.	Hon. Daniel Rono, M.P.	
16.	Hon. Fabian K. Muli, M.P.	
17.	Hon. (Col.) Geoffrey Kingangi, M.P.	
18.	Hon. Benard Okoth, M.P.	
19.	Hon. Joash Nyamoko, M.P.	
20.	Hon. Moses Kirima, M.P.	
21.	Hon. Catherine Wambilianga, M.P.	
22.	Hon. Didmus Barasa, M.P.	
23.	Hon. Purity Ngirici, M.P.	

Name:.....

Signature:.....

Committee Clerk

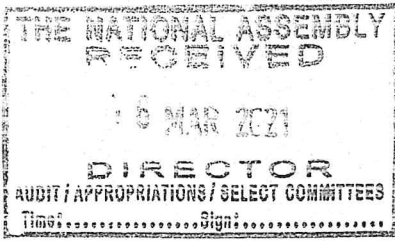
Name:.....

Signature:.....

Director, Committees

Annexure 4

Written submissions received from stakeholders.



10 Dcrttee
2
15/03

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance - Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

② LIB Group
Please deal
FAA
16/3/21

THE NATIONAL TREASURY
P O BOX 20191 - 00200
NAIROBI

Ref: TNT/PENS/15/3/(11)

Date: 9th March, 2021

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

③ Emerson
Please note
FAA
16/3/21

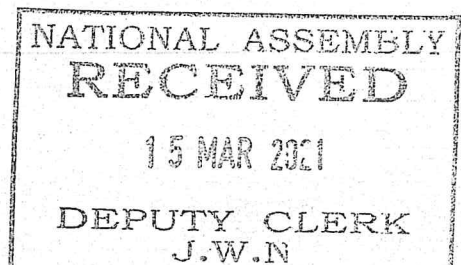
Dear Sialai,

BRIEF ON CONSIDERATION OF THE PUBLIC PETITION ON ESTABLISHMENT OF A RETIREMENT PACKAGE FOR THE AUDITOR-GENERAL

I refer to letter No. KNA/DCS/CIOC/2021 (08) dated 2nd March, 2021 on the captioned subject.

We note that the Select Constitutional Implementation Committee of the National Assembly is contemplating the amendment of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to factor in the provision of retirement benefits for the Auditor General and Controller of Budget. It is against this background that you have in particular requested for our comments on the following three issues:

- (i) Whether the Cabinet Secretary is aware of any retirement benefits that have been developed for the Independent Offices of the Auditor General and Controller of Budget and if so, whether the benefits of the immediate former holders of the two Independent Offices have been settled:



- (ii) The body or persons responsible for settling and or paying the retirement benefits due to State Officers upon leaving office:
- (iii) The opinion of the Cabinet Secretary on the proposal of the Committee to amend the Retirement Benefits (Deputy President and Designated State Officers) to factor in the retirement benefits of the Auditor General and the Controller of Budget.

We wish to respond as follows:

- (a) According to Article 229 (3) of the Constitution of Kenya (2010); the Auditor General shall hold office for a term of eight years (8) and shall not be eligible for re appointment. Similarly, according to Article 228 (3), the Controller of Budget shall hold office for a term of eight years (8) and shall not be eligible for re appointment. We are aware that the Salaries and Remuneration Commission (SRC) in the exercise of the powers conferred by Article 230 (4)(a) set the remuneration and benefits of State Officers in the Constitutional Commissions and Independent Offices through Gazette Notice No. 2887 dated 1st March, 2013. The SRC provided that *"a State Officer serving on a fixed term shall serve on contract and will be paid a service gratuity at the end of the term at the rate of 31% of annual basic salary for every year served"*.

On retirement, the immediate past Auditor General as well as the Controller of Budget were both paid the retirement benefits as provided for under the gazette notice.

- (b) The body responsible for settling and paying the retirement benefits due to State Officers is the National Treasury.
- (c) It will be appreciated that the DPDSO Act was enacted to provide for retirement benefits of the heads of the three arms of Government - the Legislature, Judiciary and the Executive. In case the categories of eligible persons under the DPDSO Act was to be expanded it would lead to huge budgetary commitments that may eventually become unsustainable.

The National Treasury has retained the services of a consultant to develop a National Retirement Benefits Policy. The main objective of the policy is to provide a policy framework that guides the coordination, good governance, development and growth of the retirement benefits sector so as to ensure security in old age for all workers by ensuring an affordable, adequate, and sustainable

retirement benefits sector in Kenya. The consultancy work will be carried out in 61 days and will entail undertaking stakeholder consultations as appropriate. At the end of the consultancy, it is expected that the extent and quantum of coverage of the retirement benefits sector both in the formal and informal sector will be brought to the fore to guide further decisions in growing the sector.

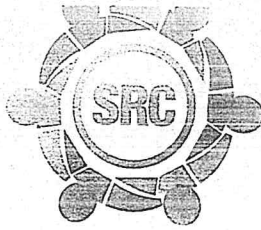
The National Treasury appreciates the concern of the Select Committee to avail retirement benefits to the holders of the Independent Offices that is reflective of the status of the respective offices. In the process of finalization of the retirement benefits policy, the National Treasury, will remain conscious of the principle of upholding the dignity of the retired persons through, provisions of the national retirement benefits policy.

Yours

Sincerely,



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



Salaries & Remuneration
Commission
Rewarding productivity

Ref. No. Ref. No: SRC/TS/LM/3/29 VOL.X (100)

16th February, 2021

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

Dear *Mr. Sialai*

CONSIDERATION OF PUBLIC PETITION ON ESTABLISHMENT OF A RETIREMENT PACKAGE FOR THE AUDITOR GENERAL

Reference is made to the above matter and the invitation to appear before the Constitutional Implementation Oversight Committee on 17th February, 2021.

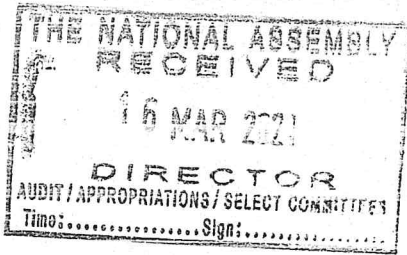
The Salaries and Remuneration Commission (SRC) has reviewed the contents of the petition presented to the National Assembly and would like to respond as follows:

- (i) The Office of the Auditor General for which the petition seeks the intervention of the National Assembly is a State Office. Setting and review of the remuneration and benefits for the position is a responsibility reserved for SRC by Article 230 (4) (a) of the Constitution of Kenya, 2010 (Constitution);
- (ii) The Constitution mandates SRC to regularly review remuneration and benefits for State Officers. Indeed, SRC has set retirement benefits for all State Officers including position of the Auditor General;
- (iii) The Commission has not been presented with a proposal on the matter for its review and setting as appropriate; and
- (iv) If and when a request on the matter is presented to SRC, the Commission will consider it in line with the principles set out in Article 230(5) of the Constitution, the Salaries and Remuneration Commission Act, 2011 and the factors that inform determination of remuneration and benefits.

SRC appreciates the oversight role of the National Assembly on this matter and requests that the above mentioned petition be referred to the Commission for consideration as per the Constitution.

Yours

Mrs Anne R. Gitau, MBS
COMMISSION SECRETARY/CEO



① D on the way
15/03/21

Salaries & Remuneration Commission

Rewarding productivity

② LIBENZI
Please deal
MAA
16/3/21

Ref No SRC/TS/LM/3/29 VOL. X (103)

10th March, 2021

The Clerk of the National Assembly
National Assembly
Parliament Buildings
NAIROBI

③ Ameyo
Please note
MAA
16/3/21

Attn: Jeremiah W. Ndombi

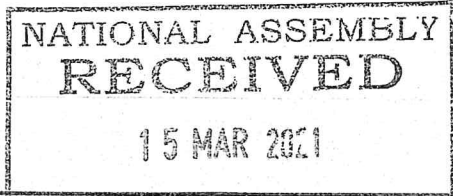
CONSIDERATION OF PUBLIC PETITION ON ESTABLISHMENT OF A RETIREMENT PACKAGE FOR THE AUDITOR GENERAL

Reference is made to your letter Ref. No: KNA/DCS/CJOC/2021 (07) dated 2nd March, 2021 and received by the Commission on 10th March, 2021, on the above subject.

The Salaries and Remuneration Commission clarifies as follows:

- (a) The Commission vide its Gazette Notice of 7th July, 2017 (**copy attached**) on Remuneration and Benefits for State Officers guided on Retirement Benefits for all State Officers. Specifically, the Commission vide the Gazette Notices for the various State Officers provided that:
 - (i) For the President, the Presidential Retirement Benefits Act, 2003 shall apply;
 - (ii) For the Deputy President, the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 shall apply;
 - (iii) For State Officers serving in Parliament, the Parliamentary Pensions Act shall apply;
 - (iv) A State Officer serving or appointed on permanent and pensionable terms shall be eligible to pension benefit in line with the existing laws; and
 - (v) A State Officer serving or appointed to a fixed term of office shall be paid a service gratuity at the rate of 31% of the basic remuneration package for the term served.

Further, the Commission issued guidelines to the Council of Governors vide letter Ref. No: SRC/TS/COG/3/61/48 Vol.II (83) dated 10th February, 2020 (**copy attached**) and the County Assemblies Forum vide letter Ref. No: SRC/TS/CAF/3/61/49 (86) dated 20th February, 2020 (**copy attached**), who had sought advice from the Commission on establishment of a pension scheme for State Officers in the County Governments.



- (b) The Auditor General, Controller of Budget and the Director of Public Prosecutions are State Officers serving on contract terms and therefore entitled to retirement benefit in form of a service gratuity at the rate of 31% of the basic remuneration package for the term served, as advised by the Commission vide the 7th July, 2017 Gazette Notice;
- (c) Retirement benefits for State Officers are paid out of the Consolidated Fund and therefore, outside the purview of the Commission and within the mandate of the National Treasury and Planning. The Commission therefore, advises that you liaise with the National Treasury and Planning in regard to settling of benefits due to the immediate former Auditor General and the Controller of Budget; and
- (d) The Chairperson and Chief Executive Officer of the Ethics and Anti-Corruption Commission were entitled to payment of service gratuity at the rate of 31% of the basic remuneration package for the term served, as guided by the Commission vide the Gazette Notice Number 6519 of 7th July, 2017, on retirement from office.

The purpose of this letter therefore, is to convey the Commission's advice on your request.



Mrs. Anne R. Gitau, MBS
COMMISSION SECRETARY/CEO



Salaries & Remuneration
Commission
Rewarding productivity

Ref No: SRC/TS/COG/3/61/48 VOL II (83)

10th February, 2020

H.E James Ongwae, CBS, EBS, OGW
Chair, Human Resource Committee
Council of Governors
P.O. Box 40401-00100
NAIROBI

Dear H.E Ongwae,

GUIDELINES ON PENSION BENEFITS FOR STATE OFFICERS IN THE COUNTY GOVERNMENTS

Reference is made to the consultative meeting on Pension for State Officers in the County Governments, held on 20th January 2020, between the Council of Governors and Salaries and Remuneration Commission (SRC).

The Commission in its 235th Commission Meeting held on 22nd January, 2020 deliberated on issues raised in the aforementioned meeting and guided that in setting up a Pension Scheme for State Officers in the County Governments, the Council of Governors adheres to the following guidelines:

1. There shall be two (2) types of retirement benefits for State Officers in the County Governments, **Pension** and **Gratuity**. An employee may **opt** for either of the Benefits.
2. Where an employee opts for gratuity, the applicable conditions and rates for gratuity shall apply, as set by SRC.
3. Where an employer establishes a pension scheme for its State Officers, the following guidelines shall apply:
 - (a) **Schema Design:** The Scheme design shall be **Defined Contribution Scheme**.
 - (b) **Pensionable Emoluments (PE):** Pensionable emoluments i.e. salary used to calculate pension emoluments, shall be expressly defined as **sixty (60) percent of the monthly gross remuneration package**, as set by SRC for State Officers.



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NAIROBI, 11th August, 2017

Price Sh. 60

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11th August, 2017

THE KENYA GAZETTE

GAZETTE NOTICE NO. 7651

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS FOR STATE OFFICERS IN THE EXECUTIVE OF THE NATIONAL GOVERNMENT

CORRIGENDUM

IN Gazette Notice No. 6519 of 2017, in Remuneration and Benefits for State Officers in the Full time Constitutional Commissions and Independent Offices, on page 3988, delete the Schedule for Remuneration for State Officers in the Full time Constitutional Commissions and Independent Offices and insert in its place the following new Schedule as specified herein below:

1. Remuneration for State Officers in the Full time Constitutional Commissions and Independent Offices

Delete

State Officer	Monthly Gross Remuneration Package (KSh.)
Auditor General	924,000
Chairperson-Independent Electoral and Boundaries Commission	
Controller of Budget	
Vice Chairperson-Independent Electoral and Boundaries Commission	765,188
Chairperson-All other Full Time Constitutional Commissions	
Director of Public Prosecution	
Members-Independent Electoral and Boundaries Commission	
Registrar of Political Parties	
Vice Chairperson-All other Full Time Constitutional Commissions	650,000
Members-All other Full Time Constitutional Commissions	
Secretary, Full Time Constitutional Commissions	621,250

insert

1. Remuneration for State Officers in the Full time Constitutional Commissions and Independent Offices

State Officer	Monthly Gross Remuneration Package (KSh.)
Auditor General	
Chairperson- Independent Electoral and Boundaries Commission	924,000
Controller of Budget	
Vice Chairperson-Independent Electoral and Boundaries Commission	765,188
Chairperson-All other Full Time Constitutional Commissions	
Director of Public Prosecution	
Members- Independent Electoral and Boundaries Commission	747,461
Registrar of Political Parties	
Vice Chairperson-All other Full Time Constitutional Commissions	
Members-All other Full Time Constitutional Commissions	621,250

SARAH J. SEREM,
Chairperson.

Annexure 5

The Draft Independent Offices Retirement Benefits Bill, 2021.

**THE INDEPENDENT OFFICES RETIREMENT BENEFITS BILL,
2021**

ARRANGEMENT OF CLAUSES

PART I – PRELIMINARY

Clause

- 1- Short title.
- 2- Interpretation.
- 3- Persons entitled to benefits.
- 4- Circumstances under which benefits may not be paid.
- 5- Pension and other benefits of a retired Auditor-General.
- 6- Pension and other benefits of a retired Controller of Budget.
- 7- Pension and other benefits of a retired Director of Public Prosecutions.
- 8- Role of entitled person
- 9- Spouse benefits.
- 10-Children's benefits.
- 11-Entitled person not be covered under any other Act.
- 12- Funds for expenses.
- 13- Accounts and audit.
- 14- Official funeral.
- 15-Computation of benefits.

**THE INDEPENDENT OFFICES RETIREMENT BENEFITS BILL,
2021**

A Bill for

AN ACT of Parliament to provide for the granting of pension and the retirement benefits to persons who hold the office of the Auditor General, Controller of Budget and Director of Public Prosecutions after 1st August, 2010 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Independent Offices Retirement Benefits Act, 2021.

Interpretation.

2. In this Act, unless the context otherwise requires—

“benefits” means pension and other retirement benefits conferred by this Act;

"Auditor-General" means a person who holds the office of Auditor-General in accordance with the Constitution;

"Controller of Budget" means a person who holds the office of Controller of Budget in accordance with the Constitution;

"Director of Public Prosecutions" means a person who holds the office of Director of Public Prosecutions in accordance with the Constitution;

"eligible child" means any child of a deceased

entitled person who—

- (a) is under eighteen years of age; or
- (b) is under twenty-four years of age and is undergoing a course of full time education; or
- (c) was at the time of the death of the deceased wholly or mainly dependent on the deceased and was at that time and has at all times since been either a person falling within paragraph (a) and (b) or is incapable, and likely to remain permanently incapable, by reason of bodily or mental infirmity, of earning his own living, and is not for the time being maintained out of moneys provided by the Government in a hospital or similar institution;

"entitled person" means any of the persons specified in section 3;

"retired Auditor-General" means a person who, having held the office of Auditor General, has ceased to hold the office as such in the manner specified in the Constitution; and

"retired Controller of Budget" means a person who, having held the office of Controller of Budget, has ceased to hold office as such in the manner specified in the Constitution.

"retired Director of Public Prosecutions" means a person who, having held the office of Director of Public Prosecutions, has ceased to hold office as such in the manner specified in the Constitution.

"spouse" means the wife or husband of an entitled person who dies while holding office as such, and includes in the case of an entitled person under whose religion or custom polygamy is lawful, any person to whom the entitled person is lawfully married in accordance with the tenets of that religion or custom.

Persons entitled to benefits.

3. (1) A person entitled to the benefits conferred by this Act shall be persons who at any time after the 27th August, 2010, retire as Auditor- General, Controller of Budget or director of Public Prosecutions.

Circumstances under which benefits may not be paid.

4. (1) Despite the provisions of section 3, the National Assembly may, on a motion supported by the votes of not less than half of the members thereof, resolve that an entitled person, surviving spouse or children, as the case may be, shall not receive any benefits conferred by this Act, on the grounds that such person—

- (a) ceased to hold office on account of having acted in willful violation of the Constitution;
- (b) was guilty of gross misconduct;
- (c) has, since ceasing to hold office been convicted of an offence and sentenced to imprisonment for a term of three years or more, without the option of a fine; or
- (d) has, since ceasing to hold office, held office in, or actively engaged in the activities of, any political party:

Provided that this provision shall come into operation on the date of commencement of this Act.

(2) Where an entitled person holds any appointive or elective post in or under the Government to which there is attached a rate of pay, other than a nominal rate, the benefits to which he is entitled shall be reduced by the amount of such pay.

Pension and other benefits of retired Auditor-General

5. A retired Auditor-General shall, during his or her lifetime, be entitled to—

- (a) a monthly pension equal to fifty per cent of the monthly the monthly basic salary of the retired office holder's last monthly basic salary while in office;
- (b) a lump sum payment on retirement equal to thirty-one per cent of the retired office holder's basic salary while in office;
- (c) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the retired office holder, and the retired office holder's spouse;
- (d) one armed security guard who shall be provided on request by the entitled person.

Pension and other benefits of retired Controller of Budget.

6. A retired Controller of Budget shall, during his or her lifetime, be entitled to—

- (a) a monthly pension equal to fifty per cent of the monthly the monthly basic salary of the retired office holder's last monthly basic salary while in office;
- (b) a lump sum payment on retirement equal to thirty-one per cent of the retired office holder's basic salary while in office;
- (c) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the retired office holder, and the retired office holder's spouse;
- (d) one armed security guard who shall be provided on request by the entitled person

Pension and other benefits of retired Director of Public

7. A retired Director of Public Prosecutions shall, during his or her lifetime, be entitled to—

Prosecutions.

- (a) a monthly pension equal to fifty per cent of the monthly the monthly basic salary of the retired office holder's last monthly basic salary while in office;
- (b) a lump sum payment on retirement equal to thirty-one per cent of the retired office holder's basic salary while in office;
- (c) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the retired office holder, and the retired office holder's spouse;
- (d) one armed security guard who shall be provided on request by the entitled person.

Role of entitled person.

8. (1) An entitled person shall be expected to play a consultative and advisory role to the Government and the people of Kenya—

(2) An entitled person may be requested by the Government to perform, subject to his or her concurrence, specific official functions and shall be paid a reasonable allowance in respect of such official functions.

Spouse benefits.

9. (1) Upon the death of an entitled person who is in receipt of, or who is entitled to a pension under this Act, the surviving spouse of the entitled person shall be entitled to fifty per cent of the pension which was payable to an entitled person.

(2) In any case where there is more than one spouse entitled to benefits under subsection (1), the benefits shall be divided equally among all such spouses.

Children's benefit.

10. (1) A children's pension shall be payable

for the Children's benefit. benefit of an eligible child where an entitled person dies and—

- (a) if there is only one child, pension at the rate of twenty-five percent of the pension entitlement of the entitled person;
- (b) if there are two or more children, a pension at the rate of fifty percent of the pension entitlement of the deceased entitled person to be divided equally for the benefit of each child.

Entitled person not be covered under any other Act.

11. (1) For the avoidance of doubt, an entitled person under this Act shall not, for the purposes of payment of a pension or provision of any other benefits, be covered under any other Act for the same period covered under this Act.

(2) Despite subsection (1), where an entitled person was a contributor under any other pension scheme, his or her contribution shall be returned to him or her with the applicable rate of interest.

Funds for expenses.

12. (1) An entitled person, or his surviving spouse, as the case may be, shall, at least five months before the commencement of each financial year, submit estimates of all the expenditure required in respect of the benefits to which he is entitled under this Act for that year, to the Cabinet Secretary responsible for finance for approval.

(2) Upon approval of the estimates submitted under subsection (1), all monies, from time to time, required in respect of the benefits conferred on an entitled person or his surviving spouse by this Act shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

(3) All other expenses incurred in the administration of the provisions of this Act shall be met out of monies appropriated by the National Assembly for

that purpose.

Accounts and
audit.

13. The accounts relating to the expenditure incurred under the provisions of this Act shall be audited and reported upon by the Auditor-General.

Official funeral.

14. Upon his death, an entitled person shall be accorded an official funeral.

Computation of
benefits.

15. In computing the benefits due to a person entitled to benefits under this section, the benefits already received by that person under any other law or policy shall be set-off against the benefits due under this Act.

- (a) a monthly pension equal to fifty per cent of the monthly the monthly basic salary of the retired office holder's last monthly basic salary while in office;
- (b) a lump sum payment on retirement equal to thirty-one per cent of the retired office holder's basic salary while in office;
- (c) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the retired office holder, and the retired office holder's spouse;
- (d) one armed security guard who shall be provided on request by the entitled person.

Pension and other benefits of retired Controller of Budget.

6. A retired Controller of Budget shall, during his or her lifetime, be entitled to—

- (a) a monthly pension equal to fifty per cent of the monthly the monthly basic salary of the retired office holder's last monthly basic salary while in office;
- (b) a lump sum payment on retirement equal to thirty-one per cent of the retired office holder's basic salary while in office;
- (c) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the retired office holder, and the retired office holder's spouse;
- (d) one armed security guard who shall be provided on request by the entitled person

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7. A retired Director of Public Prosecutions shall, during his or her lifetime, be entitled to—

Prosecutions.

- (a) a monthly pension equal to fifty per cent of the monthly the monthly basic salary of the retired office holder's last monthly basic salary while in office;
- (b) a lump sum payment on retirement equal to thirty-one per cent of the retired office holder's basic salary while in office;
- (c) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the retired office holder, and the retired office holder's spouse;
- (d) one armed security guard who shall be provided on request by the entitled person.

Role of entitled person.

8. (1) An entitled person shall be expected to play a consultative and advisory role to the Government and the people of Kenya—

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(2) In any case where there is more than one spouse entitled to benefits under subsection (1), the benefits shall be divided equally among all such spouses.

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11. (1) For the avoidance of doubt, an entitled person under this Act shall not, for the purposes of payment of a pension or provision of any other benefits, be covered under any other Act for the same period covered under this Act.

(2) Despite subsection (1), where an entitled person was a contributor under any other pension scheme, his or her contribution shall be returned to him or her with the applicable rate of interest.

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Computation of
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15. In computing the benefits due to a person entitled to benefits under this section, the benefits already received by that person under any other law or policy shall be set-off against the benefits due under this Act.

MEMORANDUM OF OBJECTS AND REASONS

The Principal object of the Bill is to provide a legal framework for retirement benefits of the Auditor-General, Controller of Budget and the Director of Public Prosecution.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement on how the Bill concerns county governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties. Section 14 of Part 1 of the Fourth schedule to Constitution provides that social security and professional pension plans is a National Government function.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the....., 2021

JEREMIAH KIONI,
Member of Parliament.

