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THE NATIONAL ASSEMBLY

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BY:

Hon. Richard Ote
Kenda, MP

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CLERK-AT
THE-TABLE

SELECT COMMITTEE ON IMPLEMENTATION

Macharia W.

REPORT ON

IMPLEMENTATION STATUS OF THE REPORT OF THE DEPARTMENTAL
COMMITTEE ON FINANCE AND NATIONAL PLANNING ON THE OPTIMIZATION
OF REVENUE IN GRAIN HANDLING SERVICES AT THE PORT OF MOMBASA

Directorate of Audit, Appropriations & Other Select Committees

National Assembly

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ABBREVIATIONS

AGOL	African Oil and Gas Limited
CS	Cabinet Secretary
GBHL	Grain Bulk Handling Limited
KIC	Kipevu Inland Container EPZ Limited
KOT	Kipevu Oil Terminal
KPA	Kenya Ports Authority
KTL	Kilindini Terminals Limited
MGTL	Mombasa Grain Terminal Limited
PFTL	Portside Freight Terminal Limited
PPPs	Public-Private Partnerships
SEZ	Special Economic Zone

CHAIRPERSON'S FOREWORD

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

The report of the Departmental Committee on Finance and National Planning was tabled before the House on 26th November, 2020 and adopted on 4th March, 2021.

The Select Committee on Implementation sought to follow up on the implementation status of the aforementioned report and subsequently held a meeting with officials of the Kenya Ports Authority, the implementing agency. The Committee also received written submissions from the National Treasury.

The Committee registers its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for facilitation and support in execution of its mandate and in the production of this report.

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



Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

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

The report of the Departmental Committee on Finance and National Planning was tabled before the House on 26th November, 2020 and adopted on 4th March, 2021. The Select Committee on Implementation sought to follow up on the implementation status of the aforementioned report and subsequently held a meeting with officials of the Kenya Ports Authority. The Committee also received written submissions from the National Treasury.

The Committee having reviewed the implementation status of the report of the Departmental Committee on Finance and National Planning on the Optimization of Revenue in Grain Bulk Handling Services at the Port of Mombasa and considered the evidence received, observed that the Kenya Ports Authority (KPA) has licensed Portside Freight Services Limited as a second-grain bulk terminal operator within the Port of Mombasa. The Committee also observed that the Kenya Ports Authority was on course in implementing the resolution with regard to the development of critical infrastructure in all ports to continually gain leverage in technology while maximizing the return on investment.

The Committee recommends that the Kenya Ports Authority should consider other qualified firms in other emerging alternative locations at Dongo Kundu SEZ, Lamu Port and Kisumu Port to optimize revenue collection and to cut down on high demurrage costs. The Committee also that the National Treasury and Planning and the Kenya Ports Authority ensures critical infrastructure is installed in all ports to continually gain leverage in technology while maximizing the return on investment. Further, the Kenya Ports Authority should on a quarterly basis report to the National Assembly on the implementation status of the development of critical infrastructure.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1.1 Establishment and Mandate of the Committee is established under Standing Order 209 of the

1. The Select Committee on Implementation is established under Standing Order 209 of the

National Assembly Standing Orders.

2. The Committee is charged with scrutinizing the resolutions of the House (including adopted committee reports), petitions and the undertakings given by the National Executive and examines whether or not such decisions and undertakings have been implemented; and whether such implemented, the extent to which they have been implemented; and whether or not implemented, the extent to which they have been implemented; and whether or not implementation has taken place within the minimum time necessary; and whether or not legislation passed by the House has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary. The Committee may propose to the House, sanctions against any Cabinet Secretary who fails to report to the relevant select Committee on implementation status without justifiable reasons.

3. Standing Order 201 further provides that within sixty days of a resolution of the House or

adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House.

4. The mandate of the Committee is further enhanced by the provisions of Article 153(4) (b)

the Constitution which requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

1.2 Committee Membership

5. The Committee membership comprises -

Chairperson

Hon. Moiatalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Movement

Vice-Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Movement

Hon. Benjamin Tayari, MP
Kinango Constituency

Orange Democratic Movement

Hon. Johnson Manyua Naicca, MP
Mumias West Constituency

Orange Democratic Party

Hon. John Muchiri Nyagah, MP
Manyatta Constituency

Jubilee Party

Hon. Feisal Abdalla, MP
Msambweni Constituency

Independent

Hon. Paul Odalo Abuor, MP
Rongo Constituency

Orange Democratic Movement

Hon. Hassan Oda Hulufo, MP
Isiolo North Constituency

Kenya Patriots Party

Hon. Nelson Koech, MP
Belgut Constituency

Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency

Wiper Democratic Movement-Kenya

Hon. Moses Kuria, M.P
Gatundu South Constituency

Jubilee Party

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. John Wanjiku, MP
Kiambaa Constituency

United Democratic Alliance

Hon. Michael Thoya Kingi, MP
Magarini Constituency

Orange Democratic Movement

Hon. Kihara Peter Kimari, MP
Mathioya Constituency

Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

Wiper Democratic Movement

Hon. Mukuha Gabriel Kago, M.P
Githunguri Constituency

Jubilee Party

Hon. Silvanus Onyiego Osoro, MP
South Mugirangi'o Constituency

Kenya National Congress

Hon. Jared Okello, MP
Nyando Constituency

Orange Democratic Movement

1.3 Committee Secretariat

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

Ms. Tracy Chebet Koskei
Senior Clerk Assistant /Team Leader

Mr. Abdirahman Hassan
Clerk Assistant II

Dr. Donald Manyala, PhD
Research Officer II

Ms. Mercy Wanyonyi
Legal Counsel

Ms. Winnie Kizia
Media Relations Officer

2.0 IMPLEMENTATION STATUS ON THE REPORT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING ON THE OPTIMIZATION OF REVENUE IN GRAIN HANDLING SERVICES AT THE PORT OF MOMBASA

2.1 Background

7. The Departmental Committee on Finance and National Planning held a fact-finding visit to Grain Bulk Handling Limited (GBHL) on 21st November, 2020, to assess ways of optimization of revenue through the grain handling facilities at the Port of Mombasa.

8. The Committee observed that GBHL operate almost 98% of all grain bulk services at the port of Mombasa and have been in operation since 2002. Further, the Kenya Ports Authority (KPA) has been having one licensed grain bulk handler that is GBHL operating at berths 3 and 4 at the Port of Mombasa with an exclusive mandate that was initially granted and expired on 15th February, 2008.

9. Following the expiry of the exclusive mandate period, there has been an agitation to liberalize grain bulk operations by allowing other additional operators and equally promote competition in the industry. The port of Mombasa has equally experienced exponential growth of grain imports over the last ten (10) years.

2.2 Recommendations by the Departmental Committee on Finance and National Planning

10. The Departmental Committee on Finance and National Planning tabled its report on 26th November, 2020 and made the following recommendations, That :

- (i) To optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022;
- (ii) The Process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability;

- (iii) Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone, the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public-Private Partnerships (PPPs) framework;
- (iv) To promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment; and
- (v) KPA should continue investing including through the PPP framework in the expansion of the Port facility to accommodate more berths to meet the growing demand within the region.

2.3 Stakeholders Submissions on the implementation status of the Report

2.3.1 Kenya Ports Authority

11. During the Committee's visit to the Port to ascertain the implementation status of the House Resolutions, Kenya Ports Authority (KPA) submitted a written response on 22nd October 2021 referenced MMN/2/49.
12. KPA stated that, in order to optimize revenue collection, KPA has fast-tracked authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.
13. Further, the authority submitted that its Strategic Plan had already recognized the need for a second-grain bulk handler to diversify from the risk of monopoly. Way back in 2017, the Authority identified Dongo Kundu and Lamu Port as potential sites for the facility.
14. The Authority stated that by the time the Finance and Planning Committee visited, KPA had already embarked on the process of identifying the operator to be licensed. Given that the KPA Strategic Plan was widely shared within the industry, several privately initiated proposals for operating a second-grain bulk facility had been received.

15. The Authority reported that the following applicants had identified specific sites of interest to them:- **Kapa Oil Refinery; Africa Ports and Terminals; Multiship International; Mombasa Grain Terminal Limited; Kilindini Terminals Limited; Kipevu Inland Container EPZ Limited; and Portside Freight Terminals Limited.** KPA noted that the Dongo Kundu SEZ is still at the design stage and Lamu Port is still under construction. Both Sites were therefore unattractive to any possible PPP investors.

16. KPA submitted that in order to fast-track the process towards authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022, KPA Management having evaluated all proposals identified the most technically feasible for progression in accordance with the Law.

17. The Technical Committee following detailed analyses recommended that each grain bulk applicant be considered subject to the availability of the berths applied for and the proximity of their physical location for silos as part of technical and commercial feasibility.

18 KPA highlighted the details of the seven (7) proposals and the Technical Committee observations/findings:

(i) **Kapa Oil Refineries:** Kapa Oil refineries expressed the need to have their bulk storage terminal at the Mombasa Port. The company was particularly interested in the land which is linked to the mainland via the new Port Reitz Dongo Kundu area. Following the proposal, Management observed that KPA does not have adequate land for the construction of an additional storage facility and that there are plans to have a new liquid bulk cargo handling facility near Dongo Kundu which will require a corresponding storage facility to ensure optimization is achieved and wastes of resources curbed.

(ii) **Multiship International Ltd:** The company made an application vide a letter Ref. MSIL/nss.KPA.68.11/17 on 23rd November 2017 to be allowed to occupy berths 13 & 14 to discharge grains and fertilizer on dedicated use. The company expressed interest to invest in both portable grain silos and un-loaders that will be movable and temporarily placed along the quayside in the port specifically to serve the Standard Gauge Railway through its wagons within

the port. However, the Authority declined the request vide letter Ref. CDD/PD/3/1/10 dated 6th February 2018 referring to KPA Master planning requirements that these berths were sorely committed for container traffic as the development and conversion plans for berth no. 11-14 was underway and construction was expected to be completed in about three years. Consequently Multiship vide their letter dated 6th June 2018 Ref. MSIL/nss.KPA.45/6-18 requested for allocation of a yard adjacent to berth no.5 to build and operate a specialized dry bulk discharge and handling terminal for grains and rehabilitation of shed no.7 and 8 for fertilizer handling dedicated for SGR. Further, Multiship vide their letter Ref. MSIL/nss.KPA.13/3-19 dated 18th March 2019 submitted a proposal for the development of dedicated grain and fertilizer terminals at the port of Mombasa and SGR Athi-River Green Park Terminus. They specifically requested for: Allocation of space in the port adjacent to berth No. 5 to construct the specialized dedicated SGR dry bulk grain discharging and handling terminal and Shed No.7/8 or 9/10 for rehabilitation to handle bulk fertilizer for dedicated transportation via SGR during discharge from the vessels in the Port. The technical committee observed that the yard adjacent to yard no. 5 is a common user facility for SGR and Meter Gauge Railway (MGR) loading and a temporary storage area for steel and motor vehicles.

(iii) **Africa Ports and Terminals:** Africa Ports and Terminals vide their letter Ref. APT-COR-2018-004 dated 3rd January 2018 sought an opportunity to engage in Marine activities including transshipment of cargo from mooring buoys to the wharf and vice versa. They also requested for allocation of suitable land for the development of grain and LPG Terminals in Lamu Port. KPA responded vide letter Ref. MCS/4/8/01 dated 16th January 2018 seeking details of the locations/plots identified by Africa Ports and Terminals through their due diligence to be suitable for the proposed investment. Similarly, KPA advised Africa Ports and Terminals that its application would be considered against the Authority's Master Plan and Public Procurement and Asset Disposal Act and Rules. The company was also guided to contact the Head of Corporate Development for the Master plan and the General Manager, Operation as well as the Head of Procurement & Supplies regarding the relevant matters associated with their proposal. Africa Ports and Terminal is yet to submit a response to the above.

(iv) **Mombasa Grain Terminal Limited (MGTL):** The Mombasa Grain Terminal Limited (MGTL) vide their letter dated 23rd November 2019, requested KPA to grant an irrevocable and unconditional wayleave permission to construct a fertilizer and grain terminal at the old KOT, after the scheduled relocation of KOT in 2021. The proposed project construction by MGTL was envisioned to take 1-2 years. Further, MGTL Sought permission from KPA to allow the company to access the proposed project site, in order to carry out a survey of their design process and determine the wayleave where MGTL equipment (Conveyor Belts and SGR Loading Gantry) will be positioned. The MGTL proposal was analyzed vis-a-vis the KPA master Plan 2018-2047. The Master plan provides that KPA will decommission and demolish the old KOT and establish an additional Berth 19 by 300m, with an associated yard area of 7.5ha. The Berth capacity for Berth 19 is estimated at 450k TEU/yr. The Master plan anticipates that a second grain terminal will be developed in Donggo Kundu by 2023. Further, KPA has planned for the development of a Grain bulk in Lamu Port by 2032 in the event the grain bulk terminal in Donggo Kundu will have reached its maximum capacity. Pursuant to the above, the Technical Committee noted that the old KOT which MGTL has identified to develop a grain and fertilizer terminal, will not be available since KPA has made prior plans to expand Berths 16-18 and establish an additional Berth 19. Moreover, the space at the old KOT will be used for containers only. Therefore, management recommended that the request by MGTL be declined since the old KOT which the company has identified for the development of a grain and fertilizer terminal, is currently in use and prior plans have been made by KPA to use the identified location.

(v) **Kilindini Terminals Limited (KTL):** The Company vides a letter dated 2nd December 2015 made an application for a wayleave to build and operate a specialized dry bulk discharge and handling terminal for grains at the Port of Mombasa. The terminal would be linked by overhead conveyors directly to the berths. KTL also proposed Berth no.5 and Berths 11 to 14 as sites for the project. KTL projected cargo to be handled as 1 million tons by end of 2020 and increase over the following two years to 1.1 million tons and 1.2 million tons respectively. The application could not however be progressed as the requested berths are not available for bulk grain handling.

(vi) **Kipevu Inland Container EPZ Limited (KIC):** Kipevu Inland Container EPZ Ltd vide letters dated 9th July 2018 and 22nd January 2020, requested KPA to grant a wayleave for installation of a multipurpose conveyor belt system to handle dry bulk cargo at Plot No. MV/VI/4794, at Kibarani adjacent to the Port area. They also proposed to construct a 150,000MT of bulk grain silo storage, 250,000sqft of covered warehouse space and modern container handling equipment. The proposed facility is expected to cater for various dry bulk products that are being imported in large quantities to serve various sectors both within Kenya and the greater African Markets i.e clinker, fertilizer, coal, gypsum & food grains while adopting the latest technology of green terminal with the lowest carbon footprint. Subsequently, KIPYU made a presentation on their proposal to the Management of KPA on the 4th of March 2020. In their presentation, KIC EPZ informed Management that they have secured 50 acres of land from Kenya Railway in Athi River to build and operate a modern receiving terminal for bulk volumes hauled via SGR, which is expected to contribute significantly to the reduction of Port congestion. The proposal was analyzed against the KPA Master Plan 2018-2047. The Master Plan anticipates that a second grain terminal will be developed in Dongo Kundu by 2023. Further, KPA has planned for the development of a Grain bulk facility in Lamu Port by 2032 in the event the Grain bulk terminal in Dongo Kundu will have reached its maximum capacity. This was considered as a future plan.

(vii) **Portside Freight Terminal Limited (PFTL):** Portside Freight Terminal Limited (PFTL) vide a letter dated 6th April 2020 sought a license for a bulk grain handling facility at the Port of Mombasa and a wayleave for the development of an overhead conveyor belt through the G-Section area of the Port. The PFTL proposal was evaluated and found to be the most technically and financially feasible since it will be 100% privately funded and the project will pose a minimum conflict with other ongoing and planned KPA developments. In addition, PFTL owns land adjacent to G-Section where the storage silos will be located which makes them the most suitable applicant. In line with section 12 of the KPA Act, management submitted the evaluation report to the Board of Directors during its 382nd Meeting held on 30th November 2020 and 3rd December 2020. The Board deliberated on the PFTL business proposal and resolved:

- (1) A license for grain bulk handling operator at the Port of Mombasa be granted to PFTL;
- (2) A wayleave be issued for the development of an overhead conveyor belt through G-Section Area to PFTL.
- (3) A counterpart team be formed to work with PFTL in developing the island berth.
- (4) The counterpart team to be engaged in firming technical specifications including routing of the overhead conveyors.
- Following the Board approval, management obtained concurrence from the Honourable Attorney General and the National Treasury to progress the project under Specially Permitted Procurement Method, Section 114(A) of the Public Procurement and Disposal Act, 2015. Subsequently, an award was made to PFTL and license/wayleave agreements were signed.
19. In constitutional Petition No. E045 of 2021, Okiya Omutata Okoit has sued KPA and CS National Treasury with interested parties being Kilindini Terminals, Mombasa Grain Terminal Limited, Kapa Oil Refineries, Africa Port & Terminals and Multiship International, Kipevu Inland Container EPZ, Dockworkers Union, and Katiba Institute. The petition challenges the award of the license and wayleave to PFTL.
20. Under the KPA Master Plan (2018-2047) implementation, KPA is still pursuing alternative locations for discharge of grain vessels with the ongoing design and development of Dongo Kundu SEZ, Lamu Port and Kisumu Port. Due to investment and financing constraints, the projects will be undertaken using the PPP Framework.
21. Historically, the licensing and issuance of wayleaves was guided by the legal framework as elaborated hereunder:-
- (i) **Section 12(2n) of the Kenya Ports Authority Act** gives the Board power to enter into agreements with any person:
- For the Supply, construction, manufacture, maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the Authority;
 - For the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Authority.

(ii) **Part C (vi) of the Tariff book, General Provisions**, empowers the Authority to enter into an agreement with any person including any company or association or body of persons corporate for the performance or provision by that person of any of the services or facilities which may, ordinarily under the Act, be performed or provided by the Authority and raise charges at such rates or for such amounts as may be mutually agreed between them, and such charges or rates shall apply and be collected as if they were set out in this Tariff Book.

(iii) **The Tariff book under clause 19 on general services** empowers the Authority to issue licenses for 12 consecutive months from the 1st day of the month of issue subject to the conditions notified to licensees from time to time.

(iv) It has been the practice of KPA to grant approvals to private operators to construct wayleaves and licenses in the performance of her duties. Grain and Bulk handling at the port are done either through:

- a) Conventional bagging vide grabs onto bagging plants alongside a ship and onto trucks. Examples of the companies include Multiport Limited and Interglobe.
- b) A mechanized system that uses conveyor belts, pipes and pneumatic suckers from the port to silos/tankage outside the port, an example of companies includes GBHL and Magadi Soda.

22. The Companies whose applications were approved by the Board using KPA Act and KPA Tariff are as follows:

- (i) East Africa Terminal Ltd whose application for wayleave was approved by the Board in 2013.
- (ii) Magadi Soda: - Wayleave through which they have conveyors operating and licenses agreement.
- (iii) Grain Bulk Handling (GBHL):- Approval was granted twice for licenses agreements and infrastructure upgrades.
- (iv) African Oil and Gas Limited (AGOL) whose request for setting up a facility for handling oil and gases was approved by the Board.
- (v) Portside Freight Services Limited: - Approval for setting up a modern conveyor facility at sheds 7 & 8 was approved by the Board.

23. It is envisaged that once Dongo Kundu SEZ and Lamu Port are fully developed, investors will bring in critical infrastructure required for expansion, investment in technology and efficient state-of-the-art grain handling equipment under the PPP framework to meet growing demand and optimize revenue collection.

2.3.2 The National Treasury

24. The National Treasury submitted a written response on 26th January 2022 referenced MOF/TE 200/01 'D' (52) and reported as follows:

(i) On the recommendation that: in order to optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022; The National Treasury reported that KPA had licensed a second-grain bulk terminal operator within the Port of Mombasa.

(ii) On the recommendation that: the process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and allocating the second-grain bulk operator at the Port of Mombasa. However, the process ended up in court. (Appendix VI)

(iii) On the recommendation that: under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone, the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public-Private Partnerships (PPPs) framework; The National Treasury reported that KPA plans provide for the development of other grain terminals at Dongo Kundu and Lamu Port through Public-Private Partnerships. New opportunities which were not envisioned in the Master Plan 2018-2047 will therefore be considered in the Strategic Plan which is reviewed every five (5) years. KPA has since embarked on the development of the Strategic Plan (2023-2027) to be launched before 31st December 2022 upon approval by the Board of Directors.

(iv) On the recommendation that: To promote efficiency in grain bulk handling in the country, there is a need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment; The National Treasury reported that KPA had put in place measures to ensure that infrastructure matches and exceeds the demand for grain commodities. The Authority is developing the Dongo Kundu berths, measuring 300 meters in length and 17 meters deep while that of Lamu Port will measure 400 meters in length and 17 meters deep to accommodate large vessels to gain from economies of scale. The Berths will be equipped with modern high capacity uploading equipment to ensure effective and efficient discharge of grain cargo operations.

(v) On the recommendation that: KPA should continue investing including through the PPP framework in the expansion of the Port facility to accommodate more berths to meet the growing demand within the region; The National Treasury reported that KPA is constructing the first 3 berths at Port of Lamu to be completed by April 2022. Additionally, the relocation of the Kipevu Oil Terminal which will accommodate 3 large oil vessels will be commissioned by end of March, 2022. The 2nd container terminal Phase 2 is scheduled to be ready by 2022 further increasing KPA's capacity to handle containerized cargo. The Authority remains open to accommodate the most effective and efficient operation model, including Public-Private Partnerships (PPP).

2.4 Implementation status

i. *To optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.*

25. The National Treasury reported that KPA had licensed a second-grain bulk terminal operator within the Port of Mombasa. KPA also acknowledged having awarded Portside Freight Terminal Limited (PFTL) a license for bulk grain handling facility at the Port of Mombasa and a wayleave for the development of an overhead conveyor through the G-section area of the Port, after their proposal was evaluated and found to be the most technically and financially feasible.

Committee Observation

26. The Committee noted that the Kenya Ports Authority had implemented the resolution. However, a Constitutional Petition No. E045 of 2021 was filed challenging the award of the license and Wayleave to Portside Freight Terminal Limited.

ii. The Process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability.

Implementation status

27. The National Treasury reported that KPA followed due process in allocating the second-grain bulk operator at the Port of Mombasa. However, the matter ended up in court. KPA reported that the Portside Freight Terminal Limited proposal was evaluated and found to be the most technically and financially feasible since it will be 100% privately funded and the project will pose a minimum conflict with other ongoing and planned KPA developments.

Committee Observation

28. The Committee noted that the Kenya Ports Authority had implemented the resolution.

iii.

Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Donggo Kundu Special Economic Zone, the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public-Private Partnerships (PPPs) framework.

29. The National Treasury reported that KPA plans to provide for the development of other grain terminals at Donggo Kundu and Lamu Port through Public-Private Partnerships. New opportunities which were not envisioned in the Master Plan 2018-2047 will therefore be considered in the Strategic Plan which is reviewed every five (5) years. KPA has since embarked on the development of the Strategic Plan (2023-2027) to be launched before 31st December 2022 upon approval by the Board of Directors.

Committee Observation

30. The Committee noted that the Kenya Ports Authority was on course in implementing the resolution with the development of the said infrastructure.

iv. To promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.

Implementation status

31. The National Treasury reported that KPA had put in place measures to ensure that infrastructure matches and exceeds the demand for grain commodities. The Authority is developing the Dongo Kundu berths, measuring 300 meters in length and 15 meters deep while that of Lamu Port will measure 400 meters in length and 17 meters deep to accommodate large vessels.

Committee Observation

32. The Committee noted that the Kenya Ports Authority was on course in implementing the resolution with the development of the said infrastructure.

v. KPA should continue investing including through the PPP framework in the expansion of the Port facility to accommodate more berths to meet the growing demand within the region.

Implementation status

33. The National Treasury reported that KPA is constructing the first 3 berths at Port of Lamu to be completed by April 2022. Additionally, the relocation of Kipevu Oil Terminal which will accommodate 3 large oil vessels will be commissioned by end of March, 2022. The 2nd container terminal Phase 2 is scheduled to be ready by 2022 further increasing KPA's capacity to handle containerized cargo.

Committee Observation

34. The Committee noted that the Kenya Ports Authority is on track to implement the resolution with the development of the said infrastructure.

3.0 COMMITTEE OBSERVATIONS

35. The Committee having reviewed the implementation status of the report of the Departmental Committee on Finance and National Planning on the Optimization of Revenue in Grain Handling Services at the Port of Mombasa and considered the evidence received observed that:
- 1) Kenya Ports Authority (KPA) has licensed Portside Freight Services Limited as a second-grain bulk terminal operator within the Port of Mombasa; and,
 - 2) The Kenya Ports Authority was on course in implementing the resolution with regard to the development of critical infrastructure in all ports to continually gain leverage in technology while maximizing the return on investment.

4.0 COMMITTEE RECOMMENDATIONS

The Committee having reviewed the said report and considered the evidence received, recommends that

- (1) The Kenya Ports Authority should consider other qualified firms in other emerging alternative locations at Dongo Kundu SEZ, Lamu Port and Kisumu Port to optimize revenue collection and to cut down on high demurrage costs;
- (2) The National Treasury and Planning and the Kenya Ports Authority ensures critical infrastructure is installed in all ports to continually gain leverage in technology while maximizing the return on investment; and
- (3) The Kenya Ports Authority should on a quarterly basis report to the National Assembly on the implementation status of the development of critical infrastructure.

SIGNED..... DATE 24/02/2022.

HON. MOITALEL OLE KENTA, MP

CHAIRPERSON, COMMITTEE ON IMPLEMENTATION



Appendix I: Adoption List







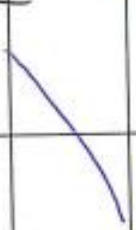





Committee on Implementation

We, the Members of the Committee on Implementation, have pursuant to Standing Order 199 adopted the Report on Implementation status of the report on optimization of revenue in grain handling services at the port of Mombasa. We affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Venue: *Committee Room on 5th Floor Continental House*

Date: *Thursday 17th February*

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP - Chairperson	
2.	The Hon. Godfrey Osotsi, MP - Vice Chairperson	<i>Virtually</i>
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	<i>Virtually</i>
5.	The Hon. (Dr.) James Kipkosgei Murgor, MP	
6.	The Hon. John Muchiri Nyagah, MP	
7.	The Hon. Johnson Many Naicca, MP	
8.	The Hon. Moses Kiarie Kuria, MP	

9.	The Hon. Paul Simba Arati, MP		
10.	The Hon. Peter Kimari Kihara, MP		
11.	The Hon. Charles Ngusya Nguna, MP		<i>Virtually</i>
12.	The Hon. Feisal Abdalla Bader, MP		
13.	The Hon. Gabriel Kago Mukuha, MP		<i>Virtually</i>
14.	The Hon. Hassan Oda Hulufu, MP		<i>Virtually</i>
15.	The Hon. Jared Okello, MP		
16.	The Hon. Joash Nyamache Nyamoko, MP		<i>Virtually</i>
17.	The Hon. Joshua Mwalyo Mbithi, MP		
18.	The Hon. Michael Thoya Kingi, MP		<i>Virtually</i>
19.	The Hon. Nelson Koech, MP		
20.	The Hon. Benjamin Dalu Tayari, MP		<i>Virtually</i>
21.	The Hon. Paul Abuur, MP		
22.	The Hon. Silvanus Osoro, MP		<i>Virtually</i>
23.	The Hon. John Njuguna Wanjiku, MP		<i>Virtually</i>

Committee Clerk

Name..... *Shel Gwara R. Hassan*

..... *[Signature]*
(Signature)

Date..... *17/02/2022*

Appendix II
Minutes of the Select Committee on
Implementation



MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 17TH FEBRUARY 2022, IN COMMITTEE ROOM ON FIFTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 12.00 P.M.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - Chairperson
2. The Hon. Godfrey Osotsi, MP - Vice Chairperson
3. The Hon. Alois Musa Lentoimaga, MP
4. The Hon. Benjamin Dalu Tayari, MP
5. The Hon. Gabriel Kago Mukuha, MP
6. The Hon. Hassan Hulufu, MP
7. The Hon. Jared Okello, MP
8. The Hon. John Muchiri Nyagah, M.P
9. The Hon. John Njuguna Wanjiku, MP
10. The Hon. Michael Kingi, MP
11. The Hon. Peter Kihara, MP
12. The Hon. Silvanus Ogoro, MP

ABSENT WITH APOLOGIES

1. The Hon. (Dr.) James Kipkosgei Murgor, MP
2. The Hon. Johnson Many Naicca, MP
3. The Hon. Paul Simba Arati, MP
4. The Hon. Richard Onyonka, MP
5. The Hon. Moses Kuria, MP
6. The Hon. Charles Ngusya Nguna, MP
7. The Hon. Feisal Bader, MP
8. The Hon. Joshua Mbithi Mwalyo, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Nelson Koech, MP
11. The Hon. Paul Odalo Abuor, MP

IN-ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Ms. Tracy Chebet Koskei | - | First Clerk Assistant |
| 2. Mr. Abdirahman Hassan | - | Second Clerk Assistant |
| 3. Ms. Jane Serem | - | Audio Officer |
| 4. Ms. Zeinab Wario | - | Sergeant-at-arms |

MIN.NO.NA/COI/2022/009: PRELIMINARIES

The Chairperson called the meeting to order at twelve o'clock (12.00 p.m.) and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. John Nyagah, MP, and the Hon. Jared Okello, MP respectively.

MIN.NO.NA/COI/2022/010: CONFIRMATION OF THE PREVIOUS MINUTES

The following Minutes were confirmed: -

- 1) Minutes of the 53rd Sitting held on Thursday 9th December 2021 were confirmed as a true record of the proceedings having been proposed by the Hon. Jared Okello, MP and seconded by the Hon. Peter Kihara, MP.
- 2) Minutes of the 1st Sitting held on Thursday 27th January 2022 were confirmed as a true record of the proceedings having been proposed by the Hon. John Nyagah, MP and seconded by the Hon. Peter Kihara, MP.
- 3) Minutes of the 2nd Sitting held on Thursday 10th February 2022 were confirmed as a true record of the proceedings having been proposed by the Hon. John Nyagah, MP and seconded by the Hon. Jared Okello, MP.

MIN.NO.NA/COI/2022/011: MATTERS ARISING

The following matters arose from the Minutes of the 53rd Sitting: -

Under MIN.NO.NA/COI/2021/208: Status of the report on improved terms for pensioners

The Committee noted that the National Treasury was yet to provide a comprehensive report on the implementation status of the report of the petition on improved terms for pensioners as directed by the Committee.

In that regard, the Secretariat was asked follow up with the National Treasury to provide an update on the implementation status of the aforementioned report.

MIN.NO.NA/COI/2022/012:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON IMPLEMENTATION STATUS OF THE
REPORT ON OPTIMIZATION OF REVENUE IN
GRAIN HANDLING SERVICES AT THE PORT OF
MOMBASA**

The Committee having considered the submissions by the National Treasury and Planning and the Kenya Ports Authority noted the following as the implementation status of the report by the Departmental Committee on Finance & National Planning on the optimization of revenue in grain handling services at the port of Mombasa:

- (i) ***To optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022***

The National Treasury reported that KPA had licensed a second-grain bulk terminal operator within the Port of Mombasa. KPA also acknowledged having awarded Portside Freight Terminal Limited (PFTL) a license for bulk grain handling facility at the Port of Mombasa and a wayleave

for the development of an overhead conveyor through the G-section area of the Port, after their proposal was evaluated and found to be the most technically and financially feasible.

Committee Observation

The Committee noted that the Kenya Ports Authority had implemented the resolution. However, a Constitutional Petition No. E045 of 2021 was filed challenging the award of the license and Wayleave to Portside Freight Terminal Limited.

- (ii) ***The Process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability.***

Implementation status

The National Treasury reported that KPA followed due process in allocating the second-grain bulk operator at the Port of Mombasa. However, the matter ended up in court. KPA reported that the Portside Freight Terminal Limited proposal was evaluated and found to be the most technically and financially feasible since it will be 100% privately funded and the project will pose a minimum conflict with other ongoing and planned KPA developments.

Committee Observation

The Committee noted that the Kenya Ports Authority had implemented the resolution.

- iii. ***Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone, the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public-Private Partnerships (PPPs) framework.***

Implementation status

The National Treasury reported that KPA plans to provide for the development of other grain terminals at Dongo Kundu and Lamu Port through Public-Private Partnerships. New opportunities which were not envisioned in the Master Plan 2018-2047 will therefore be considered in the Strategic Plan which is reviewed every five (5) years. KPA has since embarked on the development of the Strategic Plan (2023-2027) to be launched before 31st December 2022 upon approval by the Board of Directors.

Committee Observation

The Committee noted that the Kenya Ports Authority was on course in implementing the resolution with the development of the said infrastructure.

- iv. *To promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.*

Implementation status

The National Treasury reported that KPA had put in place measures to ensure that infrastructure matches and exceeds the demand for grain commodities. The Authority is developing the Dongo Kundu berths, measuring 300 meters in length and 15 meters deep while that of Lamu Port will measure 400 meters in length and 17 meters deep to accommodate large vessels.

Committee Observation

The Committee noted that the Kenya Ports Authority was on course in implementing the resolution with the development of the said infrastructure.

- v. *KPA should continue investing including through the PPP framework in the expansion of the Port facility to accommodate more berths to meet the growing demand within the region.*

Implementation status

The National Treasury reported that KPA is constructing the first 3 berths at Port of Lamu to be completed by April 2022. Additionally, the relocation of Kipevu Oil Terminal which will accommodate 3 large oil vessels will be commissioned by end of March, 2022. The 2nd container terminal Phase 2 is scheduled to be ready by 2022 further increasing KPA's capacity to handle containerized cargo.

Committee Observation

The Committee noted that the Kenya Ports Authority is on track to implement the resolution with the development of the said infrastructure.

The Committee, consequently unanimously adopted the report, after it was proposed by the Hon. Peter Kihara, MP, and seconded by the Hon. Jared Okello, MP. The Committee made the following observations and recommendations: -

Committee Observations

1. Kenya Ports Authority (KPA) has licensed Portside Freight Services Limited as a second-grain bulk terminal operator within the Port of Mombasa; and
2. The Kenya Ports Authority was on course in implementing the resolution with regard to the development of critical infrastructure in all ports to continually gain leverage in technology while maximizing the return on investment.

Committee Recommendations

1. The Kenya Ports Authority should consider other qualified firms in other emerging alternative locations at Dongo Kundu SEZ, Lamu Port and Kisumu Port to optimize revenue collection and to cut down on high demurrage costs;
2. The National Treasury and Planning and the Kenya Ports Authority ensures critical infrastructure is installed in all ports to continually gain leverage in technology while maximizing the return on investment; and
3. The Kenya Ports Authority should on a quarterly basis report to the National Assembly on the implementation status of the development of critical infrastructure.

MIN.NO.NA/COI/2022/013: ANY OTHER BUSINESS

Study Visits

The meeting noted that the Committee had not undertaken any foreign travel in the current financial year and resolved to pursue a study visit to Turkey.

MIN.NO.NA/COI/2022/014: ADJOURNMENT

The meeting was adjourned at half past twelve (12.30 p.m.). The next meeting will be held on Thursday 24th February 2022.

Sign.....


Date.....
24/02/2022.

Hon. Moitalel Ole Kenta, MP

(Chairperson)

MINUTES OF THE 44TH SITTING OF THE COMMITTEE OF IMPLEMENTATION HELD ON FRIDAY, 22ND OCTOBER, 2021, IN THE KPA BOARDROOM, MOMBASA, AT 2.30 P.M.

PRESENT

1. The Hon. Moitalele Ole Kenta, MP – Chairperson
2. The Hon. Godfrey Osotsi, MP - Vice Chairperson
3. The Hon. Benjamin Dalu Tayari, MP
4. The Hon. Charles Ngusya Nguna, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Jared Okello, MP
7. The Hon. Feisal Bader, MP
8. The Hon. Joshua Mbithi Mwalyo, MP

ABSENT WITH APOLOGIES

1. The Hon. Alois Musa Lentoimaga, MP
2. The Hon. (Dr.) James Kipkosgei Murgor, MP
3. The Hon. Moses Kuria, MP
4. The Hon. Richard Onyonka, MP
5. The Hon. John Muchiri Nyagah, M.P
6. The Hon. Johnson Many Naicca, MP
7. The Hon. Paul Simba Arati, MP
8. The Hon. Hassan Hulufo, MP
9. The Hon. John Njuguna Wanjiku, MP
10. The Hon. Mukuha Gabriel Kago, MP
11. The Hon. Michael Kingi, MP
12. The Hon. Nelson Koech, MP
13. The Hon. Peter Kihara, MP
14. The Hon. Paul Odalo Abuor, MP
15. The Hon. Silvanus Osoro, MP

IN ATTENDANCE

- | | |
|-----------------------------|---|
| 1. Amb. John Mwangemi | - Ag. Managing Director |
| 2. Mr. Daniel Ogutu | - General Manager, Human Resources & Administration |
| 3. Mr. Geoffrey Kavate | - Ag. General Manager Finance |
| 4. Mr. Turasha J. Kinyanjui | - Ag. General Manager, Board and Legal Services |
| 5. Eng. Vincent Sidai | - General Manager, Infrastructure |
| 6. Mr. Haji Masemo | - Principal, Corporate Communications Officer |
| 7. Ms. Saumu Lelley | - Communications Officer |
| 8. Mr. Charles Odoo | - Communications and Protocol Officer |
| 9. Mr. Cosmas Makori | - Head of Procurement and Supplies |

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Ms. Tracy Chebet Koskei | - | First Clerk Assistant |
| 2. Mr. Abdurahman Hassan | - | Second Clerk Assistant |
| 3. Mr. Donald Manyala | - | Research Officer II |
| 4. Ms. Jane Serem | - | Audio Officer I |
| 5. Mr. Moses Kariuki | - | Serjeant-at-Arms |

MIN.NO.NA/COI/2021/203

PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past two o'clock (2.30 p.m.) and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. Benjamin Tayari, MP, and the Hon. Joshua Mwalyo, MP, respectively. Introductions were made thereafter.

The Chairperson thereafter informed the meeting of the mandate of the Committee as provided for in Standing Order 209 of the National Assembly Standing Orders, which was to follow up on implementation of House resolutions and ensure that the House does not act in vain.

MIN.NO.NA/COI/2021/204

CONFIRMATION OF THE PREVIOUS MINUTES

This Agenda was deferred to the next Sitting.

MIN.NO.NA/COI/2021/205

MEETING WITH THE ACTING MANAGING DIRECTOR, KENYA PORTS AUTHORITY, REGARDING THE IMPLEMENTATION STATUS OF THE REPORT ON THE OPTIMIZATION OF REVENUE IN GRAIN HANDLING SERVICES AT THE PORT OF MOMBASA

The acting Managing Director Kenya Ports Authority and other officials of the Authority appeared before the Committee to brief the Committee on the implementation status of the report by the Departmental Committee on Finance and National Planning on the optimization of revenue in grain handling services at the ports of Mombasa. They informed the Committee as follows; That

In order to optimize revenue collection, KPA has fast-tracked authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.

KPA Strategic Plan had already recognized the need for a second grain bulk handler in order to diversify from the risk of monopoly. Way back in 2017, the Authority identified Dongo Kundu and Lamu Port as potential sites for the facility.

By the time the Finance and Planning Committee visited, KPA had already embarked on the process of identifying the operator to be licensed. Given that the KPA Strategic Plan was widely shared within the industry, several privately initiated proposals for operating a second

grain bulk facility had been received. The following applicants had identified specific sites of interest to them: -

- a. Kapa Oil Refinery.
- b. Africa Ports and Terminals,
- c. Multiship International,
- d. Mombasa Grain Terminal Limited,
- e. Kilindini Terminals Limited,
- f. Kipevu Inland Container EPZ Limited, and
- g. Portside Freight Terminals Limited.

Notably, the Master Plan envisaged development of a second bulk grain handling facility at Dongo Kundu and Lamu Port as stated above. However, the Dongo Kundu SEZ is still at design stage and Lamu Port is still under construction. Both sites were therefore unattractive to any possible PPP investors.

In order to fast-track the process towards authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022, KPA Management having evaluated all proposals identified the most technically feasible for progression in accordance with the Law.

The Technical Committee following detailed analyses recommended that each grain bulk applicant be considered subject to the availability of the berths applied for and the proximity of their physical location for silos as part of technical and commercial feasibility.

The following are the details of the seven (7) proposals and the Technical Committee observations/findings: -

1. Kapa Oil Refineries

Kapa Oil refineries expressed the need to have their own bulk storage terminal at the Mombasa Port. The company was particularly interested in the land which is linked to the mainland via the new Port Reitz Dongo Kundu area. Following the proposal, Management observed that KPA does not have adequate land for construction of additional storage facility and that there are plans to have a new liquid bulk cargo handling facility near Dongo Kundu which will require a corresponding storage facility to ensure optimization is achieved and wastages of resources curbed.

2. Multiship International Ltd

The company made an application vide letter Ref. MSIL/nss.KPA.68.11/17 on 23rd November 2017 to be allowed to occupy berths 13 & 14 to discharge grains and fertilizer on dedicated use. The company expressed interest to invest in both portable grain silos and unloaders that will be movable and temporarily placed along the quayside in the port specifically to serve the Standard Gauge Railway through its wagons within the port. However, the Authority declined the request vide letter Ref. CDD/PD/3/1/10 dated 6th February 2018 making reference to KPA Master planning requirements that these berths

were solely committed for container traffic as the development and conversion plans for berth no. 11-14 was underway and construction was expected to be completed in about three years.

Consequently, Multiship vide letter 6th June 2018 Ref. MSIL/nss.KPA.45/6-18 requested for allocation of a yard adjacent to berth no.5 to build and operate a specialized dry bulk discharge and handling terminal for grains and rehabilitation of shed no.7 and 8 for fertilizer handling dedicated for SGR. Further, Multiship vide letter Ref. MSIL/nss.KPA.13/3-19 dated 18th March 2019 submitted a proposal for the development of dedicated grain and fertilizer terminals at the port of Mombasa and SGR Athi-River Green Hark Terminus. They specifically requested the following:

- Allocation of space in the port adjacent to berth No.5 to construct the specialized dedicated SGR dry bulk grain discharging and handling terminal.
- Shed No. 7/8 or 9/10 for rehabilitation to handle bulk fertilizer for dedicated transportation via SGR during discharge from the vessels in the Port.

The Technical Committee observed that the yard adjacent to Yard No. 5 is a common user facility for SGR and Meter Gauge Railway (MGR) loading and a temporary storage area for steel and motor vehicles.

3. Africa Ports and Terminals

Africa Ports and Terminals vide their letter Ref. APT-COR-2018-004 dated 3rd January 2018 sought for an opportunity to engage in Marine activities including transshipment of cargo from mooring buoys to the wharf and vice versa. They also requested for allocation of suitable land for development of grain and LPG Terminals in Lamu Port.

KRA responded vide letter Ref. MCS/4/8/01 dated 16th January 2018 seeking details of the locations/plots identified by Africa Ports and Terminals through their due diligence to be suitable for the proposed investment. Similarly, KPA advised Africa Ports and Terminals that its application will be considered against the Authority's Master Plan and Public Procurement and Asset Disposal Act and Rules. The company was also guided to contact the Head of Corporate Development for the Masterplan and the General Manager, Operation as well as the Head of Procurement & Supplies regarding the relevant matters associated with their proposal.

Africa Ports and Terminals is yet to submit a response to the above.

4. Mombasa Grain Terminal Limited

The Mombasa Grain Terminal Limited (MGTL) vide a letter dated 23rd November 2019, requested KPA to grant an irrevocable and unconditional wayleave and permission to construct a Fertilizer and Grain Terminal at the old KOT, after the scheduled relocation of KOT in 2021. The proposed project construction by MGTL was envisioned to take 1-2 years.

Further, MGTL sought permission from KPA to allow the company to access the proposed project site, in order to carry out survey of their design process and determine the wayleave where MGTL equipment (Conveyor Belts and SGR Loading Gantry) will be positioned.

The MGTL proposal was analysed vis a vis the KPA Master Plan 2018-2047. The Master plan provides that KPA will decommission and demolish the old KOT and establish an additional Berth 19 by 300 m, with an associated yard area of 7.5ha. The Berth capacity for Berth 19 is estimated at 450k TEU/yr.

The Master Plan anticipates that a second Grain Terminal will be developed in Dongo Kundu by 2023. Further, KPA has planned for the development of a Grain bulk in Lamu Port by 2032 in the event the Grain bulk terminal in Dongo Kundu will have reached its maximum capacity.

The Technical Committee noted that the old KOT which MGTL has identified to develop a Grain and Fertilizer terminal, will not be available since KPA has made prior plans to expand Berths 16-18 and establish an additional Berth 19. Moreover, the space at the old KOT will be used for containers only.

Therefore, Management recommended that the request by MGTL be declined since the old KOT which the company has identified for development of a Grain and Fertilizer terminal, is currently in use and prior plans have been made by KPA to use the identified location.

5. Kilindini Terminals Limited

The company vide a letter dated 2nd December 2015 made an application for a wayleave to build and operate a specialized dry bulk discharge and handling terminal for grains at the Port of Mombasa. The terminal would be linked by overhead conveyors directly to the berths. KTL also proposed Berth no. 5 and Berths 11 to 14 as sites for the project. KTL projected cargo to be handled as 1 million tons by end of 2020 and increase over the following two years to 1.1 million tons and 1.2 million tons respectively. The application could not however not be progressed as the requested berths are not available for bulk grain handling.

6. Kipevu Inland Container EPZ Limited

Kipevu Inland Container EPZ Ltd. Vide letters dated 9th July 2018 and 22nd January 2020, requested KPA to grant a wayleave for installation of a multipurpose conveyor belt system to handle dry bulk cargo at Plot No. MV/VI/4794, at Kibarani adjacent to the Port area.

They also proposed to construct a 150,000MT of bulk grain silo storage, 250,000sqft of covered warehouse space and modern container handling equipment. The proposed facility is expected to cater for various dry bulk products that are being imported in large quantities to serve various sectors both within Kenya and the greater African Markets i.e. clinker, fertilizer, coal, gypsum & food grains while adopting the latest technology of green terminal with the lowest carbon footprint.

Subsequently, KIPEVU made a presentation on their proposal to the Management of KPA on the 4th of March 2020. In their presentation, KIC EPZ informed Management that they have secured 50 Acres of land from Kenya Railway in Athi River to build and operate a

modern receiving terminal for bulk volumes hauled via SGR, which is expected to contribute significantly to reduction of the Port congestion.

The proposal was analyzed against the KPA Master Plan 2018-2047. The Master Plan anticipates that a second grain terminal will be developed in Dongo Kundu by 2023. Further, KPA has planned for the development of a Grain bulk facility in Lamu Port by 2032 in the event the Grain bulk terminal in Dongo Kundu will have reached its maximum capacity. This was considered as a future plan.

7. Portside Freight Terminal Limited

Portside Freight Terminal Limited (PFTL) vide a letter dated 6th April 2020 sought a license for bulk grain handling facility at the Port of Mombasa and a wayleave for the development of an overhead conveyor belt through the G-Section area of the Port.

The PFTL proposal was evaluated and found to be the most technically and financially feasible since it will be 100% privately funded and the project will pose minimum conflict with other ongoing and planned KPA developments. In addition, PFTL owns land adjacent to G-Section where the storage silos will be located which makes them the most suitable applicant.

In line with Section 12 of the KPA Act Management submitted the evaluation report to the Board of Directors during its 382nd Meeting held on 30th November 2020 and 3rd December 2020. The Board deliberated the PFTL business proposal and resolved:-

1. A license for grain bulk handling operator at the Port of Mombasa be granted to PFTL.
2. A wayleave be issued for development of an overhead conveyor belt through G-Section Area to PFTL.
3. A counterpart team be formed to work with PFTL in developing the island berth.
4. The counterpart team to be engaged in firming technical specifications including routing of the overhead conveyors.

Following the Board approval, Management obtained concurrence from the Honourable Attorney General and the National Treasury to progress the project under Specially Permitted Procurement Method, Section 114(A) of the Public Procurement and Disposal Act, 2015.

Subsequently, an award was made to PFTL and license/wayleave agreements signed.

Under the KPA Master Plan (2018-2047) implementation, KPA is still pursuing alternative locations for discharge of grain vessel with the ongoing design and development of Dongo Kundu SEZ, Lamu Port and Kisumu Port. Due to investment and financing constraints, the projects will be undertaken using the PPP Framework.

Historically, the legal framework as elaborated hereunder guided the licensing and issuance of wayleaves:-

1. Section 12 (2n) of the Kenya Ports Authority Act gives the Board power to enter into agreements with any person-
 - i. For the supply, construction, manufacture, maintenance or repair by that

person of any property, movable or immovable, necessary or desirable for the purposes of the Authority;

ii. For the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Authority.

2. The Tariff book, empowers the Authority to enter into agreement with any person including any company or association or body of persons corporate for the performance or provision by that person of any of the services or facilities which may, ordinarily under the Act, be performed or provided by the Authority and empowers the Authority to issue various licenses.

3. It has been the practice of KPA to grant approvals to private operators to construct wayleaves and licenses in performance of her duties. Grain and Bulk handling at the port is done either through: -

- a. Conventional bagging vide grabs onto bagging plants alongside ship and onto trucks. Examples of the companies include Multiport limited and Interglobe.
- b. Mechanized system which use conveyor belts, pipes and pneumatic suckers from the port to silos/tankage outside the port. Example of companies includes GBHL and Magadi Soda.

The companies whose applications were approved by the Board using KPA Act and KPA Tariff are as follows;

- a. East Africa Terminal Limited - The Board approved their application for wayleave in 2013 while PPP Act was notwithstanding.
- b. Magadi Soda - Wayleave through which they have conveyors operating and licenses agreement.
- c. Grain Bulk Handling Limited (GBHL) - Approval was granted twice for licenses agreements and infrastructure upgrade
- d. African Oil and Gas Limited (AGOL) - Approval for setting up facility for handling oil and gases was approved by the Board.
- e. Portside Freight Services Limited - Approval for setting up a modern conveyor facility at Shed 7 & 8 was approved by the Board.

It is envisaged that once Dongo Kundu SEZ and Lamu Port are fully developed, investors will bring in critical infrastructure required for expansion, investment in technology and efficient state-of-the-art grain handling equipment under the PPP framework to meet growing demand and optimize revenue collection.

The Management of the Kenya Ports Authority further informed the Committee that;

- i. KPA during their presentation submitted Petition No. E 045 that had been filed in the High Court of Mombasa on 12th August 2021 requesting for an order of prohibition from granting and approving the proposals for way leave and licenses for second grain bulk handling facility at the port of Mombasa. The Committee however noted that it was mere application and there was no order issued hence the matter was not *sub judice*. The Committee instructed KPA to provide further details on the matter e.g.

- ii. court proceedings and orders granted, if any;
- iii. The Committee sought for clarification from the KPA regarding a letter to Kilindini Terminals Limited referenced CDD/2/1/13(56) dated 23rd October 2017, on application to build and operate a bulk grain handling facility at the port of Mombasa, and whether it was consistent with the date of application;
- iii. The process of identifying a 2nd container terminus was concluded in July 2021;
- iv. The Authority receives monthly initiatives from people with idea due to speciality of their operations and the idea of having another grain handling operator was in the master plan;
- v. The Strategic Plan and the Master Plan for KPA are public documents launched within the industry hence companies with capacity applied for the 2nd bulk terminal;
- vi. The Authority sets up standing committees on each field to consider and evaluate criteria for every project and hire transactional advisors where they don't have the expertise. They also set up a technical team to consider proposals by millers and identify challenges in privately initiated proposals; and
- vii. An attempt by KPA to tender for the 2nd bulk terminal was cancelled through instructions from the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development.

The Committee instructed the Authority to provide the following: -

- i. The letter from the Ministry of Transport cancelling the tender for the 2nd bulk terminal;
- ii. The license agreement/arrangement between Grain Bulk Handlers Ltd and KPA signed between the two giving GBHL exclusivity and monopoly for 8 years.

MIN.NO./NA/COI/2021/206: **ADJOURNMENT**

The meeting was adjourned at 4.30 p.m.

Date: 09/12/2021.

Sign: 

(Chairperson)

Appendix III

**Report of the Departmental Committee on Finance
and National Planning on the Optimization of Revenue
in Grain Handling Services at the Port of Mombasa**



Approved for tabling

Ben SNA
26/11/2020

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING



REPORT ON THE OPTIMIZATION OF REVENUE IN GRAIN HANDLING SERVICES AT
THE PORT OF MOMBASA

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2020



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CHAIRPERSON'S FOREWORD

This report contains the findings and recommendations of the Departmental Committee on Finance and National Planning on its fact-finding visit to Grain Bulk Handling Limited (GBHL) which was undertaken on 21st November, 2020.

The objective of the visit was to assess ways of optimization of revenue through the grain handling facilities at the Port of Mombasa. The Committee toured the facilities of GBHL where it was observed that they operate almost 98% of all grain bulk services at the Port of Mombasa and have been in operation since 2002.

Kenya Ports Authority (KPA) has been having one licensed grain bulk handler that is GBHL operating at berths 3 and 4 at the Port of Mombasa with an exclusive mandate that was initially granted and expired on 15th February, 2008. Following this expiry, there has been an agitation to liberalize grain bulk operations by allowing other additional operator(s) and equally promote competition in the industry.

During the past ten (10) years, the Port of Mombasa has equally experienced exponential growth of grain imports (with wheat and grain almost quadrupling). This significant growth has given an impetus on the need to have a second or third or fourth grain bulk handling terminal.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Kenya Ports Authority as well as all the stakeholders who made the inspection visit successful. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report on *"The optimization of revenue in grain handling services at the Port of Mombasa"*.

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:-

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

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:-
 - i. National Treasury and Planning
 - ii. State Department for Devolution
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget
 - v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members: -

Chairperson

Hon. Gladys Wanga, CBS, MP
MP for Homabay County
ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu
MP for Roysambu Constituency
Jubilee Party

ODM Party

Hon. Jimmy O. Angwenyi, MP
MP for Kititu Chache North Constituency
Jubilee Party

Hon. Joshua Kandie, MP

MP for Baringo Central Constituency

MCC Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Stanley Muthama, MP

MP for Lamu West Constituency
Jubilee Party

ODM Party

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu East Constituency
Independent Member

Hon. Edith Nyenze, MP

MP for Kitui West Constituency
WDM-K

WDM-K

Hon. Daniel Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Catherine Waruguru, MP

MP for Laikipia County
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
MP for Siaya County
ODM Party

Hon. James Mwangi, MP

MP for Tetu Constituency
Jubilee Party

Jubilee Party

Hon. Andrew Okuome, MP

MP for Karachuonyo Constituency
ODM Party

Hon. (Prof.) Mohamud Muhammed, MP

MP for Wajir South Constituency
Jubilee Party

Jubilee Party

Hon. David Mbohi, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Peter Lochakapong, MP

MP for Sigor Constituency
Jubilee Party

Jubilee Party

Hon. Francis K. Kimani, MP
MP for Molo Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP

MP for Moyale Constituency
Jubilee Party

Hon. Joseph Oyula, MP
MP for Butula Constituency

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat: -

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Mr. Josephat Motonu
Senior Fiscal Analyst

Ms. Lauren Wesonga
Clerk Assistant II

Mr. Chelang'a Maiyo
Research Officer II

2 INTRODUCTION

6. Globally, the dry bulk trade has grown because of the need for raw materials in several important industries such as steel, aluminum and fertilizer manufacture, among others. A large fleet exists to service this trade. As a result, bulk shipping has become a rapidly expanding sector of shipping industry and bulk tonnage now accounts for about three-quarters of the world's merchant fleet.

7. KPA has been having one licensed grain bulk handler that is GBHL, operating at berths 3 and 4 at the Port of Mombasa with an exclusive mandate that was initially granted and expired on 15th February, 2008.

Table 1: GRAINS HANDLED BY GBHL FROM 2015 TO 2020

Years	Total tonnage handled	No. of Ships
2015	2,043,680	87
2016	1,939,477	81
2017	3,087,643	101
2018	2,422,890	80
2019	2,792,141	85
2020	2,181,766	79
TOTAL	14,467,597	513
TOTAL AVG/YEAR	2,411,266	85

8. Transportation of bulk commodities has undergone a radical change due to the tremendous increase in size and carrying capacity of vessels. This enormous increase in the volume of cargo has emphasized the need for faster and more efficient handling and storage operations, to exploit economies of scale. The scope of global materials handling industry is incredibly varied, from the supply of single pieces of mobile equipment to dedicated turnkey terminals handling millions of tonnes of major bulk commodities annually.

2.1 ESTABLISHMENT OF GRAIN BULK HANDLERS LIMITED

9. The Grain Bulk Handlers Limited (GBHL) is a private limited company incorporated in 2000 to undertake freight and forwarding services with speciality in cereals handling. The Company has installed its equipment at berths 3 and 4 at the Port of Mombasa in Kenya, with the conveyors leading to the storage elsewhere within the precincts of the port.

10. The company owns and operates a specialized bulk discharge and handling terminal for grain imports. GBHL facilities comprise of the following:-

- Vessel handling facility;
- Bulk transit terminal;
- A bulk storage terminal;
- Bagged warehousing; and
- Local transportation.

11. GBHL provides the following services to importers:-

- i. Discharge of bulk grain vessels;
- ii. Bulk silos for transit and long term storage;
- iii. Delivery to road and rail in bulk and bags;
- iv. Warehousing for bagged cargo for long term storage; and
- v. Local transportation provided by a fleet of trucks and trailer units for bagged cargo.

12. GBHL draws its clientele from millers, traders, international food relief organizations such as World Food Programme and Non-Governmental Organizations (NGOs) within the region and elsewhere, among others. Importers are charged with the responsibility of cargo clearance and payment of the requisite duty to the Kenya Revenue Authority (KRA).

13. Introduction of the specialized terminal and the operations of the GBHL promoted effective and efficient handling of grain hence reduced the charges levied to importers by shipping companies on the basis of delayed cargo clearance and mainstreamed port operations.

2.2 AGREEMENT BETWEEN KENYA PORTS AUTHORITY AND GBHL

14. The license agreement relating to the handling of grains, cereals and fertilizers in bulk in the Port of Mombasa was signed on 17th December, 2002 between KPA and GBHL. In the agreement, KPA was given the power to supervise some aspects of the operations and activities of GBHL, while GBHL agreed to be supervised and regulated by KPA in relation to certain aspects of the operations referred to in the Agreement.

15. In the Agreement, GBHL would operate in berths 3 and 4 and was required to pay KPA a fixed fee of USD 5,000 per annum which would be paid yearly in advance. The fee would be revised after every five years and the new fee payable by GBHL to KPA would be similar to that payable by other operators undertaking the discharge and storage of commodities in bulk from the Port and as published in the Tariff Book. The fee would be paid without any set-off counterclaim or condition whatsoever and free and clear of any deduction or withholding for or on account of taxes except a deduction or withholding for or on account of any present or future tax which GBHL will be required to pay by law.

16. KPA agreed that the ship contracted by GBHL to discharge commodities from or load commodities into shall be given priority access to the berths (or as the case may be, any one of them) provided that KPA's obligation to give priority access to the berths where the ships in question conform to the limitations applicable to the use of the berths (or as the case may be, any one of them) as notified by KPA to all users of the Port from time to time; and where GBHL has informed KPA in writing at least twenty-four (24) hours before the day as of which it is intended that a ship will dock at the berths (or as the case may be, any one of them).

17. KPA committed that it would not license any person for a period of eight (8) years commencing from 15th February, 2000 to construct, develop and/or operate any facility capable of discharging commodities shipped in bulk from a ship docked at any berth in the Port and which commodities after discharge are stored in bulk in silos, warehouses or other similar storage facilities erected on any other land over which KPA or any person controlled by KPA has management or control. KPA would however permit other persons carrying on operations as bagging plant operators on the quayside and undertaking storage of commodities outside the Port.

18. The tariff rate per tonne (or part thereof) of dry general or dry bulk cargo handled at Mbaraki, bulk bitumen handled via bituminers, soda ash handled via conveyors would be one Dollar and fifty cents (USD 1.50) while the tariff rate (or part thereof) of cargo handled at Mombasa Old Port or Outports or at other than appointed places unless otherwise stated or cargo handled at Mbaraki, soda ash handled via conveyor would be Dollars nought and fifty cents (USD 0.50). Accordingly, the aggregate of the tariff rates would be two Dollars (USD 2) per tonne (or part thereof).
19. In the Agreement, KPA was not to publish or create a separate category of tariff in respect of the handling of commodities through the Terminal and that the tariff rates applicable to the handling of commodities through the Terminal would at all times and from time to time for the purposes of the application of tariff rates by KPA to users of the Port be categorised with and be regarded as being similar to the operations and services that are undertaken by persons other than GBHL as at the date of signing the Agreement.
20. The Agreement was to remain in force for a period of thirty-three (33) years commencing from and including the start date.
21. The Agreement gave GBHL the powers to:-
 - i. discharge commodities from ships docking at the berths pursuant to contractual arrangements between GBHL and its customers;
 - ii. loading of commodities into ships docking at the berths pursuant to contractual arrangements between GBHL and its customers;
 - iii. handling of commodities at the Terminal and areas adjacent to the Terminal including storage warehousing and bagging together with all necessary documentation and accounting pursuant to contractual arrangements between GBHL and its customers; and
 - iv. loading of commodities onto vehicles and railway wagons for delivery to consignees and other cargo handling operations including all necessary documentation and accounting.
22. KPA and GBHL signed the Second Variation of License Agreement in respect of the License Agreement dated 17th December, 2002 and the Variation of License Agreement dated 13th April, 2008.

3 MEETINGS WITH STAKEHOLDERS

23. The Departmental Committee on Finance and National Planning held meetings with stakeholders on Saturday, 21st November, 2020 in order to seek their opinion on the matter under inquiry. The Committee held meetings with:-

- i. Grain Bulk Handlers Limited (GBHL);
- ii. Cereal Millers Association (CMA);
- iii. Kenya Ships Agents Association, Kenya Transporters Association and Kenya Freight Forwarders Association; and
- iv. Kenya Ports Authority (KPA)

24. The stakeholders submitted as follows:-

3.1 GRAIN BULK HANDLERS LIMITED

In their submission, GBHL stated that:-

25. GBHL was established in 1999 and operationalised in 2000 with the mandate of discharge, storage, bagging or delivery of shipped goods to their clients in Kenya and the Great Lakes Region. Some of its clients include World Food Programme (WFP) and United States Agency for International Development (USAID).
26. Operationalisation of GBHL reduced the amount of spillages experienced when offloading goods from ships hence reducing loss to clients. It also reduced the time that vessels spend at the Port from two weeks to between three and five days hence reducing the demurrage charges paid by its clients and congestion at the Port.
27. GBHL signed two agreements with KPA, the Wayleave Agreement which was signed in 1992 for a period of forty-five (45) years and it gave GBHL authority to pass their conveyor belts on KPA's land; and the License Agreement signed in 2000 for a period of thirty-three (33) years from 1999 which governs the operations of GBHL. In the License Agreement, GBHL is supposed to pay KPA USD 3.85 per tonne handled at the Port. GBHL charges USD 13.5 per tonne in bag and USD 16.5 per tonne in bulk to its clients.
28. GBHL recognized the need to revolutionize the handling of bulk grain and fertilizer imports at the Port of Mombasa. The ambitious project was conceived at a time when the handling of bulk grain imports at Mombasa involved combined use of grabs, vacuators and mobile bagging plants situated at the quayside.
29. This mode of handling was characterized by low vessel discharge rates, heavy spillage during discharge operations, heavy dust emission and poor accounting for discharged quantities thus making the port very expensive for bulk grain importers as well as ship operators/owners.
30. GBHL receives deliveries of bulk cereal imports from around the world at the port of Mombasa in order to meet the ever-increasing demand from millers, traders, NGOs and relief agencies in East and Central Africa, including Great Lakes, Southern Sudan and Somalia.
31. The Company has a storage capacity of 200,000 metric tonnes at the Port of Mombasa and 125,000 metric tonnes at the Nairobi Inland Container Depot. At inception, they handled about 400,000 metric tonnes of grain which has since increased to about 2.7 million metric tonnes in 2019 (an increase of about 7%).

3.2 CEREAL MILLERS ASSOCIATION

In their submission, CMA stated that:-

32. Cereal Millers Association was registered in the year 2000 and operationalized in 2007. It represents 40% of the cereal market in Kenya. There are one hundred and fifty six (156) maize millers and fifty six (56) wheat millers in Kenya.

33. There is a deficit of between 2 million to 2.7 million metric tonnes of wheat in Kenya per annum and there are times when maize is also imported when there is a shortage. It is because of these large amounts of grain imports that CMA recommended that there should be more grain handling companies at the Port of Mombasa because having one handler has led to delays in clearance of cereals and payment of high demurrage charges by clients.

34. GBHL was the only company licensed to handle grains at the Port from the year 2008 to 2009. Additionally, the rates charged to GBHL by KPA were lower than those charged to other conventional handlers and this makes it difficult for other handlers to penetrate the market.

35. KPA Board had approved the licensing of a second grain handling company but KPA was yet to issue the license.

3.3 KENYA SHIPS AGENTS ASSOCIATION, KENYA TRANSPORTERS ASSOCIATION AND KENYA FREIGHT FORWARDERS ASSOCIATION

In their submission, they noted that:-

36. The cost of transportation in Kenya was very high and this was occasioned by cess fees charged by when goods are being ferried across the counties, multiple licenses, unharmonised parking fees among others. The situation has really made road transportation expensive with the attendant cost being passed over to the final consumer.

37. There is need to increase rolling stock by both KPA and GBHL. KPA offered nine free storage days while GBHL offered seven free storage days. The free storage days should be increased in order to make the Port attractive to importers. The regional tracking seals and KRA staff should be increased in order to reduce clearance time at the Port.

38. A lot of emphasis is placed on the use of the Standard Gauge Railway (SGR) as opposed to trucks and this denies trucks business. The market has been monopolised by multinational companies which is against the provision of section 16 of the Merchant Shipping Act, 2009.

39. The government agencies stationed at the Port of Mombasa should be harmonised with a view of avoiding overlapping mandates which results in delayed clearance of goods at the Port.

3.4 KENYA PORTS AUTHORITY

In their submission, KPA stated that:-

40. M/s Grain Bulk Handling Limited holds a lease, way-leave and license agreements from KPA for purposes of bulk grain handling from berth 3 and 4 through an overhead conveyor running across the Port area to their facility outside the Port area at Shimanzi. The original owners of GBHL were Jaffer and Jaffer Limited who changed its name to Grain Bulk Handlers Ltd in 1994 (herein referred to as GBHL).

41. The GBHL facility concept was shared with KPA in 1984 when they sought Way leave to put up a conveyor belt system to the port quay for handling and storage of bulk grain. The Wayleave was granted and concluded in December 1992. The construction of the GBHL facility commenced in December, 1998 and completed in February 2000.

42. From inception the GBHL are multi - user service provider working for other parties on a tariff basis and as per the Agreement GBHL was given a duration of thirty three years from February 2000 with a Fixed fee of USD\$ 5,000.00 per annum payable yearly in advance and revisable every 5 years.

43. The GBHL chartered or ship agents appointed were also to be given priority access to berths 3 and 4. In addition, KPA was not to allow or permit or license any other person to develop or operate a similar facility for a period of 8 years from 15th February, 2000. This was so because it would not be economically rational to create additional capacity and the period was necessary for GBHL to recoup their investment of infrastructure.

44. In February 2008, the exclusivity expired and the KPA Board resolved on 30th April, 2008 that the handling of grain at the Port be liberalized to eliminate monopoly and promote healthy competition. KPA began the process of tendering for a second grain handler but the government cancelled the process for further stakeholder consultation. KPA Board however resolved to license a second grain handler and this will be done by the year 2022.

45. GBHL remains as main grain bulk handler at 98% of the grain imported into the country through the Port of Mombasa.

46. Other players such as Kilindini Terminals limited have applied for a way leave for grain bulk handling. Their proposal is being reviewed to establish viability and optimal location.

47. GBHL pays KPA USD 3.85 per tonne of grains that they handle. The last tariff review was done in 2012 and the next one will be done soon. Other conventional operators pay a tariff of USD 10.4. The table below shows the application of tariff payable to KPA.

APPLICATION OF TARIFFS (PAYABLE TO KPA)

48. Table 2: GBHL rates per ton or part thereof from February 2000 to 1st July 2008:-

Item	Tariff Rate (USD)
Stevedoring	1.50
Shorehandling	0.50
TOTAL	2.00

49. Table 3: Quayside bulk grain handling operators rates per ton or part thereof for the same period:-

Item	Tariff Rate (USD)
Stevedoring	6.00
Shorehandling	5.00
TOTAL	11.00

50. The rates were adjusted marginally in 2008 and in 2012 and approved by the Government through the Minister for Transport.

51. GBHL rates per ton or part thereof:-

Item	Tariff Rate (USD)
Stevedoring	1.65
Wharfage	2.20
TOTAL	3.85

52. Quayside bagging and using own equipment rates per ton or part thereof:-

Item	Tariff Rate (USD)
Stevedoring	4.40
Bagging	1.00
Wharfage	5.00
TOTAL	10.40

53. The rationale for the above charges is because KPA tariffs are structured on a through cost-plus-basis giving cognizance to the resource utilization and appropriate profit margin.

54. The difference between GBHL charges and conventional bulk handling is USD 6.55 (10.40-3.85). GBHL benefits from its investment which provide for a more efficient and cost effective handling.

55. Grain Millers pay a handling fee of USD 16 per ton when grains are collected from GBHL. GBHL provides free seven (7) days storage and thereafter pay USD 0.13 per ton per day.

56. It is also noted that GBHL charges to millers exceed what would be paid if the grains were collected directly from KPA by USD 5.6 (16 to 10.4). Since it is a competitive market, millers could be enjoying other advantages at GBHL and hence not collecting their grains from KPA conventional handling methods. *as the advantage for mills*

57. In terms of grains handled by GBHL from 2015 to 2020 a total tonnage handled was 14,467,597 tonnes with total number of being five hundred and thirteen (513) as shown in the table below:-

Years	Total tonnage handled	No. Of Ships
2015	2,043,680	87
2016	1,939,477	81
2017	3,087,643	101
2018	2,422,890	80
2019	2,792,141	85
2020	2,181,766	79
TOTAL	14,467,597	513
TOTAL AVG/YEAR	2,411,266	85

58. GBHL has a storage capacity of 220,700 tonnes in Mombasa and Nairobi at 134,000 tonnes, with this capacity and calculated with 20 days free storage their annual throughput capacity for Mombasa alone is approximately 4.027 million tonnes.

59. There has been other applicants who have expressed interest in build and operate a specialized dry bulk discharge and handling terminal for grains at the Port of Mombasa including Kilindini Terminals Limited, Kapa Oil Refinery, Africa Ports and Terminals, Multiship International, Kipevu Inland Container EPZ Limited,

4 COMMITTEES' OBSERVATIONS

Following the inspection visit to the Port of Mombasa and from the stakeholders' submissions, the Committee observed that:-

60. Cargo throughput at the Port of Mombasa has been rising over the years driven by the corresponding economic growth of countries that use the port for import and export.
61. Kenya Ports Authority through the Wayleave Agreement of 1992 for a period of forty-five (45) years and a License Agreement entered in 2000 for a period of thirty-three (33) years designated berths 3 and 4 to GBHL to handle grain bulk vessel discharge alongside the conventional dry grain and fertilizer handling that utilize grabs for bagged cargo.
62. GBHL is a private company which commenced operations in 2000 and solely operates a specialized terminal (berths 3 and 4) for handling bulk grain imports and is the sole operator for mechanical bulk grain handling at the Port of Mombasa.
63. GBHL facilities comprise of a vessel handling facility, a bulk transit terminal, a bulk storage terminal bagged warehousing and local transportation services.
64. Terminal/berths 3 and 4 are designated to GBHL but occasionally, the berth serves as a common user facility for purposes of discharging other vessels when idle.
65. The Port of Mombasa has limited berths for handling specialized cargo including dry bulk grain discharge, this shortage is attributed to the congestion experienced at the Port especially during emergency, surge in importation and or humanitarian crisis.
66. Kenya Ports Authority is responsible for providing the critical infrastructure to support the berthing of grain bulk whereas GBHL has installed equipment for discharge of grain vessels and storage facilities.
67. Grain and bulk handling at the Port is done either through GBHL vide conveyor from the port to silos outside the Port; or conventionally by bagging vide grabs onto bagging plants alongside ships and loaded to trucks.
68. Conventional grain bagging is mainly done where there is excess demand for vessel discharge resulting from long queues of ships awaiting clearance hence waiting time and demurrage charges are not deemed economical.
69. GBHL uses highly mechanized systems with dust suppression filters which has resulted in reduced dust emission to the environment, shorter ship dwell times and reduced cargo wastage.
70. GBHL dry bulk handling terminal in Nairobi is complete with a storage capacity of 134, 000 M/T of cargo, the terminal is adjacent to the Athi SGR station. The two institutions entered into a lease agreement on 25th November, 2018 with the aim of allowing GBHL to reside and conduct dry bulk handling without hindrance. The Nairobi terminal is responsible for non-food products such as clinker, coal and fertilizer.

71. The current rates payable for grain bulk handling under the GBHL service is USD 3.85 per M/T as provided for in the KPA Tariff Book while conventional grain bulk handlers are charged USD 10.4 per M/T. This price differentiation has presented a technical barrier to trade and competition.

72. The projected annual growth in grain handling at the Port of Mombasa is 7%. In 2019, the vessel discharge was at 2.7 million metric tonnes compared to 400,000 metric tonnes in 2000.

73. The License Agreement between KPA and GBHL covers a period of 33 years from the signing period in 2000 and the Agreement provides that GBHL will be granted exclusive operation for a period of 8 years from 2000 to allow her recoup expenditure before exploring the licensing of another grain bulk handler at the Port of Mombasa.


74. Kilindini Terminals Ltd (KTL) was granted wayleave subject to several conditions however, according to KPA, KTL has not responded to KPA on the same. KTL have proposed variation of their initial application to change location from berth 11 to berth 5 which has a width of 76 meters while a vessel has an average length of 200 meters making it inadequate for use.

5 COMMITTEE RECOMMENDATIONS

From the above observations, the Committee recommends that:-

75. In order to optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.
76. The process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability.
77. Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone (SEZ), the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public Private Partnerships (PPPs) framework.
78. To promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing on the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.
79. KPA should continue investing through the PPP framework in expansion of the Port facility to accommodate more berths to meet the growing demand within the region.

SIGNED..... DATE.....


HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

28th November 2020

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

**MINUTES OF THE 59TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD IN 5TH FLOOR, CONTINENTAL
HOUSE ON WEDNESDAY, 25TH NOVEMBER, 2020 AT 02.00 PM**

PRESENT

	Chairperson
1. Hon. Gladys Wang'a, MP	-
2. Hon. Isaac W. Ndirangu, MP	-
3. Hon. Jimmy O. Angwenyi, MGH, MP	Vice Chairperson
4. Hon. Christopher Omulele, MP	
5. Hon. Shakeel Shabbir Ahmed, CBS, MP	
6. Hon. (Dr.) Christine Ombaka, MP	
7. Hon. David M. Mboni, MP	
8. Hon. Joseph M. Oyula, MP	
9. Hon. Joshua C. Kandie, MP	
10. Hon. Edith Nyenze, MP	
11. Hon. Catherine Waruguru, MP	
12. Hon. James Gichuhi Mwangi, MP	
13. Hon. Peter Lochakapong, MP	
14. Hon. Qalicha Gufu Wario, MP	

ABSENT WITH APOLOGY

1. Hon. Daniel E. Nanok, MP
2. Hon. Andrew A. Okuome, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura	-	Senior Clerk Assistant/Head of Secretariat
2. Ms. Lauren Wesonga	-	Clerk Assistant II
3. Mr. Chelang'a Maiyo	-	Research Officer II
4. Mr. John Njoro	-	Serjeant-At-Arms
5. Ms. Mercyline Kerubo	-	Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. Meeting to consider and adopt the following reports:-
 - i. Report on the inspection visits to KRA Offices to ascertain the impact of revenue enhancement initiatives on revenue collection; and
 - ii. Report on the optimization of revenue in grain handling services at the Port of Mombasa.
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/283: COMMUNICATION FROM CHAIRPERSON

The meeting was called to order at 02.30 p.m. and a prayer was said. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2020/284: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2020/285: CONSIDERATION AND ADOPTION OF THE REPORT ON THE INSPECTION VISITS TO KRA OFFICES TO ASCERTAIN THE IMPACT OF REVENUE ENHANCEMENT INITIATIVES ON REVENUE COLLECTION

The Committee considered the report and adopted it having been proposed and seconded by Hon. Shakeel Shabbir, CBS, MP and Hon. James Gichuhi, MP respectively. The Committee agreed on the following observations and recommendations:-

COMMITTEES' OBSERVATIONS

Following the inspection visits to KRA Offices and OSBPs, the Committee observed that:-

1. Revenue collection points installed with scanners collect more revenue compared to those without scanners but with high traffic. For instance, the Malaba OSBP which is busier than the Namanga OSBP managed to collect revenue of KSh. 2 billion in the FY 2019/20 compared to Namanga which collected KSh. 4 billion in the same FY;
2. Automation of systems has enhanced revenue collection by KRA as there is less human intervention and increased information sharing between the regional offices and with the Times tower centralized monitoring centre;
3. KRA is understaffed with four thousand five hundred (4500) permanent and pensionable staff and one thousand eight hundred (1800) under contract terms. This understaffing has resulted in revenue underperformance due to inadequate staff complement; posing a challenge on service delivery;
4. The Malaba OSBP lacks decent staff housing forcing the staff to travel long distances to and from work which reduces productivity and puts them in an awkward position where they have to seek accommodation in houses owned by smugglers thereby compromising their integrity;
5. There was huge potential of revenue increase if the OSBPs were made to operate 24hours as it will ease of doing business since there is no limitations of working hours. Traders are able to import and export more. The 24hr operations will also ease congestion as the operating hours will be flexible;
6. KRA installed in Regional Electronic Cargo Tracking Seals (RECTS) where all containerized Transit Cargo & Single Customs Territory (SCT) goods from the port, and excisable goods are tracked under the Regional Electronic Cargo Tracking System (RECTS) Seals. The installation of the cargo tracking system has greatly minimized cases of corruption and theft of goods on transit as there is less or no human intervention and thus improved transparency due to real time information sharing. Before the RECTS, KRA was forced to escort trucks physically to ensure that they reach destination as declared. However, the cargo tracking devices are very few with the Inland Container Deport having only five thousand (5,000) seals). The lack of enough seals has created backlog at the Port of Mombasa and hence the need to invest in additional RECTS;
7. The lack of harmonization of tax on commodities between Kenya and her neighbors has encouraged smuggling of goods into the country especially alcoholic and soft drinks. For

instance, the excise duty payable on alcoholic and soft drinks in Tanzania is relatively lower in comparison to the excise duty charged in Kenya. This has resulted in unscrupulous traders preferring to smuggle the items through the long and porous Kenya-Tanzania Border;

8. The introduction of 10% import duty on non-East African countries has resulted in a decrease in volumes of hardwood imported into Kenya and this may lead to deforestation in the country; and reduction in revenue;
9. There is need to re-examine the Special Economic Zones policy in Kenya and carry out a comparative study between the SEZ policy in Uganda and Rwanda as there were reports of some businesses relocating to these two countries chiefly because of favorable policies and ease of doing business;
10. The cost of electricity for manufacturers in Kenya is high compared to Uganda which has lower prices for electricity in the industrial zones making it a preferred business destination. This could be seen by the increase in the number of manufactured products being imported from Uganda to Kenya e.g. tiles and steel bars;
11. The Malaba OSBP was poorly designed with no parking space for trucks leading to long queues of trucks, the buildings were dilapidated, the paths were not paved and there was no standby generator in case of power failure;
12. The Malaba OSBP had no clean water and the only water available was being pumped from river Malaba for use in sanitation. The contractor did not carry out a feasibility study to assess whether there was a potential for drilling a borehole to supply water to the OSBP;
13. Kenya Ports Authority had twenty-two (22) acres of unutilized land close to the Malaba OSBP that can be utilized for parking of trucks and this will go along in reducing traffic congestion;
14. The road leading to the Busia OSBP was narrow and dilapidated and this leads to long queues of trucks including those carrying explosive material posing a risk in case of an explosion given that there were no fire extinguishers in Busia County;
15. The speedboats used by KRA for surveillance at the Port of Mombasa are old and are unable to effectively monitor illegal activities in the waters and apprehend the tax evaders;
16. All OSBPs did not have coolers in their warehouses hence goods stored awaiting clearance go bad quickly;
17. The long and porous border between Kenya and her Tanzania and Uganda continue to encourage smuggling as the Multi agency teams are unable to provide security surveillance. The cross-border trade continues to undermine revenue collection as the traders use these illegal and unmanned routes.

COMMITTEE RECOMMENDATIONS

From the above observations, the Committee recommends that:-

1. Kenya Revenue Authority should immediately install drive-through scanners and in addition consider purchasing mobile scanners for bulk cargo and smart gates for all One Stop Border Posts. Parliament, through the Departmental Committee on Finance and National Planning should provide this budgetary requirement to be factored through the Supplementary Estimates I 2020/21 with priority on Malaba and Busia One Stop Border Posts and in the long term ensure all OSBPs are adequately equipped with drive-through scanners, mobile scanners for bulk cargo and smart gates;

2. The Kenya Revenue Authority is grossly understaffed at 4500 permanent staff and 1800 staff on contract. The National Treasury should allocate additional funds under the Supplementary Estimates I for 2020/21 to employ additional 2000 staff;
3. The Cabinet Secretary, National Treasury and the Commissioner General, Kenya Revenue Authority, should work out ways of operationalizing all One Stop Border Posts to operate 24 hours a day by the end of the year 2021. There is need for regional diplomatic engagement between Kenya and her neighbors to ensure necessary infrastructure is put in place to facilitate 24 hour operations;
4. The National Treasury should engage with Ministries of Finance in the East African Region during the budget cycle for the FY 2021/2022 in order to harmonize the excise duty charged by respective countries;
5. The Cabinet Secretary for National Treasury should direct Kenya Ports Authority to transfer land owned by Kenya Ports Authority in Malaba to Kenya Revenue Authority for purposes of building a truck parking facility. Once the transfer is done, Treasury should source funding to build the parking facility before the end of 2021;
6. The Cabinet Secretary, National Treasury should provide a report to Parliament on the Status of Special Economic Zone on how they compete with the rest of the East African countries within sixty days upon adoption of the report;
7. The Cabinet Secretary Ministry of Industrialization, Trade and Cooperatives should establish industrial zones where, in consultation with the Cabinet Secretary, Ministry of Energy the cost of electricity shall be subsidized in order to attract investment in the manufacturing sector; Provide a status report on the establishment of industrial zones and the progress made in establishing the same;
8. The National Treasury in consultation with the Departmental Committee on Finance and National Planning should review Tax Laws in the country in order to promote ease of doing business in the country. The amendments should be introduced in the Finance Bill, 2021;
9. The Commissioner General, KRA should include the purchase of regional electronic cargo seals in the Authority's budgets for the Financial years 2021/2022; 2022/2023; and 2023/2024;
10. To effectively combat illegal trade and tax evasion at the Ports of Mombasa and Kisumu, Parliament should allocate funds in Kenya Revenue Authority's budget for the FY 2021/2022 for the purchase of speedboats;
11. Kenya Revenue Authority should budget and purchase cold storage equipment in all One Stop Border Posts to ensure that goods stored in the warehouses are kept in the right conditions before they are dispatched; and
12. Feasibility studies should be carried out to find out the viability of establishing a border post at Shompole as the long and porous border between Namanga and Isebania One Stop Border Posts poses a greater avenue for tax evaders.

**MIN.NO.NA/F&NP/2020/286: CONSIDERATION AND ADOPTION OF THE
REPORT ON THE OPTIMIZATION OF REVENUE
IN GRAIN HANDLING SERVICES AT THE PORT
OF MOMBASA**

The Committee considered the report and adopted it having been proposed and seconded by Hon. Edith Nyenze, MP and Hon. Qalicha Wario, MP respectively. The Committee agreed on the following observations and recommendations:-

COMMITTEES' OBSERVATIONS

Following the inspection visit to the Port of Mombasa and from the stakeholders' submissions, the Committee observed that:-

1. Cargo throughput at the Port of Mombasa has been rising over the years driven by the corresponding economic growth of countries that use the port for import and export.
2. Kenya Ports Authority through the Wayleave Agreement of 1992 for a period of forty-five (45) years and a License Agreement entered in 2000 for a period of thirty-three (33) years designated berths 3 and 4 to GBHL to handle grain bulk vessel discharge alongside the conventional dry grain and fertilizer handling that utilize grabs for bagged cargo.
3. GBHL is a private company which commenced operations in 2000 and solely operates a specialized terminal (berths 3 and 4) for handling bulk grain imports and is the sole operator for mechanical bulk grain handling at the Port of Mombasa.
4. GBHL facilities comprise of a vessel handling facility, a bulk transit terminal, a bulk storage terminal bagged warehousing and local transportation services.
5. Terminal/berths 3 and 4 are designated to GBHL but occasionally, the berth serves as a common user facility for purposes of discharging other vessels when idle.
6. The Port of Mombasa has limited berths for handling specialized cargo including dry bulk grain discharge, this shortage is attributed to the congestion experienced at the Port especially during emergency, surge in importation and or humanitarian crisis.
7. Kenya Ports Authority is responsible for providing the critical infrastructure to support the berthing of grain bulk whereas GBHL has installed equipment for discharge of grain vessels and storage facilities.
8. Grain and bulk handling at the Port is done either through GBHL vide conveyor from the port to silos outside the Port; or conventionally by bagging vide grabs onto bagging plants alongside ships and loaded to trucks.
9. Conventional grain bagging is mainly done where there is excess demand for vessel discharge resulting from long queues of ships awaiting clearance hence waiting time and demurrage charges are not deemed economical.
10. GBHL uses highly mechanized systems with dust suppression filters which has resulted in reduced dust emission to the environment, shorter ship dwell times and reduced cargo wastage.
11. GBHL dry bulk handling terminal in Nairobi is complete with a storage capacity of 134,000 M/T of cargo, the terminal is adjacent to the Athi SGR station. The two institutions entered into a lease agreement on 25th November, 2018 with the aim of allowing GBHL to reside and conduct dry bulk handling without hindrance. The Nairobi terminal is responsible for non-food products such as clinker, coal and fertilizer.
12. The current rates payable for grain bulk handling under the GBHL service is USD 3.85 per M/T as provided for in the KPA Tariff Book while conventional grain bulk handlers are charged USD 10.4 per M/T. This price differentiation has presented a technical barrier to trade and competition.
13. The projected annual growth in grain handling at the Port of Mombasa is 7%. In 2019, the vessel discharge was at 2.7 million metric tonnes compared to 400,000 metric tonnes in 2000.
14. The License Agreement between KPA and GBHL covers a period of 33 years from the signing period in 2000 and the Agreement provides that GBHL will be granted exclusive operation for a period of 8 years from 2000 to allow her recoup expenditure before exploring the licensing of another grain bulk handler at the Port of Mombasa.
15. Kilindini Terminals Ltd (KTL) was granted wayleave subject to several conditions however, according to KPA, KTL has not responded to KPA on the same. KTL have

proposed variation of their initial application to change location from berth 11 to berth 5 which has a width of 76 meters while a vessel has an average length of 200 meters making it inadequate for use.

COMMITTEE RECOMMENDATIONS

From the above observations, the Committee recommends that:-

1. In order to optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022H1.
2. The process of appointing new operator(s) for the grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, 2015 to ensure non-discrimination and accountability.
3. Under the KPA Master Plan of 2018 to 2047, KPA needs to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone (SEZ), the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public Private Partnerships (PPPs) framework.
4. In order to promote efficiency in grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximizing on the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.
5. KPA should continue investing including through the PPP framework in expansion of the Port facility to accommodate more berths to meet the growing demand within the region.

MIN.NO.NA/F&NP/2020/287: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 04.08 p.m. The next meeting will be held on Tuesday, 1st December, 2020 at 10.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..........DATE 26th November 2020

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE OPTIMIZATION OF REVENUE IN GRAIN
HANDLING SERVICES AT THE PORT OF MOMBASA

DATE: 25TH NOVEMBER, 2020

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU, MP – VICE-CHAIRPERSON	
3. HON. JIMMY N. O. ANGWENYI, MGH, MP	Michael
4. HON. CHRISTOPHER OMULELE, MP	Michael
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	Chabaka
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON. EDITH NYENZE, MP	Michael
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	



Dated as of the

13th day of November

, 2018

KENYA PORTS AUTHORITY

- And -

GRAIN BULK HANDLERS LIMITED

SECOND VARIATION OF LICENCE AGREEMENT

In respect of the Licence Agreement dated 17th December 2002 and the Variation
of Licence Agreement dated 13th April 2018

This Second Variation of Licence Agreement is made as of the 27th day of Nov 2018.

CT LAND REGISTRY
MOMBASA
14 NOV 2018

KENYA PORTS AUTHORITY, a body corporate with perpetual succession established under the Kenya Ports Authority Act (Cap. 391) for the purpose hereof of Post Office Box Number 95009 – 80104, Mombasa (hereinafter referred to as "KPA" which expression shall, where the context so requires, include KPA's successors in title and permitted assigns); and

GRAIN BULK HANDLERS LIMITED, (Company Number C. 18094) a private liability company incorporated in the Republic of Kenya and of Post Office Box 80469 - 80100, Mombasa (hereinafter referred to as "Company" which expression, where the content so requires includes the Company's successors in title and permitted assigns)

Each hereinafter, referred to individually as a "Party" and collectively as the "Parties".

WHEREAS:

(A) The Parties hereto entered into a Licence Agreement ("Licence Agreement") dated 17th December 2002 relating to handling of grains cereals and fertilizer in bulk in the Port of Mombasa and the Licence Agreement was varied by the Variation of Licence Agreement ("Variation of Licence Agreement") dated 13th April, 2018.

(B) The Parties hereto have agreed to further amend and vary the Licence Agreement and the Variation of Licence Agreement on the terms and conditions set out in this Second Variation of Licence Agreement and to make provision for certain additional matters as stipulated hereunder:

(C) The Parties have agreed that this Second Variation of Licence Agreement shall form and be construed as being part of the Licence Agreement and the Variation of Licence Agreement.

IN CONSIDERATION of the due and punctual performance of the Company of the covenants and agreements in this Second Variation of Licence Agreement and in further consideration of the payment by the Company to KPA the sums of Kenya Shillings Thirty thousand (Kshs. 30,000/-) (receipt whereof is hereby acknowledged by KPA); now it is hereby agreed that with effect on and from the date hereof the Licence Agreement and the Variation of Licence Agreement shall be amended and varied as follows:



1. DEFINITIONS

1.1 Words and expressions defined in the Licence Agreement and Variation of Licence Agreement shall bear the same meanings ascribed to them in the Licence Agreement and the Variation of Licence Agreement wherever used in this Second Variation of Licence Agreement (including the recitals to this Second Variation of Licence Agreement) unless the context otherwise requires.

2. VARIATION

2.1 It is hereby agreed by the Parties that with effect on and from the date hereof, the Licence Agreement and the Variation of Licence Agreement shall be amended and varied in the following manner:

2.2 By deleting the entire definition of "Berths" and replacing it with "Berths" means the two adjacent berths at the Port known as "Berth No. 3 and Berth No. 4 measuring a total length of 437 meters from Bollard Number 15 to 34".

2.3 By inserting on the definition of "Wayleave Agreement" to include "the Third Variation Agreement dated 12th of November 2018 and made between KPA and GBHL to read as follows "Wayleave Agreement" means the wayleave agreement dated 24th December, 1992 and made between KPA and GBHL (previously known as Jaffer & Jaffer Limited) (as amended by the variation agreement dated 6th March, 1998 made between KPA and GBHL), Second Variation Agreement dated 13th April 2018 made between KPA and GBHL and (further amended by the Third Variation Agreement dated 12 day of November 2018 made between KPA and GBHL).

3. EFFECT OF THE VARIATION ON LICENCE AGREEMENT

3.1 Save as hereinbefore expressly stated the Licence Agreement and the Variation of Licence Agreement shall continue in full force and effect and all references in the Licence Agreement and the Variation of Licence Agreement to "this Agreement" shall be construed as references to the Licence Agreement and Variation of Licence Agreement as amended and varied by this Second Variation of Licence Agreement.

3.2 Where there are any inconsistencies between this Second Variation of Licence Agreement and the Licence Agreement and the Variation of Licence Agreement the terms of this Second Variation of Licence Agreement shall prevail.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of each Party as of the date first written above.

EXECUTION

SEALED with the Common Seal of
KENYA PORTS AUTHORITY

In the presence of

~~MANAGING DIRECTOR~~

~~~~

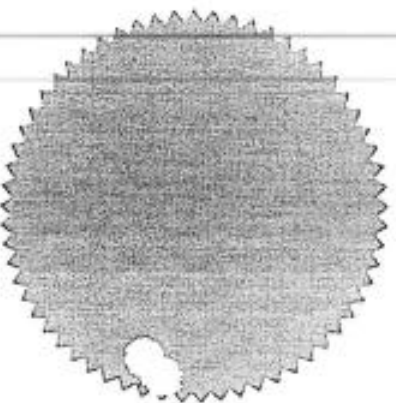
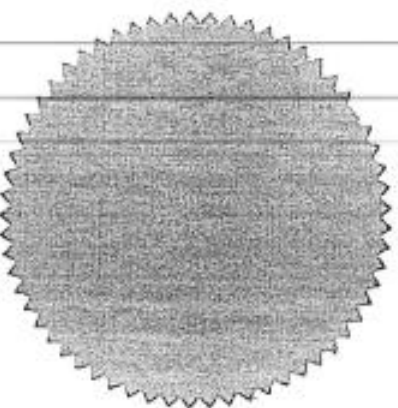

DIRECTOR/SECRETARY

SEALED with the Common Seal of
GRAIN BULK HANDLERS LIMITED
In the Presence of

~~MANAGING DIRECTOR~~

~~~~


DIRECTOR/SECRETARY



RECEIVED BY KENYA
PORTS AUTHORITY
DORNBANK

Presented by

14th Nov 2018 2018
15/11/2018 1637
13/9/16

S. K. Mwangi 503

(5)

Dated as of the 17TH day of DECEMBER, 2002

KENYA PORTS AUTHORITY

- and -

GRAIN BULK HANDLERS LIMITED

LICENCE AGREEMENT

relating to the handling of grains cereals and
fertilisers in bulk
in the Port of Mombasa



This Agreement is made ¹⁷ ~~as~~ of the ^{21st} ~~the~~ day of DECEMBER, 2012



BETWEEN:
1. KENYA PORTS AUTHORITY, a body corporate with perpetual succession established under The Kenya Ports Authority Act (Cap. 391) for the purposes hereof of Post Office Box Number 95009, Mombasa (hereinafter referred to as "KPA" which expression shall, in the context so requires, include KPA's successors in title and permitted assigns); and

2. GRAIN BULK HANDLERS LIMITED (Company Number C.187947) a private limited liability company incorporated in the Republic of Kenya as "GBHL" which expression shall, where the context so requires, include GBHL's successors in title and permitted assigns).
Witnessed on 17-12-2012
on this document at

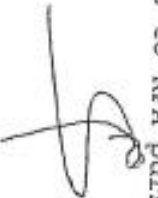
WHEREAS:

- (A) GBHL presently undertakes the Operations at and adjacent to the Port.
- (B) KPA wishes to supervise and regulate certain aspects of the Operations and activities relating thereto.
- (C) GBHL has agreed to be supervised and regulated by KPA in relation to certain aspects of the Operations referred to in this Agreement and on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the recitals of this Agreement) the following expressions shall, unless the context otherwise requires, have the meanings:
"Act" means The Kenya Ports Authority Act (Chapter 391, Laws of Kenya);
"Berths" means the two adjacent berths at the Port known as "Berth No. 3" and "Berth No. 4";
"Business Day" means a day (other than a Saturday Sunday or gazetted public holiday in Kenya) on which banking institutions are generally open for the conduct of banking business in Kenya;
"Commodities" means maize rice wheat and other types of grains and cereals and fertilisers;
"Fee" means the fee payable by GBHL to KPA pursuant to Section 2;


W.A.

"GBHL Charges" means the rates at which GBHL levies charges to its customers for undertaking the Operations on behalf of its customers;

"Land" means the leasehold interest comprised in Title Numbers: Mombasa/Block I/400, 494 and 1948 of which GBHL is the registered proprietor;

"Lease" means the instrument of lease dated 4th November, 1994 and made between KPA and GBHL (previously known as Jaffer & Jaffer Limited) (as amended by a variation of lease dated 6th March, 1998 and made between KPA and GBHL) pursuant to which KPA leased the land comprised in Title Number: Mombasa/Block I/400 to GBHL;

"Operations" means the services and other activities including the discharge handling storage warehousing loading and unloading of Commodities all as more particularly described in Schedule 1;

"Port" means the Port of Kilindini, Mombasa;

"Quayside" means the area abutting the Berths and commonly referred to as the quayside of the Berths;

"Service Levels" mean the performance and other standards set out in Schedule 2;

"Ships" means vessel docking at the Berths for the purpose of discharging and/or loading of Commodities;

"Start Date" means the date of this Agreement;

"Tariff Book" means the document known as the "Tariff Book of Harbour Dues and Charges" and published by KPA pursuant to section 30 of the Act;

"Terminal" means the integrated facility for the storage and handling of, inter alia, Commodities in bulk erected by GBHL on the Land together with the mechanical conveyor system referred to in the Wayleave Agreement; and

"Wayleave Agreement" means the wayleave agreement dated 24th December, 1992 and made between KPA and GBHL (previously known as Jaffer & Jaffer Limited) (as amended by a variation agreement dated 6th March, 1998 and made between KPA and GBHL) pursuant to which KPA granted a right of wayleave to GBHL over certain land owned by KPA.




1.2 In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular number only shall include the plural number also and vice versa and words importing the masculine gender include the feminine gender and neuter and vice versa;
- (b) reference to Sections sub-clauses clauses and Schedules shall be construed as references to sections sub-clauses and clauses of and the schedules to this Agreement;
- (c) the expression "person" shall include any legal or natural person partnership trust company joint venture or other body (whether corporate or unincorporate);
- (d) reference to the expression "month" means a calendar month;
- (e) a reference to a statute shall include any statutory extension or modification amendment or re-enactment and any regulations or order made under that statute and any general reference to a statute includes any regulations or orders made under that statute;
- (f) references to the "parties" or "party" means the persons who are parties to this Agreement;
- (g) "Dollars" and "U.S.\$" denote the lawful currency from time to time of the United States of America;
- (h) a reference to "dwt" means dead-weight;
- (i) a reference to "tax" includes any present or future tax duty impost levy or charge of any kind which is imposed by or pursuant to the laws of the Republic of Kenya (and includes any penalty interest or fine in connection therewith);
- (j) a reference to "tonne" and "tonnage" refers to metric tonnes; and
- (k) references to the "Tariff Book" shall include any revision modification or amendment thereto.

1.3 Section headings shall not affect the interpretation of this Agreement.

1.4 References to or to a provision of a document are references to it as duly amended or supplemented before or after the date of this Agreement.



W.

1.5 Any covenant by a party not to do an act or thing shall be deemed to include an obligation not to permit or suffer any such act or thing to be done by another person where that party is or should be aware that such act or thing is being done.

2. THE FEE

2.1 In consideration of KPA undertaking the activities referred to in Section 3, GBHL shall during the subsistence of this Agreement pay to KPA a fixed fee of United States Dollars five thousand (U.S.\$5,000/=) per annum payable yearly in advance, the first payment to be made within thirty (30) days of the Start Date and each subsequent payment to be made on each successive anniversary of the Start Date. The fee payable by GBHL to KPA shall be revisable every five years and the new fee payable by GBHL shall be similar to that payable by other operators undertaking the discharge and storage of Commodities in bulk from the Port and as published in the Tariff Book.

2.2 Payment of the fee by GBHL to KPA shall be made:

- (a) without any set-off counterclaim or condition whatsoever; and
- (b) free and clear of any deduction or withholding for or on account of taxes except a deduction or withholding for or on account of any present or future tax which GBHL is required by law to make.

2.3 If GBHL is required by law to make any deduction or withholding for or on account of any present or future tax on account of the fee payable under this Agreement:

- (a) GBHL shall notify KPA as soon as GBHL becomes aware of the requirement;
- (b) GBHL shall pay the tax deducted to the appropriate taxation authority promptly and in any event before any fine or penalty arises;
- (c) unless KPA shall be entitled to a credit for tax paid in respect of such deduction or withholding, the amount due in respect of the payment shall be increased by the amount necessary to ensure that KPA receives and retains (free from any liability relating to the deduction or withholding) a net amount which after the tax deduction is equal to the full amount which KPA would otherwise have received;

(d) GBHL shall indemnify KPA against any liability of KPA in respect of such taxes; and

(e) within two (2) months after making any tax deduction GBHL shall deliver to KPA documentary evidence satisfactory to the KPA that the tax had been paid to the appropriate taxation authority.

2.4 Any value added tax payable or which may become payable on the Fee shall be for the account of GBHL.

2.5 If GBHL fails to make payment of the Fee on the due date for payment GBHL shall pay interest on such sum for the period from (and including) the due date for payment up to the date of actual payment (after as well as before any judgement) in accordance with this clause 2.5. Interest shall be payable at the rate which is five per cent. (5%) per annum above the Dollar LIBOR rate published from time to time by Barclays Bank of Kenya limited throughout the relevant period. Interest under this clause 2.5 shall accrue from day to day be compounded at the end of each month and shall be paid by GBHL on demand.

2.6 If the Fee shall fall due for payment on a day which is not a Business Day payment shall be effected on the immediately following Business Day.

3. SUPERVISION AND REGULATION BY KPA

3.1 GBHL agrees that KPA shall be responsible for monitoring Service Levels and reviewing the GBHL Charges from time to time.

3.2 In order to enable KPA to undertake the matters referred to in clause 3.1, GBHL shall upon a request in writing from KPA provide to KPA the following information and documents:

Information and documents in relation to the GBHL Charges

(a) the audited financial statements of GBHL; and

(b) GBHL's published tariff rates (including all revisions);

Information and documents in relation to Service Levels

(a) individual ship's outturn reports;

(b) Monthly Ships' file report; and

(c) GBHL's quarterly marketing report.

3.3 In the event that KPA shall wish to consult with GBHL on any matter or issue relating to Service Levels and/or the GBHL Charges the following procedures shall be followed:

(a) KPA shall give at least thirty (30) days prior written notice (hereinafter called the "Request Notice") to GBHL with details of the issues KPA wishes to consult on the reasons for wishing to do so and the actions which KPA would wish GBHL to undertake in the circumstances;

- (b) GBHL on receipt of the Request Notice shall be entitled to make written representations (hereinafter called the "Representation Notice") within fifteen (15) days of receipt of the Request Notice to KPA on the issues and matters set forth in the Request Notice and setting out GBHL's proposals as to the action GBHL would propose be taken and any alternative actions that might be taken or reasons for not taking action. Within five (5) days of receipt by KPA of the Representation Notice, each of KPA and GBHL shall use its best endeavours to consult with each other by telephone or other modes of communication in an attempt to resolve any conflict of views; and
- (c) if the consultation procedures set out in sub-clause 3.3(b) do not result in a resolution then KPA and GBHL shall after the expiry of thirty (30) days from the date of Request Notice appoint senior officers of each of KPA and GBHL to meet in person with a view to resolve any conflict of views and written minutes of such meetings shall be prepared.
- 3.4 GBHL shall implement all matters agreed on between KPA and GBHL in the manner agreed between KPA and GBHL and KPA shall be entitled to make recommendations to GBHL for consideration by GBHL on matters on which any conflict of views cannot be resolved.
4. UNDERTAKINGS OF GBHL
- 4.1 GBHL undertakes that, during the subsistence of this Agreement:
- (a) it will pay the Fee at the times and in manner set out in Section 2;
- (b) (without prejudice to GBHL's rights under the Wayleave Agreement) it will and will procure that its employees perform and observe the rules or regulations governing the terms of access to and from the Port as may be made by KPA from time to time including, without limitation, any rules or regulations regarding:
- (i) the use of roads and other means of access to from and within the Port; and
- (ii) the parking of vehicles at such places within the Port as KPA may from time to time generally permit;
- (c) (without prejudice to GBHL's rights under the Wayleave Agreement) it will not obstruct any service road or other means of access to from or within the Port;

- (d) It will carry out the routine cleaning and clearing of the Quayside and any other areas within the Port following any spillage of Commodities in the conduct of the Operations; and
- (e) It will use all reasonable endeavours to ensure that the Operations are performed in accordance with the Service Levels.

5. AGREEMENTS BY KPA

5.1 In consideration of the agreement by GBHL to be supervised and regulated as set out in Section 3, KPA hereby agrees with GBHL:

- (a) that KPA shall procure that those Ships which GBHL has been contracted to discharge Commodities from or load Commodities into shall be given priority access to the Berths (or, as the case may be, any one of them) provided that KPA's obligation to give priority access to the Berths will only apply in the following cases:
- (i) where the Ships in question conform to the limitations applicable to the use of the Berths (or, as the case may be, any one of them) as notified by KPA to all users of the Port from time to time; and
- (ii) where GBHL has informed KPA in writing at least twenty-four (24) hours before the day as of which it is intended that a Ship will dock at the Berths (or, as the case may be, any one of them);
- (b) that, subject to paragraph 5.1(c), KPA shall not, and KPA shall procure that no person controlled by KPA shall, permit allow and/or licence any person for a period of eight (8) years commencing from 15th February, 2000 to construct develop and/or operate any facility which is capable of discharging Commodities shipped in bulk from a Ship docked at any berth in the Port and which Commodities after discharge are stored in bulk in silos warehouses or other similar storage facilities erected on any land in or in the vicinity of the Port or on any other land over which KPA or any person controlled by KPA has management or control provided that nothing in this sub-clause 5.1(b) shall prevent KPA from permitting other persons carrying on operations as bagging plant operators on the quayside and undertaking storage of Commodities outside the Port;

(c) KPA hereby permits allows and licences GBHL to undertake and carry on the Operations;



Wp

(d) that the tariff rates under the Tariff Book which are applicable to the handling of Commodities through the Terminal are as follows:

(1) paragraph 10.5 of Section II of the Tariff Book and which refers to "Dry General or Dry Bulk cargo handled at Mbaraki bulk bitumen handled via bitutainers, soda ash handled via conveyors". The tariff rate per tonne (or part thereof) presently payable is Dollar one and fifty cents (U.S.\$1.50); and

(ii) paragraph 13.7 of Section III of the Tariff Book and which refers to "Cargo handled at Mombasa Old Port, or at Outports, or at other then appointed places unless otherwise stated, or cargo handled at Mbaraki, Soda Ash handled via conveyor". The tariff rate per tonne (or part thereof) presently payable is Dollars nought and fifty cents (U.S.\$0.50).

Accordingly, the aggregate of the tariff rates pursuant to the foregoing sub-clauses 5.1(d)(i) and 5.1(d)(ii) amount to a throughput charge of two Dollars (U.S.\$2.00) per tonne (or part thereof);

(e) that KPA shall not publish or create a separate category of tariff in respect of the handling of Commodities through the Terminal and that the tariff rates applicable to the handling of Commodities through the Terminal shall at all times and from time to time for the purposes of the application of tariff rates by KPA to users of the Port be categorised with and be regarded as being similar to the operations and services which are undertaken by persons other than GBHL as at the date hereof and which are recognised by KPA as falling within the description of operations and services set out in paragraph 10.5 of Section II (in respect of stevedoring services) and paragraph 13.7 of Section III (in respect of shore-handling services) of the Tariff Book;

(f) that the term "quayside" as defined to in the Wayleave Agreement shall include the Berths and the Quayside; and

(g) that nothing in this Agreement shall or shall be deemed to derogate from or in any way limit or vary the rights and obligations of each of KPA and GBHL under the Wayleave Agreement or the Lease or vary or amend the terms and conditions of the Wayleave Agreement and/or Lease and each of the Wayleave Agreement and the Lease shall continue in full force and effect in accordance with its terms without amendment or substitution.



6. REPRESENTATIONS AND WARRANTIES BY KPA

6.1 KPA represents and warrants to GBHL that:

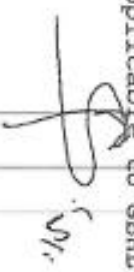
- (a) it has the power to observe and perform its obligations under this Agreement;
- (b) all corporate approvals consents and authorities required by KPA to enter into and perform its obligations under this Agreement have been obtained and remain in full force and effect;
- (c) this Agreement constitutes valid and legally binding obligations of KPA enforceable in accordance with its terms; and
- (d) neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms conditions or provisions of, or constitute a default or require any consent under, any indenture mortgage charge agreement or other instrument or arrangement to which KPA is a party or by which KPA is bound or violate any of the terms or provisions of the Act or any judgement decree or order of any rule or regulation applicable to KPA.

6.2 The representations and warranties in clause 6.1 shall be deemed repeated by KPA on and as of each day that this Agreement remains in force and effect.

7. REPRESENTATIONS AND WARRANTIES BY GBHL

7.1 GBHL represents and warrants to KPA that:

- (a) it has the power to observe and perform its obligations under this Agreement;
- (b) all corporate approvals consents and authorisations required by GBHL to enter into and perform its obligations under this Agreement have been obtained and remain in full force and effect;
- (c) this Agreement constitutes valid and legally binding obligations of GBHL enforceable in accordance with its terms; and
- (d) neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms conditions or provisions of, or constitute a default or require any consent under, any indenture mortgage charge agreement or other instrument or arrangement to which GBHL is a party or by which GBHL is bound or violate any of the terms or provisions of GBHL's memorandum and articles of association or any judgement decree applicable to GBHL;



7.2 The representations and warranties in clause 7.1 shall be deemed repeated by GBHL on and as of each day that this Agreement remains in force and effect.

8. ARBITRATION

8.1 In the event of any dispute or difference between the parties arising out of or in connection with this Agreement and the same cannot be settled through negotiation by the parties within twenty one (21) of an offer by one party to the other to negotiate a settlement, the parties agree to attempt to settle the dispute by mediation or in accordance with the Dispute Resolution Centre (DRC) Mediation guidelines, which guidelines are deemed to be incorporated by reference to this clause 8.1. No party may commence any court proceedings or arbitration in relation to such dispute until mediation has terminated. If the dispute has not been settled pursuant to the mediation procedures aforesaid within ninety (90) days from the date when the mediation was instituted, then the dispute shall be determined by three arbitrators in accordance with the Arbitration Act 1995 (Cap. 49). The decision of such arbitrators shall be final and binding in accordance with the Arbitration Act.

9. NOTICES

9.1 Any demand notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing.

9.2 Any such demand notice or other communication shall be addressed as provided in clause 9.3 and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery, upon delivery at the address of the relevant party set out in clause 9.3;
- (b) if sent by registered post five (5) days after the date of posting Provided that proof is given that the notice was properly addressed and duly posted by registered post; and
- (c) if sent by facsimile, when dispatched provided that the sender has received a receipt indicating proper transmission,

Provided that if, in accordance with the above provisions, any such demand notice or other communication would otherwise be deemed to be given or made outside normal working hours on a Business Day in the place of service of the demand notice or other communication it shall be deemed to be given or made at the start of normal working hours on the next Business Day.

9.3 The relevant addressee address and facsimile number of each party for the purposes of this Agreement, subject to clause 9.4 are:

for KPA, to:

P.O. Box 95009
Mombasa

Attn: Managing Director
Fax No: 011-311867

for GBHL, to:

P.O. Box 80469
Mombasa

Attn: Executive Chairman
Fax Nos: 011-316845, 011 230232

9.4 A party may notify the other party to this Agreement of a change to its name address or facsimile number for the purposes of clause 9.3 Provided that such notification shall only be effective on:

(a) the date specified in the notification as the date on which the change is to take place; or

(b) if no date is specified or the date specified is less than ten (10) days after the date on which notice is given, the date falling fifteen (15) Business Days after notice of any such change has been given.

10. DURATION

10.1 This Agreement shall remain in force for a period of thirty three (33) years commencing from (and including) the start Date.

11. COSTS

11.1 Each party shall bear its own costs incurred in the negotiation preparation and execution of this Agreement Provided that GBHL shall pay the stamp duty which is payable on or in connection with this Agreement.

12. ASSIGNMENT

12.1 No party shall be entitled to assign any of its rights or transfer any of its obligations hereunder without the prior written consent of the other party.



13. NO PARTNERSHIP

13.1 Nothing in this Agreement shall constitute or be deemed to constitute GBHL the agent or partner of KPA for any purpose whatsoever.

14. MISCELLANEOUS

14.1 This Agreement constitutes the entire agreement between the parties and no amendment or addition to this Agreement shall have any force or effect unless approved by the Board of Directors of each party and is reduced to writing and duly executed by both parties.

14.2 Each party shall during the term that this Agreement remains in full force and effect and subsequent to its termination keep confidential documents data and information concerning the activities business methods and other information of the other party which is provided under the terms of this Agreement or which comes into its possession as a result of this Agreement.

15. GOVERNING LAW

15.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

SCHEDULE 1

DESCRIPTION OF OPERATIONS

1. Discharge of Commodities from Ships docking at the Berths pursuant to contractual arrangements between GBHL and its customers.
2. Loading of Commodities into Ships docking at the Berths pursuant to contractual arrangements between GBHL and its customers.
3. Handling of Commodities at the Terminal and areas adjacent to the Terminal including storage warehousing and bagging together with all necessary documentation and accounting pursuant to contractual arrangements between GBHL and its customers.
4. Loading of Commodities onto vehicles and railway wagons for delivery to consignees and other cargo handling operations including all necessary documentation and accounting.



SCHEDULE 2
SERVICE LEVELS

1. Discharge of Commodities from Ships

GBHL will use its best endeavours to reach an average through vessel rate of 7,000 dwt per weather working day.

2. Handling of Commodities at the Terminal

GBHL will use its best endeavours to reach an average daily delivery rate of 3,500 tonnes per weather working day, subject to availability of transport.

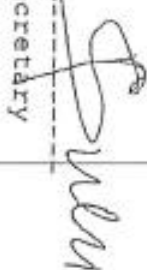
IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the day and year first above written.

SEALED with the Common Seal of
KENYA PORTS AUTHORITY
In the presence of:

Managing Director

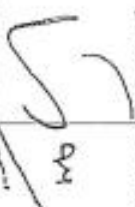



Secretary

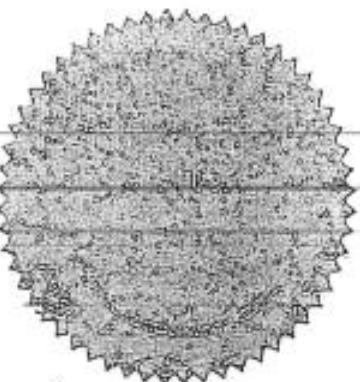
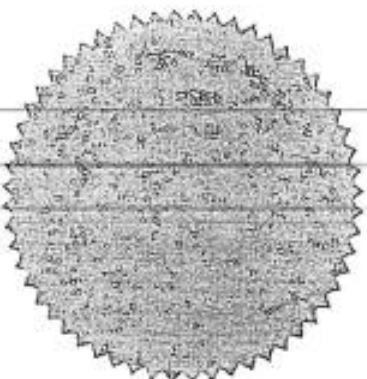


SEALED with the Common Seal of
CHAIN BULK HANDLERS LIMITED
In the presence of:

Director


AM


Director/Secretary



OFFICE OF THE
SECRETARY OF PORTS AND
MARITIME SERVICES
Nairobi
2300m 17-12-11



Kenya Ports Authority

P. O. Box 95009 - 80104, Mombasa, Kenya

Telephone: +254 (41) 2113487

+254 (41) 2113838

+254 720 312211

Mobile:

+254 720 202424

+254 733 337941 - 6

Telefax:

+254 (41) 2230906

Website: www.kpa.co.ke

Office of the Managing Director

CDD/2/1/13(56)

23rd October 2017

Mr. Mohamed Islam
The Director
Kilindini Terminals Limited
P.O. Box 87074
MOMBASA

Dear *Mohamed,*

APPLICATION TO BUILD AND OPERATE A BULK GRAIN HANDLING FACILITY AT THE PORT OF MOMBASA

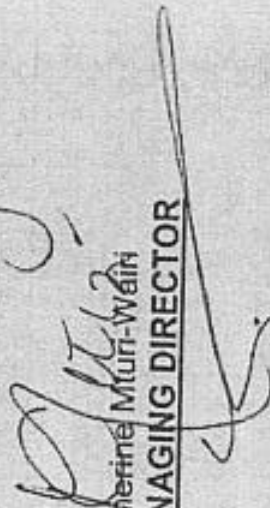
The above subject matter and your application dated 10th February 2017, to build and operate a bulk grain handling facility at the Port of Mombasa refers.

We would like to inform you that the KPA Board, at its 334th Regular meeting, approved your application to be granted a way leave to operate at Berth 11 subject to conforming to the following:

- a) The Standard Gauge Railway (SGR) port relief line operations
- b) Berths 11-14 rehabilitation designs and development plans; and
- c) Fulfillment of the requirements of the PPP Act 2013 and other regulatory obligations.

In view of the above, you will be required to comply with the PPP Act 2013 on privately initiated investment proposals.

Yours sincerely,


Catherine Muri-Waini

MANAGING DIRECTOR



Appendix IV

Submissions from the Kenya Ports

Authority





Kenya Ports Authority

P. O. Box 95009 - 80104 Mombasa, Kenya.

Telephone: +254 (41) 2113497
+254 (41) 2113838

Mobile: +254 720 312211
+254 720 202424
+254 733 337941 - 6

Telefax: +254 (41) 2230906
Website: www.kpa.co.ke

Office of the Managing Director
MMN/2/2/49

22nd October 2021

Ms. Serah M. Kioko

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

MEETING REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

With reference to your letter NA/DAASC/COI/2021/(110) letter dated 4th October 2021, our response is as follows: -

In order to optimize revenue collection, KPA has fast-tracked authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.

KPA Strategic Plan had already recognized the need for a second grain bulk handler in order to diversify from the risk of monopoly. Way back in 2017, the Authority identified Dongo Kundu and Lamu Port as potential sites for the facility.

By the time the Finance and Planning Committee visited, KPA had already embarked on the process of identifying the operator to be licensed. Given that the KPA Strategic Plan was widely shared within the industry, several privately initiated proposals for operating a second grain bulk facility had been received. The following applicants had identified specific sites of interest to them:

- a. Kapa Oil Refinery,
- b. Africa Ports and Terminals,
- c. Multiship International,
- d. Mombasa Grain Terminal Limited,
- e. Kilindini Terminals Limited,
- f. Kipevu Inland Container EPZ Limited and
- g. Portside Freight Terminals Limited.

Notably, the Master Plan envisaged development of a second bulk grain handling facility at Dongo Kundu and Lamu Port as stated above. However, the Dongo Kundu SEZ is still at design stage and Lamu Port is still under construction. Both sites were therefore unattractive to any possible PPP investors.

In order to fast-track the process towards authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022, KPA Management having evaluated all proposals identified the most technically feasible for progression in accordance with the Law.

The Technical Committee following detailed analyses recommended that each grain bulk applicant be considered subject to the availability of the berths applied for and the proximity of their physical location for silos as part of technical and commercial feasibility.

The following are the details of the seven (7) proposals and the Technical Committee observations/findings: -

1. Kapa Oil Refineries

Kapa Oil refineries expressed the need to have their own bulk storage terminal at the Mombasa Port. The company was

particularly interested in the land which is linked to the mainland via the new Port Reitz Dongo Kundu area. Following the proposal, Management observed that KPA does not have adequate land for construction of additional storage facility and that there are plans to have a new liquid bulk cargo handling facility near Dongo Kundu which will require a corresponding storage facility to ensure optimization is achieved and wastages of resources curbed.

2. Multiship International Ltd

The company made an application vide their letter Ref. MSIL/nss.KPA.68.11/17 on 23rd November 2017 to be allowed to occupy berths 13 & 14 to discharge grains and fertilizer on dedicated use. The company expressed interest to invest in both portable grain silos and un-loaders that will be movable and temporarily placed along the quayside in the port specifically to serve the Standard Gauge Railway through its wagons within the port. However, the Authority declined the request vide our letter Ref. CDD/PD/3/1/10 dated 6th February 2018 making reference to KPA Master planning requirements that these berths were solely committed for container traffic as the development and conversion plans for berth no. 11-14 was underway and construction was expected to be completed in about three years.

Consequently, Multiship vide their letter 6th June 2018 Ref. MSIL/nss.KPA.45/6-18 requested for allocation of a yard adjacent to berth no. 5 to build and operate a specialized dry bulk discharge and handling terminal for grains and rehabilitation of shed no.7 and 8 for fertilizer handling dedicated for SGR. Further, Multiship vide their letter Ref. MSIL/nss.KPA. 13/3-19 dated 18th March 2019 submitted a proposal for the development of dedicated grain and fertilizer terminals at the port of Mombasa and SGR Athi-River Green Park Terminus. They specifically requested the following:

- Allocation of space in the port adjacent to berth No.5 to construct the specialized dedicated SGR dry bulk grain discharging and handling terminal
 - Shed No. 7/8 or 9/10 for rehabilitation to handle bulk fertilizer for dedicated transportation via SGR during discharge from the vessels in the Port.

The Technical Committee observed that the yard adjacent to Yard No. 5 is a common user facility for SGR and Meter Gauge Railway (MGR) loading and a temporary storage area for steel and motor vehicles.

3. Africa Ports and Terminals

Africa Ports and Terminals vide their letter Ref. APT-COR-2018-004 dated 3rd January 2018 sought for an opportunity to engage in Marine activities including transshipment of cargo from mooring buoys to the wharf and vice versa. They also requested for allocation of suitable land for development of grain and LPG Terminals in Lamu Port.

KPA responded vide letter Ref. MCS/4/8/01 dated 16th January 2018 seeking details of the locations/plots identified by Africa Ports and Terminals through their due diligence to be suitable for the proposed investment. Similarly, KPA advised Africa Ports and Terminals that its application will be considered against the Authority's Master Plan and Public Procurement and Asset Disposal Act and Rules. The company was also guided to contact the Head of Corporate Development for the Masterplan and the General Manager, Operation as well as the Head of Procurement & Supplies regarding the relevant matters associated with their proposal.

Africa Ports and Terminals is yet to submit a response to the above.

4. Mombasa Grain Terminal Limited (MGTL)

The Mombasa Grain Terminal Limited (MGTL) vide their letter dated 23rd November 2019, requested KPA to grant an irrevocable and unconditional wayleave and permission to construct a Fertilizer and Grain Terminal at the old KOT, after the scheduled relocation of KOT in 2021. The proposed project construction by MGTL was envisioned to take 1-2 years.

Further, MGTL sought permission from KPA to allow the company to access the proposed project site, in order to carry out survey of their design process and determine the wayleave where MGTL equipment (Conveyor Belts and SGR Loading Gantry) will be positioned.

The MGTL proposal was analyzed vis a vis the KPA Master Plan 2018 – 2047. The Master plan provides that KPA will decommission and demolish the old KOT and establish an additional Berth 19 by 300 m, with an associated yard area of 7.5ha. The Berth capacity for Berth 19 is estimated at 450k TEU/yr. (Refer to KPA Master Plan, Page 47).

The Master Plan anticipates that a second Grain Terminal will be developed in Dongo Kundu by 2023 (Refer to KPA Master Plan, Page 64). Further, KPA has planned for the development of a Grain bulk in Lamu Port by 2032 in the event the Grain bulk terminal in Dongo Kundu will have reached its maximum capacity (Refer to KPA Master Plan, Page 85).

Pursuant to the above, the Technical Committee noted that the old KOT which MGTL has identified to develop a Grain and Fertilizer terminal, will not be available since KPA has made prior plans to expand Berths 16 – 18 and establish an additional Berth 19. Moreover, the space at the old KOT will be used for containers only.

Therefore, Management recommended that the request by MGTL be declined since the old KOT which the company has identified for development of a Grain and Fertilizer terminal, is currently in use

and prior plans have been made by KPA to use the identified location.

5. Kilindini Terminals Limited

The company vide their letter dated 2nd December 2015 made an application for a wayleave to build and operate a specialized dry bulk discharge and handling terminal for grains at the Port of Mombasa. The terminal would be linked by overhead conveyors directly to the berths. KTL also proposed Berth no. 5 and Berths 11 to 14 as sites for the project. KTL projected cargo to be handled as 1 million tons by end of 2020 and increase over the following two years to 1.1 million tons and 1.2 million tons respectively. The application could not however not be progressed as the requested berths are not available for bulk grain handling.

6. Kipevu Inland Container EPZ Limited (KIC)

Kipevu Inland Container EPZ Ltd. vide their letters dated 9th July 2018 and 22nd January 2020, requested KPA to grant a wayleave for installation of a multipurpose conveyor belt system to handle dry bulk cargo at Plot No. MV/VI/4794, at Kibarani adjacent to the port area.

They also proposed to construct a 150,000MT of bulk grain silo storage, 250,000sqft of covered warehouse space and modern container handling equipment. The proposed facility is expected to cater for various dry bulk products that are being imported in large quantities to serve various sectors both within Kenya and the greater African Markets i.e. clinker, fertilizer, coal, gypsum & food grains while adopting the latest technology of green terminal with the lowest carbon footprint.

Subsequently, KIPEVU made a presentation on their proposal to the Management of KPA on the 4th of March 2020. In their presentation, KIC EPZ informed Management that they have

secured 50 Acres of land from Kenya Railway in Athi River to build and operate a modern receiving terminal for bulk volumes hauled via SGR, which is expected to contribute significantly to reduction of the Port congestion.

The proposal was analyzed against the KPA Master Plan 2018-2047. The Master Plan anticipates that a second grain terminal will be developed in Dongo Kundu by 2023. Further, KPA has planned for the development of a Grain bulk facility in Lamu Port by 2032 in the event the Grain bulk terminal in Dongo Kundu will have reached its maximum capacity. This was considered as a future plan.

7. Portside Freight Terminal Limited (PFTL)

Portside Freight Terminal Limited (PFTL) vide their letter dated 6th April 2020 sought a license for bulk grain handling facility at the Port of Mombasa and a wayleave for the development of an overhead conveyor belt through the G-Section area of the Port.

The PFTL proposal was evaluated and found to be the most technically and financially feasible since it will be 100% privately funded and the project will pose minimum conflict with other ongoing and planned KPA developments. In addition, PFTL owns land adjacent to G-Section where the storage silos will be located which makes them the most suitable applicant.

In line with Section 12 of the KPA Act Management submitted the evaluation report to the Board of Directors during its 382nd Meeting held on 30th November 2020 and 3rd December 2020. The Board deliberated the PFTL business proposal and resolved: -

1. A license for grain bulk handling operator at the Port of Mombasa be granted to PFTL.
2. A wayleave be issued for development of an overhead conveyor belt through G-Section Area to PFTL.

3. A counterpart team be formed to work with PFTL in developing the island berth.

4. The counterpart team to be engaged in firming technical specifications including routing of the overhead conveyors.

Following the Board approval, Management obtained concurrence from the Honourable Attorney General and the National Treasury to progress the project under Specially Permitted Procurement Method, Section 114(A) of the Public Procurement and Disposal Act, 2015.

Subsequently, an award was made to PFTL and license/wayleave agreements signed.

In Constitutional Petition No. E045 of 2021 Okiya Omutata Okoiti has sued KPA and CS National Treasury with interested parties being Kilindini Terminals, Mombasa Grain Terminal Limited, Kapa Oil Refineries, Africa Port & Terminals and Multi ship International, Kipevu Inland Container EPZ, Dockworkers Union and Katiba Institute. The petition challenges the award of the license and wayleave to PFTL.

Under the KPA Master Plan (2018 – 2047) implementation, KPA is still pursuing alternative locations for discharge of grain vessel with the ongoing design and development of Dongo Kundu SEZ, Lamu Port and Kisumu Port. Due to investment and financing constraints, the projects will be undertaken using the PPP Framework.

Historically, the licensing and issuance of wayleaves was guided by the legal framework as elaborated hereunder: -

1. **Section 12 (2n) of the Kenya Ports Authority Act** gives the Board power to enter into agreements with any person-

- i. For the supply, construction, manufacture, maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the purposes of the Authority;

- ii. For the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Authority.

2. Part C (vi) of the Tariff book, General Provisions, empowers the Authority to enter into agreement with any person including any company or association or body of persons corporate for the performance or provision by that person of any of the services or facilities which may, ordinarily under the Act, be performed or provided by the Authority and raise charges at such rates or for such amounts as may be mutually agreed between them, and such charges or rates shall apply and be collected as if they were set out in this Tariff Book. (Benefit to KPA)

3. The Tariff book under clause 19 on general services empowers the Authority to issue various licenses. It states....

'Unless otherwise provided for in this tariff book, the following licenses/fees shall be required and may be issued on application. Licenses shall be for 12 consecutive months from the 1st day of month of issue and are subject to the conditions notified to licensees from time to time.' Sic

4. It has been the practice of KPA to grant approvals to private operators to construct wayleaves and licenses in performance of her duties. Grain and Bulk handling at the port is done either through;

- a. Conventional bagging vide grabs onto bagging plants alongside ship and onto trucks. Examples of the companies include Multiport limited and Interglobe.
- b. Mechanized system which use conveyor belts, pipes and pneumatic suckers from the port to silos/tankage outside the port. example of companies includes GBHL and Magadi Soda.

The companies whose applications were approved by the Board using KPA Act and KPA Tariff are as follows;

- a. East Africa Terminal Ltd.-Their application for wayleave was approved by the Board in 2013 while PPP Act was notwithstanding.
- b. Magadi Soda- Wayleave through which they have conveyors operating and licenses agreement.
- c. Grain Bulk Handling Limited (GBHL)-Approval was granted twice for licenses agreements and infrastructure upgrade
- d. African Oil and Gas Limited (AGOL)- Approval for setting up facility for handling oil and gases was approved by the Board.
- e. Portside Freight Services Limited – Approval for setting up a modern conveyor facility at Shed 7 & 8 was approved Board.

It is envisaged that once Dongo Kundu SEZ and Lamu Port are fully developed, investors will bring in critical infrastructure required for expansion, investment in technology and efficient state-of-the-art grain handling equipment under the PPP framework to meet growing demand and optimize revenue collection.


Amb. John Mwangemi
AG. MANAGING DIRECTOR

Appendix V

Submissions from the National Treasury and Planning

(2) CHERRY desk
Please find
27/1/22

① DAASC
25/1/22

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
FINANCE - NAIROBI
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

When replying please quote

Ref: MOF/TE 200/01 'D' (52)

Date: 26th January, 2022

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

Dear Sialai

Ref: Submission of Written Response and Request for postponement of a Meeting with the
National Assembly Select Committee on Implementation

We refer to your letter No. NA/DAASC/CO1/2-022/ (001) dated 17th January, 2022. The
Cabinet Secretary, National Treasury and Planning has been invited for a follow-up meeting
with the Select Committee on Implementation on Thursday, 27th January, 2022 in Committee
Room on 5th Floor, Continental House, Parliament Buildings at 10.00a.m.

The agenda of the meeting is to apprise the Committee on the implementation status of the
Report of the Departmental Committee on Finance and National Planning regarding
optimization of Revenue in Grain Handling Services at the Port of Mombasa.

However, due to exigencies of work, the Cabinet Secretary is not in a position to attend the
said meeting as scheduled. This is therefore to let you know of this situation and seek your
indulgence to request the Committee to reschedule this meeting to a later date in a fortnight.

Attached herein is the National Treasury's written Submission for your perusal and reference.

NATIONAL ASSEMBLY
RECEIVED
27 JAN 2022
DIRECTOR
AUDIT/APPROPRIATIONS/SELECT COMMITTEES

NATIONAL ASSEMBLY
RECEIVED
27 JAN 2022
DEPUTY CLERK
J.W.N
P.O. Box 41842 - 00100, NAIROBI

We sincerely apologize for any inconveniences this might have caused.

Yours



Hon. Nelson Gaichuhie, CBS
Chief Administrative Secretary / National Treasury

A WRITTEN SUBMISSION ON THE IMPLEMENTATION STATUS OF THE REPORT BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING REGARDING THE OPTIMIZATION OF REVENUE IN THE GRAIN HANDLING SERVICES AT THE PORT OF MOMBASA

The Kenya Ports Authority (KPA) has implemented recommendations of the Committee as summarized in the table below: -

No.	Recommendation	Action by KPA
1.	In order to optimize revenue collection, KPA should fast-track authorization of design, development and commissioning of other grain bulk handlers to enhance efficiency and effectiveness in the grain handling business by 2022.	KPA has licensed a second grain bulk terminal operator within the Port of Mombasa.
2.	The process of appointing new operator(s) for grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Asset Disposal Act, to ensure nondiscrimination and accountability.	KPA followed due process in allocating the second grain bulk operator at the Port of Mombasa. However, the matter has ended up in court. A copy of the Court order on Constitutional Petition No. E045 of 2021 is hereby attached for ease of reference.
3.	Under the KPA masterplan of 2018 to 2047, KPA need to pursue alternative locations to discharge grain vessels particularly at the Dongo Kundu Special Economic Zone (SEZ), the upcoming Lamu and Kisumu Ports with consideration on space and business model applicable under the Public Private Partnerships (PPPs) framework.	KPA plans provide for development of other grain terminals at Dongo Kundu and Lamu Port through Public Private Partnerships. This will be guided by the Port Master Plan and the Strategic Plan. changes arising from market dynamics. New opportunities which were not envisioned in the Master Plan 2018 - 2047 will therefore be considered in the Strategic Plan which is reviewed every five (5) years. KPA has since embarked on development of the Strategic Plan (2023 – 2027) to be launched before 31 st December 2022 upon approval by the Board of Directors.
4.	To promote efficiency in the grain bulk handling in the country, there is need for the government to provide critical infrastructure to continually expand and sustainably gain leverage on technology while	KPA has put in place measures to ensure that infrastructure development matches and exceeds the demand for grain commodities. The Authority is developing the Dongo Kundu berths, measuring 300 metres and 15 metres deep while that of Lamu Port, will measure 400 metres in length and 17 metres deep to accommodate large

Hon. Nelson Galchuhie, CBS

Chief Administrative Secretary / National Treasury

Yours

<p>maximizing on the return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment.</p>	<p>vessels to gain from economies of scale. The Berths will be equipped with modern high capacity uploading equipment to ensure effective and efficient discharge of grain cargo operations.</p>
<p>5. KPA should continue investing including through the PPP framework in the expansion of port facility to accommodate more berth to meet the growing demand within the region.</p>	<p>KPA will continue to invest in infrastructure development at Mombasa Port, Lamu Port and Dongo Kundu to enhance its capacity ahead of demand.</p>
<p>The Authority is constructing the first 3 berths at Port of Lamu to be completed by April 2022. Additionally, relocation of Kipevu Oil Terminal which will accommodate 3 large oil vessels will be commissioned by end of March, 2022. The 2nd container terminal Phase 2 is scheduled to be ready by 2022 further increasing KPA's capacity to handle containerized cargo.</p>	<p>The Authority remains open to accommodate the most effective and efficient operation model, including Public Private Partnerships (PPP).</p>

Appendix VI

Constitutional Petition No. E045 of 2021

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTION PETITION NO. E045 OF 2021

IN THE MATTER OF: ARTICLES 10,20, 22, 23 (3), 27, 47, 165 (3) (d) (ii), 201, 227, 258
OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: SECTIONS, 3 AND 4, PART V OF THE PUBLIC
PROCUREMENT AND ASSET DISPOSAL ACT 2015

AND

IN THE MATTER OF: ARTICLE 10 OF THE UNIVERSAL DECLARATION OF
HUMAN RIGHTS

AND

IN THE MATTER OF: PUBLIC PRIVATE PARTNERSHIP ACT

AND

IN THE MATTER OF: LEADERSHIP AND INTEGRITY ACT 2012

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF: THE KENYA PORTS AUTHORITY ACT

AND

IN THE MATTER OF: KENYA PORTS AUTHORITY MASTER PLAN 2019

AND

IN THE MATTER OF: THE LICENCE FOR OPERATION OF A SECOND BULK
GRAIN HANDLING FACILITY AT THE PORT OF MOMBASA

BETWEEN

OKIYA OMTATAH OKOITI.....PETITIONER/APPLICANT

-VERSUS-

KENYA PORTS AUTHORITY.....1ST RESPONDENT
CABINET SECRETARY

MINISTRY OF NATIONAL TREASURY AND PLANNING.....2ND RESPONDENT
PORTSIDE FREIGHT TERMINALS LIMITED.....1ST INTERESTED PARTY

*Received On 17/8/21
by Githu Nyong'o*

17 AUG 2021



PORTSIDE FREIGHT TERMINALS LIMITED.....	2 ND INTERESTED PARTY
KILINDINI TERMINALS LIMITED	3 RD INTERESTED PARTY
MOMBASA GARIN TERMINAL LIMITED.....	4 TH INTERESTED PARTY
KAPA OIL REFINERY.....	5 TH INTERESTED PARTY
AFRICA PORTS AND TERMINALS	6 TH INTERESTED PARTY
KIPEVU INLAND CONTAINER EPZ LIMITED	7 TH INTERESTED PARTY
DOCKERS WORKERS UNION.....	8 TH INTERESTED PARTY

ORDER

(In Open Court Before Honourable Justice R. Nyakundi on 16th August, 2021)

THIS MATTER COMING UP for hearing of the Applicant’s Notice of Motion dated **29th June, 2021** for Orders **THAT:-**

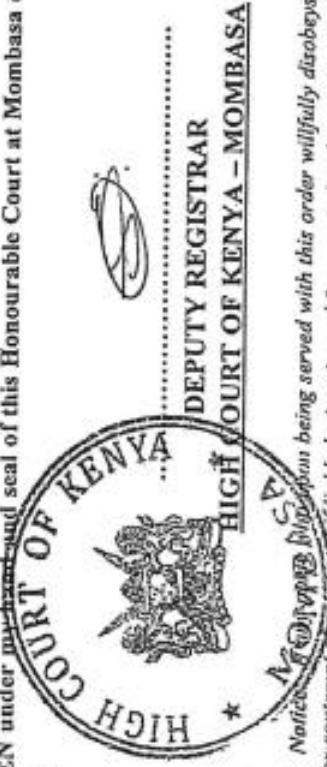
1. That this Honourable Court be pleased to certify this Application as urgent and service hereof be dispensed with in the first instance and same be heard on priority basis during the August vacation.
2. The pending the inter-partes hearing and determination of this Application this Honourable Court be pleased to grant a temporary conservatory order staying the implementation, procurement and award of a license by the 1st Respondent to the 1st Interested party for the development of a second bulk grain handling facility pursuant to the 2nd Respondent’s approval dated 28th June, 2021 granting the 1st Respondent authority for the use of Specially Permitted Procurement Procedure for this purpose.
3. The Court gives any other directions at it may deem just and fit to grant.
4. That the Costs of the Application be borne by the Respondents.

UPON PERUSING the Notice of Motion dated **16th August, 2021** brought under certificate of urgency under Articles 10,22,23,47,165,201,227 of the Constitution of Kenya, Section 3, 4, 7, 9 and 11 of the Fair Administrative Action Act, Section 3, 4 and 11 4 (a) of the Public Procurement and Asset Disposal Act 2015, Rule 4,23 and 24 of the Constitution of Kenya(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013) and all enabling provisions of the law) in the absence of both parties:

IT IS HEREBY ORDERED: -

1. **THAT** the matter be and is hereby certified urgent Exparte in the first instance.
2. **THAT** the Certificate and Notice of Motion be admitted and be heard during the vacation.
3. **THAT** the Certificate and the Chamber Summons be admitted and heard during the vacation.
4. **THAT** pending the inter-partes hearing and determination of this Application a temporary conservatory order be and is hereby issued staying the implementation, procurement and award of a license by the 1st Respondent to the 1st Interested party for the development of a second bulk grain handling facility pursuant to the 2nd Respondent's approval dated 28th June, 2021 granting the 1st Respondent authority for the use of Specially Permitted Procurement Procedure for this purpose.
5. **THAT** the substantive motion dated 12th August, 2021 be heard on 27th August, 2021 before Ogola J.
6. **THAT** the petitioner be at liberty to file skeleton submissions on the canvassing the Notice of Motion on the merits of it.

GIVEN under my hand and seal of this Honourable Court at Mombasa on this 16th day of August, 2021



Penal Notice: If any person being served with this order willfully disobeys the same, such party shall be cited for contempt of court and if liable be imprisoned for a period and exceeding six months or to a fine



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION – 2022

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

REPORT ON THE ELECTION CAMPAIGN FINANCING (AMENDMENT)
BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 FEB 2021	DAY: Thurs
TABLED BY: Hon. Albic Albic	
CLERK AT THE TABLE: Mainah Wanjiku	

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

FEBRUARY 2022

Approved for stamp
Approved for stamp
Approved for stamp
Approved for stamp

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ABBREVIATIONS AND ACRONYMS

AG	Attorney-General
CIOC	Constitutional Implementation Oversight Committee
IEBC	Independent Electoral and Boundaries Commission
IRCK	Inter-Religious Council of Kenya
KLRC	Kenya Law Reform Commission
MCA	Member of County Assembly
NCCK	National Council of Churches of Kenya
NGEC	National Gender and Equality Commission

LIST OF ANNEXURES

Annexure 1:	Summary of views collected from the public hearings in the various counties
Annexure 2:	Minutes of Committee sittings on consideration of the Bill and adoption of report
Annexure 3:	Copy of newspaper advertisement of 12 th November, 2021 and 9 th December, 2021 notifying the public of intended public hearings and inviting the public to submit memoranda on the Bill
Annexure 4:	Attendance lists for the Public Hearings in the various counties
Annexure 5:	Written Memoranda on the Bill received from Members of the Public and other stakeholders
Annexure 6:	Attendance register of Members who attended meeting adopting the Bill

CHAIRPERSON'S FOREWORD

The Election Campaign Financing (Amendment) Bill (National Assembly Bill No. 37 of 2021) is a Bill sponsored by the Constitutional Implementation Oversight Committee through its immediate former Chairperson Hon Jeremiah Kioni, MP seeking to amend the Election Campaign Financing Act, 2013, No. 42 of 2013. It was published on 12th August, 2021 and went through First reading in the National Assembly on, 9th November, 2021. Pursuant to Standing Orders 127(6)(a) of the National Assembly Standing Orders, the Bill was committed to the Constitutional Implementation Oversight Committee for consideration and facilitation of public participation.

The Bill seeks to amend various sections of the Election Campaign Financing Act, 2013, No. 42 of 2013, in order to align its provisions with the Elections Act, 2011 and further propose amendments that will enable its full implementation. Specifically, the Bill seeks to repeal the provisions in the Act establishing the expenditure committee that is established by a candidate, a political party or a referendum committee for purposes of regulating spending by a candidate, a political party or a referendum committee during an election period or a referendum campaign period as the case may be.

The Bill when enacted into law will allow candidates and political parties to be able to raise their own resources and regulate their expenditures during election period or referendum campaign period.

Pursuant to Article 118(1)(a) of the Constitution, the Constitution Implementation Oversight Committee resolved to undertake public hearings on the Bill in various Counties in order to get views from a wide section of the public. Subsequently advertisements were made in the Daily newspapers of 12th November, 2021 and 9th December, 2021 for the Committee to undertake public hearings in various Counties and also requesting for submission of memoranda from the public on the Bill.

The Committee held public hearings in the Counties of Nairobi, Bungoma, Homabay, Busia, Embu, Kirinyaga, Meru, Laikipia, Kilifi and Kwale during which members of the public either individually or representing institutions and organizations made oral presentations and/ or submitted memoranda which the Committee took into account while considering the Bill.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty in the consideration of the Bill. I further express my gratitude to the Offices of Speaker and Clerk of the National for providing technical and logistical support to the Committee while considering the Bill.

On behalf of the Constitutional Implementation Oversight Committee and pursuant to the provisions of Standing Order 199 (6), it's my pleasant duty and privilege to present to the House a report of the Committee on the Election Campaign Financing (Amendment) Bill (National Assembly Bill No. 37 of 2021).



HON. ALOIS M. LENTOIMAGA, M.P.
CHAIRPERSON,
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

1.0 PREFACE

1.1. Establishment of the Committee

1. The Constitutional Implementation Oversight Committee (CIOC) is a National Assembly Select Committee established under Section 4 of the Sixth Schedule to the Constitution of Kenya. The Committee is responsible for overseeing the implementation of the Constitution and among other things-

- (i) Shall receive regular reports from the Commission on the Implementation of the Constitution (CIC) 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 this 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

2. The Committee consists of the following Members-

- | | | |
|--|---|--------------------------|
| 1) The Hon. Alois M. Lentoimaga, M.P. | - | Chairperson |
| 2) The Hon. Peter Kaluma, M.P. | - | Vice- Chairperson |
| 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, CBS, 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. Bernard Okoth, M.P.
- 12) The Hon. Purity Njirici, M.P
- 13) The Hon. (Dr.) Naomi Shaban, EGH, M.P.
- 14) The Hon. Charles Gimose, M.P.
- 15) The Hon. Daniel Rono, M.P.
- 16) The Hon. Halima Mucheke, 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

1.3.

Committee Secretariat

3. The Committee is facilitated by the following Secretariat-

- 1) Mr. Edward Libendi - Senior Legal Counsel/Head of the Secretariat
- 2) Ms. Lynette Otieno - Legal Counsel I
- 3) Mr. Eugene Apara - Research Officer
- 4) Ms. Deborah Mupusi - Media Relations Officer
- 5) Mr. Michael Chege - Senior ICT Officer
- 6) Mr. Sakana Ole Saoli - Hansard Officer
- 7) Mr. Boniface Mushila - Sergeant-at-Arms

1.4. Adoption of the Committee Report

4. We, the Members of the Constitutional Implementation Oversight Committee have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure 6).

2.0 BACKGROUND AND HIGHLIGHTS OF THE BILL

2.1 Background

5. The Constitutional Implementation Oversight Committee is mandated under section 4 of the sixth schedule of the Constitution to prepare any legislation required to implement the Constitution and address any impediments to the process of implementation of the Constitution of Kenya.
6. The Committee in the execution of its mandate undertook the task of auditing the Constitution, Statutes enacted to operationalize the Constitution and existing government policies to establish the status of implementation of the Constitution and any gaps existing in the Constitution that could be hampering implementation or impediments to full realization of the letter and spirit of the Constitution.
7. The Committee observed that Article 88(4)(1) of the Constitution provides that it shall be the responsibility of the Independent Electoral and Boundaries Commission (IEBC) to regulate the amount of money that may be spent by or on behalf of a candidate or party during election campaigns.
8. To give effect to Article 88(4) of the Constitution, Parliament enacted the Elections Campaign Financing Act, 2013. However, upon enactment, it was realized that there were difficulties in implementing the Act due to some provisions in the Act, key among them the provisions requiring candidates and political parties to form campaign expenditure committees to manage campaign funds on their behalf.
9. The Committee observed that public funding of political parties alone cannot sustain campaign requirements of political parties and the candidates and therefore there was necessity for candidates and political parties to raise additional funds for campaigns privately.
10. The Committee noted that with the volatile nature of Kenyan political competition, it would be very difficult for an individual to raise funds for electoral campaigns using private means like selling their parcels of land and then give these resources to third parties to manage these funds on their behalf during campaigns

11. The Committee therefore in execution of its mandate resolved to review the Election Campaign Financing Act, 2013 and thereafter developed the Election Campaign Financing (Amendment) Bill, 2021 (National Assembly Bill No. 37 of 2021) which sought to amend the 2013 legislation in order to make it implementable.

2.2 Highlights of the Bill

12. Clause 2 of the Bill provides that the Election Campaign Financing Act, 2013 (the principal Act) be amended in section 2 by deleting the definition of the expression “expenditure committee”.

13. Clause 3, 4 and 5 of the Bill proposes to repeal section 7, 8 and 9 of the principal Act respectively with the effect of abolishing the political party expenditure committee, the independent candidate expenditure committee and the referendum expenditure committee respectively.

14. Clause 6 of the Bill proposes to repeal section 10 of the principal Act which provides the requirement of a candidate, political party and referendum committee to submit expenditure reports to the Commission containing all records of income and expenditure.

15. Clause 7 of the Bill proposes to repeal section 16 of the principal Act and substitute with a new section 16 whose effect is to require a candidate, political party and referendum committee to disclose the amount and source of contributions received for campaign for a nomination, election or a referendum and creates an offence for failure to so disclose.

16. Clause 8 of the Bill proposes to repeal section 17 of the principal Act which mandated candidates or political parties to disclose any surplus campaign funds to the Commission and guided how the surplus funds would be applied.

17. Clause 9 of the Bill proposes to repeal section 21 of the principal Act which provides dispute resolution mechanisms for disputes arising out of alleged breach of the provisions of the principal Act.

18. Clause 10 of the Bill proposes to repeal section 25 of the principal Act which provides for registration and dissolution of expenditure committees.

19. Clause 11 of the Bill proposes to amend section 26(3) of the principal Act to enable the Commission to determine whether the information made available on request for inspection requires to be treated with confidentiality.

20. Clause 12 of the Bill proposes to repeal section 27 of the principal Act which mandates the Auditor General, upon request by the Commission to audit the accounts relating to campaign expenses of candidates, political parties or expenditure committees.

21. Clause 13 of the Bill proposes to repeal section 28 of the principal Act which allows persons dissatisfied with any matter relating to campaign finance expenditures submitted by a candidate, political party or expenditure committee to file a claim to the Commission and the timeframe of hearing and determination of the claim.

22. Clause 14 of the Bill proposes to amend section 29(2) of the principal Act by inserting a new paragraphs (i) and (j) seeking to allow the Commission to make regulations in relation to audit of accounts and procedure for claims.

3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

3.1. Legislative provisions on public participation

23. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

24. Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

3.2 Public Participation

25. In an effort to reach as many members of the public and stakeholders as possible in consideration of the Bill, the Committee resolved to hold public hearings on the Bill in a number of Counties and the sample to be picked at least one from the former Provinces. The Committee also sent out letters to specific stakeholders involved in electoral matters inviting them to submit memoranda on the Bill and to have a meeting with the Committee where necessary.

26. In line with the Constitution and Standing Orders, the Constitutional Implementation Oversight Committee, through the office of the Clerk of the National Assembly advertised the plan to hold public hearings and invitation for memoranda in the Daily Nation and Standard Newspapers of Friday, 12th November, 2021 and 9th December, 2021 in the Counties of Nairobi, Nyanira, Bungoma, Homabay, Busia, Embu, Kirinyaga, Meru, Laikipia, Kilifi, and Kwale.

27. The Committee also sent invitations to the respective County Governors and County Assemblies to attend and participate in the hearings and make presentations on the proposed Bill and also requested the respective County Commissioners’ offices to invite members of the general public to the advertised venues.

28. The Committee facilitated public hearing sessions in the above Counties, during which members of the public either individually or representing institutions and organizations made presentations and/ or submitted memoranda which the Committee took into account while considering the Bill.

29. In view of the limited time available, and to ensure that all the above counties were covered, the Committee resolved that the Members of the Committee would establish

sub-committees for purpose of conducting public hearings in the various Counties concurrently.

30. A comprehensive list of members of the public who attended the public hearings in the various counties is attached to this report as *annexure 4*.

3.3 Summary of views from the Public hearings

31. The Committee observed that a majority of the Members of the Public (over 90%) who attended the public hearings in the various Counties visited supported the Bill with varying reasons.

32. Below is a summary of views that the Committee received from members of the public during the public hearings in support of the Bill:

(a) That, candidates or political parties contesting elections should come with their own money and not fundraise from members of the public since this ends up becoming a source of corruption because those who contribute funds for candidate's campaigns will need favors and tenders from the candidates hence influencing the decisions of the candidate if they win a seat.

(b) That, there are expectations by persons who contribute funds to a candidate or political party's cause and if the candidate or political party then fails to win the intended seat, those members of the public who contributed funds may start asking for a refund of their money.

(c) That, the Election Campaign Financing law is a source of vice and enslavement and should be abolished altogether since people who contribute more funds may feel more entitled and therefore distract the candidate from his core representation mandate.

(d) That, people intending to contest for political office should raise their own funds and therefore manage the same funds on their own because if people raise funds for a politician and he doesn't do as they please like not attending funerals or going to the Constituency as frequently as they wish, the people may resort to violence and attack the politician imagining how they contributed their funds to a person who now disregards them.

- (e) That, there should be no limit on the amount a candidate or political party can spend during the campaigns and so long as the money has been acquired in the right manner, the owner should have freedom to use the money how they deem fit and not be answerable to a Committee.
- (f) That, in the Kenyan political environment there is a lot of dishonesty and a competitor may influence another's Campaign expenditure committee so that when he requires resources to be applied towards a particular cause, the Committee may reject or delay the release in order to give undue advantage to the opponent.
- (g) That, the NCCCK recognizes that campaign financing plays a major role in the quality of elections and democratization of the country and whereas candidates and parties have limited capacity to campaign effectively without adequate funding, they nonetheless have a responsibility to account for such funds to ensure transparency and forestall corruption.
- (h) That, the NCCCK is concerned that the Bill would ostensibly water down the oversight on campaign financing especially in consideration of the fact that the Bill was being considered against a background of rejection of the Campaign Financing Regulations by the National Assembly in August, 2021.
- (i) That, the NCCCK is concerned that the Bill creates loopholes for money laundering through the donations and spending.
- (j) The IEBC indicated that it had developed amendments to the Election Campaign Financing Act which seeks to address areas identified as ambiguous, conflicting and un-implementable and therefore will require joint consultations with the Committee.

3.4 Analysis of written Submissions received from stakeholders

PROVISION IN BILL	STAKEHOLDER	STAKEHOLDER PROPOSAL	ANALYSIS COMMITTEE	BY
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<p>Amendment of section 2 of the Election Campaign Financing Act, 2013 to delete the provision of “expenditure committees”</p>	<p>National Council of Churches Kenya (NCCK)</p>	<p>Opposed the amendment on the basis that expenditure committees enable and oversight of campaign funds</p>	<p>The Committee observed that campaigns were largely funded by private individuals. In this regard candidates ought to be given discretion in the manner of use of funds. Further there were provisions within the Elections Campaign Financing Act, 2013 Elections Act, 2011 and other related laws that ensured there was transparency and accountability on matters related to campaign financing and spending.</p>
<p>Amendment of section 2 of the Election Campaign Financing Act, 2013 to delete the provision of “expenditure committees”</p>	<p>Kenya Reform Commission (KLLRC)</p>	<p>Amend section 2 by deleting the terms “Expenditure account” and “Expenditure report” since they are consequential amendments to deletion of the “Expenditure Committees”.</p>	<p>The committee observed that for purposes of enhancing accountability and transparency in election campaign financing, expenditure accounts and expenditure reports may be retained in the Act</p>
<p>Proposed new amendment to section 6 of the Election Campaign Financing Act, 2013 that provides</p>	<p>Kenya Reform Commission (KLLRC)</p>	<p>Amend section 6 of the principal Act by: a) In subsection (1) by (i) deleting paragraphs (c) and substituting</p>	<p>The committee observed that the amendment is subject to Standing Order 133(5) which provides that no</p>

<p>for authorized persons for purposes of regulating election campaign financing</p>		<p>therefore "(c) an "agent of a political party" (ii) deleting paragraph (d) and substituting therefor (d) an agent of a referendum committee; (b) by deleting subsection (2) (c) by deleting subsection (3) (d) by deleting subsection (6); and (e) by deleting subsection (7)</p>	<p>amendment shall be permitted to be moved if it deals with a different subject matter or proposes to unduly expand the subject matter of the Bill.</p>
<p>Repeal of section 7, 8 and 9 of the Election Campaign Financing Act, 2013 that provide for establishment of the party expenditure committees, independent candidate expenditure committee, referendum expenditure committees and submission of expenditure committees reports respectively.</p>	<p>National Council of Churches of Kenya (NCCCK)</p>	<p>Opposed the proposed amendment stating that sections 7, 8 and 9 of the Principal Act which had been proposed for deletion be retained as contained in the principal Act since Expenditure Committees help candidates and political parties to manage their campaign expenses and ensure compliance with laws</p>	<p>The Committee observed that campaigns were largely funded by the candidates from private sources. In this regard, candidates ought to be given discretion in the manner of use of funds. Further there were provisions within the Elections Campaign Financing Act, 2013 Elections Act, 2011 and other related laws that ensured there was transparency and accountability on matters</p>

		and regulations	related to campaign financing and spending.
<p>Repeal of section 10 of the Election Campaign Financing Act, 2013 that provides for submission of expenditure reports.</p>	<p>National Council of Churches Kenya (NCCK)</p>	<p>They agreed with the Committee in deletion of section 10(1)(a) of the principal Act which requires candidates or political parties to submit preliminary reports within 21 days of party primaries but stated that the other provisions of section 10 be retained as is contained in the principal Act on the basis that it is important for transparency and accountability to require all candidates and political parties to submit reports of their expenses and source of funds</p>	<p>The Committee observed that the Act makes provision for the Commission to make regulations on submission of reports and manner of disclosure of matters related to campaign financing so this matter is adequately addressed by the regulations.</p>
<p>Amendment of sections 16, 17, 21, 25, 26, 27 and 28 of the Election Campaign Financing Act, 2013</p>	<p>National Council of Churches Kenya (NCCK)</p>	<p>They opposed the amendment to sections 16, 17, 21, 25, 26, 27 and 28 on the basis that the provisions enhanced transparency and</p>	<p>The Committee observed that the Act makes provision for the Commission to make regulations on</p>

		<p>accountability related to election campaign financing and helped to reduce corruption, electoral malpractices and use of illicit funds in elections.</p>	<p>submission of reports and manner of disclosure of matters related to campaign financing so this matter is adequately addressed in regulations. Further other laws such as the Elections Act, 2011 have provisions that act as adequate deterrence against electoral malpractices.</p>
<p>Repeal of section 17 of the Election Campaign Financing Act , 2013 that provides for the manner in which surplus campaign funds shall be dealt with</p>	<p>Kenya Law Reform commission (KLRC)</p>	<p>They opposed repeal of section 17 which dealt with surplus campaign funds on the basis that the intention of Article 88(4)(i) of the Constitution is to give the IEBC mandate of regulating amount of funds that may be spent in campaigns.</p>	<p>The Committee observed that Act gives the Commission the power to make regulations prescribing procedures for disclosure of the amount of contributions made to a candidate or to a party, the nature of these contributions and the intended expenditures by a candidate or a party and generally for disclosure of matters related to campaign financing.</p> <p>The Committee further observed that elections in Kenya are not wholly funded by public funds.</p>

<p>Amendment of section 29 of the Election Campaign Financing Act , 2013 that seeks to enable the Commission to make regulations to prescribe the manner of audit of accounts relating to the campaign expenses of a candidate, a political party or a referendum committee and the procedure for claims objecting to any matter related to campaign finance expenditures submitted by a candidate</p>	<p>National Council Churches Kenya (NCCK)</p>	<p>They support the proposed amendment to section 29 of the Principal Act as it provides for audit mechanism for candidates or political parties.</p>	<p>In this regard it would be unreasonable to require a candidate who uses their private funds to submit any such surplus funds as is provided for currently in the Act.</p>
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4.0 OBSERVATIONS AND RECOMMENDATIONS

4.1. OBSERVATIONS

33. The committee observed the following:-

- (a) That Article 88(4)(1) of the Constitution provides that it shall be the responsibility of the Independent Electoral and Boundaries Commission (IEBC) to regulate the amount of money that may be spent by or on behalf of a candidate or party during election campaigns.
- (b) That to give effect to Article 88(4) of the Constitution, Parliament enacted the Elections Campaign Financing Act, 2013. However, upon enactment, it was realized that there were difficulties in implementing the Act due to some provisions in the Act, key among them the provisions requiring candidates and political parties to form campaign expenditure committees to manage campaign funds on their behalf.
- (c) That public funding of political parties alone cannot sustain campaign requirements of political parties and the candidates and therefore there was necessity for candidates and political parties to raise additional funds for campaigns privately.
- (d) That from the public hearings that the Committee undertook in the Counties, members of the public held a strong view that candidates or political parties seeking to participate in elections should not raise funds from the public but should look for own resources and therefore should not relinquish management of campaign funds to any expenditure committee.
- (e) That further, with the volatile and competitive nature of Kenyan elections, there was likelihood of the members of the campaign expenditure committee of a candidate being compromised by a competitor hence a candidate should be given a leeway to manage their own funds.
- (f) Regarding the proposals from the National Council of Churches of Kenya that the proposed amendments be dropped as it would lead to opaqueness in regulation of campaign spending, the Committee observed that it had maintained the requirement for candidates to have campaign expenditure accounts and reports to ensure that candidates or political parties banked

their campaign funds in certain accounts and submitted reports on utilization of the said funds to the Commission only recommending abolishing of the expenditure committee and therefore ensuring that transparency and accountability are maintained.

(g) Regarding the proposal by the Kenya Law Reform Commission on deletion of expenditure Accounts and expenditure reports, the Committee observed that the two terms were not tied to the Expenditure committee and therefore abolishment of the expenditure committees did not necessarily mean that there would be no expenditure accounts and expenditure reports, which were crucial for accountability by candidates and political parties.

(h) In view of the Committee's finding on the various issues above, the committee did not adopt the amendments proposed by the invited stakeholders.

4.2. RECOMMENDATION

34. The Committee noting the proposals from the public and invited stakeholders and having considered the same, hereby recommends that the Bill be adopted without amendments.



Signature:

Date: 23/2/2022

HON. ALOIS M. LENTOIMAGA, M.P.
CHAIRPERSON,
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE



Summary of Views from Public Hearings

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE (CIOC) PUBLIC HEARING ON:

- 1. THE ELECTIONS (AMENDMENT) BILL, 2021**
- 2. THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, 2021**

BUNGOMA COUNTY

DATE: FRIDAY, 19TH NOVEMBER, 2021

VENUE: RED CROSS HALL, KANDUYI

CHAIRPERSON: HON. RAPHAEL WANJALA, M.P.

The Hon. Catherine Wambilianga, M.P. welcomed the Committee Members to Bungoma County and invited the Chairperson of the session, Hon. Rapahel Wanjala, M.P. who took members of the public through the contents of the two Bills explaining the purpose of the meeting as a chance for the Committee to hear and collate views of the public on the two Bills.

He thereafter invited members of the public to give their views on the two Bills urging them to be as candid as possible.

The members of the public who gave views on the two Bills raised the following as grounds in support of and in opposition to the Bills:

A. THE ELECTIONS (AMENDMENT) BILL, 2021

- a) That in the current County Assembly of Bungoma there are some nominated MCAs who are from Busia County and they do not add value to the county government as they do not understand the issues affecting the residents of Bungoma.
- b) That when nominees are required to be registered voters in the counties where they are nominated, it will reduce cases of corruption where candidates who do not deserve nominations have simply been paying the political party owners in order to be nominated.
- c) That the nominees should be residents and registered voters in the counties as then they would be more conversant with the issues affecting the people and therefore

would be more reliable in addressing the people's concerns and making relevant legislations useful to the county government.

- d) That the nominated MCAs should not just be registered voters but residents of the county for a minimum period of say five years to avoid people just coming to register for purposes of nomination and since as residents, they are in touch with the people of the county and therefore in performing their representation role, they are able to find sources of information on various issues of concern to the citizenry.
- e) That the Bill when enacted into law will reduce cases of personal interests which include; nomination of boyfriends and girlfriends from other counties who do not have knowledge about issues concerning the people of the county.
- f) That the Bill should be amended to require political parties to include religious leaders as special groups, and nominate them to allow them to bring back stability to the Government of Kenya.
- g) That the nominees from other counties do not invest in the county since they just come for assembly sittings and go back to their counties.
- h) That apart from the candidates being registered voters of their respective counties, they should also have contributed to and supported the political party
- i) That the nominee MCAs should be ancestrally from the county so that the values of the residents of that county are preserved.
- j) That nominations for MCAs and even MPs should not be for more than one term so as to give other people chances.
- k) That for one to be nominated to the county assembly, they should be a resident and have participated as an aspirant in elections to prove interest in position.
- l) That the law should be amended to require electoral colleges consisting of local residents from the special interest group to be established to propose the MCA candidate to be nominated because they would choose the most qualified candidate for the position as is the case in the neighboring country of Uganda.
- m) That the fundamental document to be considered in nomination should be the birth certificate and not just to be registered voters in the county of nomination.
- n) One person who opposed the Bill stated that in some cases, people become residents of a county during the electoral cycle by virtue of marriage and should not be disadvantaged when they are supporters of the political party.

B. THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, 2021

- a) That as long as the money used in campaigns has been acquired in the right manner, the candidate should exercise freedom on how to use the money.
- b) That there should be no limit on how to spend the money during campaigns.
- c) That Kenyans want someone with money to be elected so as to solve their problems and not someone with no money and therefore the candidates and political parties should use their own money for campaigns.
- d) That in case people fundraise for a particular candidate or political party and they to clinch the intended seat, some of the members of the public who contributed will start asking for a refund of their money leading to disorder.
- e) They will be enslaved by the common mwananchi who will need the candidate to meet their demands which are unnecessary. The candidates should come with their own strength by campaigning with their own money.
- f) That the campaign expenditure committees may become infiltrated by the opponents of a candidate or political party thus derailing the agenda of the candidate or political party.

BUSIA COUNTY

DATE: SATURDAY, 20TH NOVEMBER, 2021

VENUE: PORT VICTORIA SOCIAL HALL, PORT VICTORIA TOWN

CHAIRPERSON: HON. SIMON KING'ARA, M.P.

The Hon. Raphael Wanjala, M.P. welcomed the Members of the Committee to Busia County and invited the Chairperson of the session, Hon. Simon King'ara, M.P. who took members of the public through the contents of the two Bills explaining the purpose of the meeting as a chance for the Committee to hear and collate views of the public on the two Bills.

He thereafter invited members of the public to give their views on the two Bills urging them to be as candid as possible.

The members of the public who gave views on the two Bills raised the following as grounds in support of and in opposition to the Bills:

A. THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, 2021

1. That people intending to venture into politics should raise their own funds for campaigns and not to source funds from members of the public to use during elections.
2. That if the members of the public from say the constituency raised funds for a politician to use for campaigns and the politician wins the seat, if he subsequently does not satisfy their requirements for example attending their social activities and being present in the constituency regularly, the people may resort to violence against the politician on grounds that without their funds, he would not have won the seat or begin to demand reimbursement of their funds.
3. That the law is a source of corruption as people who raise more funds may come demanding for tenders and favours from the politicians who then lose focus on their core mandate of representation, legislation and oversight.
4. That the Bill is timely as it allows persons intending to contest to raise their own funds and to manage their monies without the requirement of establishing committees consisting of persons who may not share ideologies with the candidate or particular political party.

B. THE ELECTIONS (AMENDMENT) BILL, 2021

1. That the Bill was timely to prevent nepotism and other ills during nomination of MCAs as witnessed during the 2013 general elections where one party official nominated his child and a wife to the Busia County Assembly.
2. That during the 2013 general elections, ODM party got 12 nomination slots but two of the people nominated were not from Busia county and another official nominated his household, and even the persons with disabilities did not get a nomination slot.
3. That the law when enacted would control abuse of power by the political party leaders who nominate their friends without considering merit
4. That if political parties were to nominate MCAs from among residents of that particular county who had expertise in a particular field e.g. teachers, fisher folk or irrigation experts, then these persons would add value to the county.
5. That there is need to institutionalize and strengthen political parties by nominating people who have capacity and have supported the political parties.

6. That political parties with a chance to nominate MCAs to the County Assembly should be liaising in nominations to ensure there is regional balance to ensure that the nominees are distributed across the sub counties. In Busia county during the 2017 general elections for example, 3 MCAs were nominated from the same sub-county by different political parties
7. That the Bill should be amended so that the person nominated should have resided in the county for at least 2 years or a certain minimum duration.
8. That nominations of MCAs have become a source of corruption whereby in some cases, persons nominated from outside the counties, agree with political party leaders to pay them a certain amount of money for purposes of being nominated.

NYAMIRA AND HOMABAY COUNTIES

DATE: FRIDAY, 19TH NOVEMBER, 2021
VENUE: EKERENYO EDUCATION HALL, NYAMIRA

DATE: SATURDAY 20TH NOVEMBER, 2021
VENUE: CDF HALL, KABUNDE, HOMABAY

CHAIRPERSON: HON. PETER KALUMA, M.P.

1. The public hearings were held at Ekerenyo Social Hall (Nyamira County) and Kabunde (Homabay County) on 19th and 20th November 2021 respectively.
 2. Several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.
 3. In response to the Committee's invitation, the members of the public either individually or representing institutions and organizations made presentations and/ or submitted memoranda.
 4. A comprehensive list of members of the public who attended the public hearings in the various counties is attached to this report.
- A. THE ELECTIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)**
5. The Committee observed that a large number (about 90%) of the persons who presented their views expressed support on the proposed amendment to section 34 of the Elections Act, 2011 on the following grounds:

- a) There was need for appropriate laws to govern elections and the nomination process that promoted greater stakeholder engagement to reduce the occurrence of contentious nominations.
 - b) The amendments proposed will ensure the objectives of Article 90 (2) (C) are realized as it will enhance equity and ensure that the list of nominees for the county assembly seats reflects the true face of the county. Only the persons who are registered as voters in a county will be eligible for nomination in that County.
 - c) The proposed amendment will enhance representation to the extent that persons who are nominated are registered as voters in a particular county, and therefore will be more aware of the issues affecting the county thus able to effectively articulate and address those issues through their respective assemblies. As opposed to the current situation where persons who are not registered voters in a particular County and have no interest or knowledge on the issues of the county have been nominated thereby not adding value to the said counties.
 - d) The essence of nominations is to bring persons with special knowledge or expertise into county assemblies or to represent special interests groups. In this regard this objective would be better achieved if persons nominated into the county assembly had knowledge of the county they are nominated in.
 - e) There were proposals that the Bill be amended to put an additional requirement that other than being a registered voter in the county that the person is nominated, the person ought to have resided in that county for an uninterrupted period of eight years or any other such reasonable amount of time.
 - f) There was need for further amendments to ensure there was equitable distribution of nomination positions amongst all the wards and communities constituting a particular county. Further areas and communities within the county that are marginalized should be given priority in the nomination process.
6. The Committee observed the following as the main reasons others gave while opposing the Bill-
- a) The Constitution does not bar any individual from vying in any part of the country; in this regard nomination of persons should not be limited to persons registered in the county they are nominated;
 - b) Allowing persons to be nominated in any county and not limiting only to those registered voters in that particular county would help to enhance national unity. The proposed amendment may likely lead to tribalism;

- c) The amendment may disenfranchise certain groups of persons such as women who inter-marry and may wish to be nominated in the counties they are married in. Such women may likely not be nominated as they will be seen as “outsiders.”

**B. THE ELECTIONS (CAMPAIGN FINANCING (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 37 OF 2021)**

7. The Committee observed that a large number (about 80%) of the persons who presented their views expressed support on the proposed amendments to the Elections Campaign Financing Act, 2013, (No. 42 of 2013) on the following grounds:
 - a) Noting Kenya’s historical context on elections and election financing it wouldn’t make sense simply to mirror the political funding models of the Western Countries and regulation of the same in Kenya. The Elections Campaign Financing Act, 2013 heavily borrowed its provision from established democracies without taking into consideration the social, economic and political context of Kenya.
 - b) Election campaigns in Kenya are primarily financed by individual candidates and not through contributions of third parties or political parties for candidates sponsored by parties. In this regard it would be overbearing to require a person upon the completion of campaigns to surrender their personal funds to political parties or charitable organizations.
 - c) Taking into consideration that individuals primarily finance their elections campaigns through use of privately sourced funds. Such individuals should be at liberty to determine the manner in which they use those funds and not be compelled to cede control of such funds to third parties.
 - d) Election campaign funds in most instances are not public funds hence the provision on audit of such funds by the auditor-general is inexplicable and laborious reporting requirements are unreasonable. There was no justifiable reason to expend public funds auditing monies that are not from the public coffers.
 - e) There existed agencies that could effectively monitor and audit use of funds during campaigns such as the Ethics and Anti-Corruption Commission.
8. The Committee observed the following were the main reasons others gave while opposing the Bill-
 - a) There was need to ensure that funds sourced from third parties other than individual personal funds are audited to ensure accountability and ensure funds were not from proceed of crimes.

- b) Persons should not be compelled to constitute election campaign committees, however it was important to provide for disclosure of sources of campaign funds and audit of the manner that the funds are used so as to reduce electoral malpractices such as bribery as in most instance campaign funds were used for bribery as opposed to funding organizational and logistical issues related to campaigns.
- c) The Act if fully implemented as it currently is, gives an opportunity for the electorate to interrogate candidates for various positions based on their leadership qualities and not funds they put in place to campaign or handouts given.

EMBU AND MERU COUNTIES

DATE: FRIDAY, 26TH NOVEMBER, 2021
VENUE: CDF HALL KIRITIRI, EMBU

DATE: SATURDAY 27TH NOVEMBER, 2021
VENUE: KAMUNDI MEMORIAL HALL, MERU

CHAIRPERSON: HON. MOSES KIRIMA, M.P.

1. The public hearings were held at the CDF Hall Kiritiri (Embu County) and Kamundi Memorial Hall (Meru County) on 26th and 27th November 2021 respectively.
2. Several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.
3. In response to the Committee's invitation, the members of the public either individually or representing institutions and organizations made presentations and/ or submitted memoranda.
4. A comprehensive list of members of the public who attended the public hearings in the various counties is attached to this report.

**A. THE ELECTIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.
41 OF 2021)**

5. The Committee observed that a large number (about 90%) of the persons who presented their views expressed support on the proposed amendment to section 34 of the Elections Act, 2011 on the following grounds:

- a) The amendments proposed will ensure objective of Article 90 (2) (C) are realized as it will enhance equity and ensure that the list of nominees for the county assembly seats reflects the true face of the county. Only persons who are registered voters in a county will be eligible for nomination in that County.
- b) That the nominees should be residents and registered voters in the counties as then they would be more conversant with the issues affecting the people and therefore would be more reliable in addressing the people's concerns and making relevant legislations useful to the county government.
- c) That there was need to provide for a clear and credible nomination process so as to ensure that the objectives of Article 90 of the Constitution were achieved and there was effective representation of special interest groups. Further there was need for criteria including setting out academic qualifications for persons to be nominated in counties.
- d) That there was need for enhanced civic education of electoral matters as most Kenyans were not aware of the electoral laws governing elections.
- e) That the electorate ought to be given an opportunity to vet Party lists and in this regard nominations should be done after elections and after proper vetting of persons nominated to counties.
- f) That there was need for balancing in the nomination of various categories of special interest groups, as a lot of focus had been placed on women at the expense of other special interest groups such as persons living with disabilities and marginalised communities.

B. THE ELECTIONS (CAMPAIGN FINANCING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)

6. The Committee observed that a large number (about 80%) of the persons who presented their views expressed support on the proposed amendment to the Elections Campaign Financing Act, 2013, (No. 42 of 2013) on the following grounds:
 - a) The Elections Campaign Financing Act, 2013 heavily borrowed its provision from established democracies without taking into consideration the social, economic and political context of Kenya and its application in Kenya may be difficult.

- b) Election campaigns in Kenya are primarily financed by individual candidates and not through contributions of third parties or political parties for candidates sponsored by parties. In this regard it would be overbearing to require a person upon the completion of campaigns to surrender their personal funds to political parties or charitable organizations.
- c) Candidates for various positions primarily finance their elections campaigns through use of privately sourced funds consequently should be at liberty to determine the manner in which they use those funds and not be compelled to cede control of such funds to third parties.
- d) It is unjustifiable or otherwise unreasonable to expect individuals who use personal monies to conduct election campaigns to submit any surplus funds after conclusion of elections to political parties and charitable organizations yet these were private funds.
- e) Election campaign funds in most instances are not public funds hence the provision on audit of such funds by the auditor-general is inexplicable and laborious reporting requirements are unreasonable. There was no justifiable reason to expend public funds auditing monies that are not from the public.

7. The Committee observed that the following were the main reasons others gave while opposing the Bill-

- a) There was need to ensure that funds sourced from third parties other than individual personal funds are audited to ensure accountability and ensure funds were not from proceeds of crimes;
- b) Persons should not be compelled to constitute election campaign committees to manage utilization of privately raised funds.
- c) That the Act if fully implemented will give an opportunity for the electorate to interrogate candidates for various positions based on their leadership qualities and not funds they put in place to campaign or hand-outs given.
- d) That there was need to strengthen political parties so that individuals are sponsored by political parties as this would help to reduce the impact of money being a key determinant for persons being elected into leadership positions.

KIRINYAGA COUNTY

DATE: FRIDAY, 26TH NOVEMBER, 2021

VENUE: ST. PAULS ACK, KUTFUS HALL

CHAIRPERSON: HON. PETER KALUMA, M.P.

The Hon. Purity Ngirici, M.P. welcomed the Members to Kirinyaga County and invited the Chairperson, Hon. Peter Kaluma, M.P. who took Members of the public through the contents of the two Bills explaining the purpose of the meeting as a chance for the Committee to hear and collate views of the public on the two Bills.

He thereafter invited members of the public to give their views on the two Bills urging them to be as candid as possible. Below is a summary of the views received from the members of the public on the two Bills:

A. THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, 2021

1. That the Election Campaign Financing Act is akin to requiring a candidate to have a lot of money for them to vie since for one to have a committee to manage the funds, the monies must be a lot.
2. That the Bill will ensure implement-ability of the law since it will allow a candidate and political parties to spend upto a limit of what they have.
3. That considering that the funds used in election campaigns are mainly raised by individuals and political parties, the individuals should be allowed to control how they spend it.
4. One person gave an analogy of a candidate who during the 2017 general elections sold his land in order to campaign, and he forms a committee to manage the funds and then loses elections, would it be fair for the candidate to return the remainder of the money he raised from the sale of the land to the political party and not pick up from his loss?
5. That the Committee may misappropriate the funds or be infiltrated by other contestants who may be a stumbling block to one's political aspirations.
6. That sometimes candidates may have taken a loan to contest and if they lose the seat on allegations that the money raised was mismanaged by the committee, it may lead to threats to the lives of the committee members.

B. THE ELECTIONS AMENDMENT BILL, 2021

1. That MCAs nominated from outside the county cannot understand the issues affecting the people in that area
2. That the Bill when enacted will abolish the issue of flower girls and boys who don't speak in the Assembly and are just there to vote even on issues they do not comprehend.

3. That nominations of people from outside the county has led to erosion of the culture and values of the people of a county as the imported person comes with new cultures that may be immoral.
4. That nominations of persons from outside the county have been sources of corruption as people just pay monies in order to be nominated.
5. That nominations should be reserved to people who supported the political party.
6. That nominees from outside the county will not add value to the county and their people and this will amount to misuse of public funds of that particular county.
7. That some people have become serial nominees nominated in different counties during each electoral cycle.
8. Nominations should ensure there is regional balance so that the nominees don't come from one part of the county or are relatives of the Governor or MP.
9. That after nominations, the people should know which ward a candidate comes from so that apart from representing the specific category of persons generally, the people of that ward are able to benefit representation of the candidate.
10. That there should be participation of the nominees in the political parties and invest in the said party as political parties are like investments as they are the only ones who understand the needs of the local community for devolution to thrive.
11. That amend the law so that the nominee should have been a resident of the county for a particular period e.g. 5 years before that election as it may leave gap of people registering last minute just to be nominated.
12. The nominee should have shown interest in the position and if possible participated in the general elections and also be an active participant in a political party.

LAIKIPIA COUNTY

DATE: SATURDAY, 27TH NOVEMBER, 2021

VENUE: NANYUKI POLYTECHNIC

CHAIRMAN BY HON. PETER KALUMA, M.P.

Prayers by Hon. Kaluma

Explanation of Elections (Amendment) Bill by Hon. Kaluma

To amend the Elections Act so that those who are nominated as MCAs should come from the county and be registered voters in that county.

Explanation on the Election Campaign Financing (Amendment) Bill by Hon. Anthony Oluoch, M.P.

Views by Wananchi

ELECTION CAMPAIGN FINANCING COMMITTEE

- That this can be reserved for the President only since the candidates are few.
- Amend so that there is need to know the source of funds though
- That there should be a limit of the amount of money a candidate can use for campaigns
- Zoning of the country by political players should not be there.

ELECTIONS AMENDMENT BILL

- That the law should cover all seats
- Academic qualifications-There should be minimum qualifications for the political positions

CONCLUSION

Response by Hon. Peter Kaluma to issues raised by the Members of the public.

Question

1. Political parties discipline in nominating MCAs from other counties

KILIFI AND KWALE COUNTIES

DATE: FRIDAY, 3RD DECEMBER, 2021

VENUE: MAKIO HALL, MAJENGO, KILIFI

DATE: SATURDAY 4TH DECEMBER, 2021

VENUE: KWALE CULTURAL CENTRE HALL, KWALE

CHAIRPERSON: HON. DANIEL RONO, M.P.

8. The public hearings were held at Makio Social Hall (Kilifi County) and Kwale Cultural Centre Hall (Kwale County) on 3rd and 4th December, 2021 respectively.
9. Several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.
10. In response to the Committee's invitation, the members of the public either individually or representing institutions and organizations made presentations and/ or submitted memoranda.
11. A comprehensive list of members of the public who attended the public hearings in the various counties is attached to this report.

A. THE ELECTIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)

12. The Committee observed that all the persons who presented their views expressed support on the proposed amendment to section 34 of the Elections Act, 2011 on the following grounds:
 - a) That the proposed amendment will enhance representation to the extent that person who are nominated are being registered voters in a particular county, will be more aware of the issues affecting the county thereby able to effectively articulate and address those issues through their respective assemblies. As opposed to the current situation where persons who are not registered voters in a particular County and have no interest or knowledge on the issues of the county have been nominated thereby not adding value to the said counties.
 - b) That there were proposals that the Bill be amended to put an additional requirement that other than being a registered voter in the county, the person ought to have resided in that county for an uninterrupted period of five years or any other such reasonable amount of time.
 - c) That there was need for further amendments to ensure there was equitable distribution of nomination positions amongst all the wards and communities constituting a particular county.
 - d) That the nominees should be residents and registered voters in the counties as then they would be more conversant with the issues affecting the people and therefore would be more reliable in addressing the people's concerns and making relevant legislations useful to the county government.
 - e) That the nominated MCAs should not just be registered voters but residents of the county for a minimum period of say five years to avoid people just coming to register for purposes of nomination and since as residents, they are in touch with the people

of the county and therefore in performing their representation role, they are able to find sources of information on various issues of concern to the citizenry.

- f) That the Bill when enacted into law will reduce cases of personal interests which include; nomination of boyfriends and girlfriends from other counties who do not have knowledge about issues concerning the people of the county.
- g) That nominations for MCAs and even MPs should not be for more than one term so as to give other people chances.
- h) That for one to be nominated to the county assembly, they should be a resident and have participated as an aspirant in elections to prove interest in position.

B. THE ELECTIONS (CAMPAIGN FINANCING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)

13. The Committee observed that a large number (about 80%) of the persons who presented their views expressed support on the proposed amendment to the Elections Campaign Financing Act, 2013, (No. 42 of 2013) on the following grounds:

- a) That the Election Campaign Financing Act, 2013 heavily borrowed its provisions from established democracies without taking into consideration the social, economic and political context of Kenya and its application in Kenya may be difficult.
- b) That candidates for various positions primarily finance their elections campaigns through use of privately sourced funds and therefore they should be at liberty to determine the manner in which they use those funds and not be compelled to cede control of such funds to third parties.
- c) That it is unjustifiable to expect individuals who use personal monies in undertaking election campaigns to submit any surplus funds after conclusion of elections to political parties and charitable organizations yet these were private funds.
- d) That the political climate during elections in Kenya is very fluid and therefore campaign expenditure committees may be corrupted or infiltrated by the opponents of a candidate or political party thus derailing the agenda of the candidate or political party.

14. The Committee observed the following as the main reasons members of the public gave in opposition to the Bill-

- a) There was need to ensure that funds sourced from third parties other individual personal funds are audited to ensure accountability and ensure funds were not from proceed of crimes.

b) Persons should not be compelled to constitute election campaign committees, however it was important to provide for disclosure of sources of campaign funds and audit of the manner the funds are used so as to reduce electoral malpractices such as bribery as in most instance campaign funds were used for bribery as opposed to funding organizational and logistical issues related to campaigns.

MINUTES OF THE FOURTH SITTING (SIXTH SESSION) OF THE
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON
THURSDAY, 17TH FEBRUARY, 2022 AT THE MEDIA CENTRE, MAIN PARLIAMENT
BUILDINGS AT 11:30 A.M.

PRESENT

1. The Hon. Alois M. Lentoimaga, M.P.	-	Chairman
2. The Hon. Peter Kaluma, M.P.	-	Vice Chairman
3. The Hon. Charles Gimose, M.P.		
4. The Hon. Daniel Rono, M.P.		
5. The Hon. Bernard Okoth, M.P.		
6. The Hon. Didimus Barasa, M.P.		
7. The Hon. T.J Kajwang, M.P.		
8. The Hon. Moses Kirima, M.P.		
9. The Hon. Halima Mucheke, M.P.		
10. The Hon. Raphael B.S. Wanjala, M.P.		
11. The Hon. Abdi Shurie, M.P.		
12. The Hon. Christine Ombaka, M.P.		

APOLOGIES

1. The Hon. (Dr.) Naomi Shaban, M.P.
2. The Hon. Joash Nyamoko, M.P.
3. The Hon. Japheth Mutai, M.P.
4. The Hon. Catherine Wambilianga, M.P.
5. The Hon. Purity Ngirici, M.P.
6. The Hon. Fabian K. Muli, M.P.
7. The Hon. (Col.) Geoffrey Kingangi, M.P.
8. The Hon. Yussuf Hassan Abdi, M.P.
9. The Hon. Peris Tobiko, M.P.
10. The Hon. Catherine Wambilianga, M.P.
11. The Hon. Simon Ng'ang'a King'ara, M.P.

SECRETARIAT

1. Mr. Edward Libendi
 2. Ms. Lynette Otieno
 3. Mr. Sakana Saoli
 4. Mr. Solomon Lelekwa
- Principal Legal Counsel/CIOC Clerk
- Legal Counsel
- Hansard Reporter III/Clerk assistant
- Intern

MIN.NO.CIQC/2022/13

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes to Twelve O'clock (11:40 am) and opened it with a word of prayer.

The Chair thereafter proceeded to once again thank the Members of the Committee for giving him a chance to be the Chairperson. He also requested Members to work together as a team and to try conclude the business pending before the Committee keeping in mind the short period of time left before the general elections in August, 2022.

Members thereafter adopted the agenda of the meeting as follows:

- 1) Adoption of the report of the Committee on its consideration of the Elections (Amendment) Bill, 2021(National Assembly Bill No. 41 of 2021).
- 2) Adoption of the report of the Committee on its consideration of the Election Campaign Financing (Amendment) Bill, 2021 (National Assembly Bill No. 37 of 2021).

MIN.NO.CIQC/2022/14 ADOPTION OF COMMITTEE REPORT ON THE
ELECTIONS AMENDMENT BILL (NATIONAL ASSEMBLY BILL NO. 41, 2021)

The Chairperson requested the Legal Counsel to take Members through the report of the Committee on the Elections (Amendment) Bill, (National Assembly Bill No. 41 of 2021). The Counsel went through the Bill explaining the background and reasons for development of the Bill and the mischief that the proposed amendment sought to achieve. She also took Members through a summary of the views from the public indicating that almost all members of the public who spoke supported the Bill. Some with proposals for amendment.

Members of the committee were satisfied with the highlights and resolved to adopt the report with an amendment to require that while undertaking the nominations, the IEBC should ensure that there is equitable distribution of the nominees in the wards of the County so that we don't have a situation whereby all the nominated MCAs come from one sub-county.

Members thereafter adopted the report of the Committee after it had been proposed by the Hon. Peter Katuma, M.P. and seconded by the Hon. Moses Kirima, M.P.

MIN.NO.CIQC/2022/15 ADOPTION OF COMMITTEE REPORT ON THE
ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 37 OF 2021)

The Chairman thereafter invited the Legal Counsel to take Members through the second report, the report of the Committee on the Election Campaign Financing (Amendment) Bill, 2021

(National Assembly Bill No. 37 of 2021). The Counsel took Members through the Committee report highlighting the background, reasons for development of the Bill and the importance of the said amendments in ensuring that the parent Act is implementable. The Committee noted that members of the public in most of the counties where it undertook public hearings and invited stakeholders supported the Bill with only a few opposing the same.

Members considered the objections to the Bill clause by clause noting the reasons for the opposition and rejected the proposals to amend or delete the provisions in the Bill. Members thereafter adopted the report of the Committee on the Bill without any amendment after it had been proposed by the Hon. Daniel Rono, M.P. and seconded by the Hon. Peter Kaluma, M.P.

MIN.NO.CIOC/2022/16 **ANY OTHER BUSINESS AND ADJOURNMENT**

Invitation to a retreat.

The Chairperson brought to the attention of the committee a letter from the Inter-Governmental Relations Technical Committee (IGRTC) inviting the Members of the Committee to a joint retreat from 10th to 13th March, 2022.

Members of the committee deliberated on the invitation and resolved that the retreat be rescheduled to be held from 7th to 10th March, 2022 since the National Assembly which will be on recess during the period.

Adjournment.

There being no other business, the meeting was adjourned at fifteen minutes past One O'clock (1.15 pm).


SIGN.....
THE HON. ALOIS LENTOIMAGA M.P.

DATE 23/2/2022
CHAIRPERSON



NEWS GENERAL



PHOTO STORY

Wager leader
Kalenzo Musiyoka
addresses
wrenchers at
Kisumu market on
Thursday
/news/kenya

BLANE GANE

Ruto, Raila allies trade barbs over violence

ODM leaders say they won't apologise for chaos stage-managed by UDA for sympathy and profiling

LUKE MWACH
@lukemwach

Allies of Deputy President William Ruto and ODM leader Raila Odinga's on Thursday traded barbs over Wednesday's violence in Eldoret that saw the DP's rally in Konolele end prematurely.

Speaking in Parliament buildings, MPs allied to both sides engaged in bitter blame game even as the United Democratic Alliance—a party associated with Ruto—demanded disqualification of ODM from the 2022 general election.

UDA national chairman Johnson Mtshama said the Independent Electoral and Boundaries Commission should take action against ODM for the action of its "supporters".

"The IEBC should take action in disciplining the ODM party by even disqualifying them from participating in the coming general election," Mtshama said.

"UDA has been committed to peaceful campaigns and has gone out of the way to warn its supporters of being disqualified if they engage in violence. This is what we expect from all other political and non-political players in the country participating in next year's elections."

In Parliament, Raila and Ruto troops engaged each other in blame game even as Tangutanga lawmakers linked the skirmishes to the Oppo-

sition chief. The DP allies, numbering over 30, said the violence was ODM Raila's strategy to protect his territory against "a raging bullfight movement".

The MPs said Raila has realized that the bullfight movement is unstoppable and is using every means to stop it.

"The events in Kericho, Kisumu, were ODM Raila Odinga's desperate attempt to protect his last bastion against a raging and unstoppable bullfight nation," said Patrick Mwangi, ODM's Igumbung'ombe MP.

The leaders also faulted the police for engaging in politics, accusing them of being part of a broader scheme to frustrate Ruto's campaign. Kunjili MP Dildorus Barasa said the ODM leader should publicly condemn violence meted out to Ruto on Wednesday.

"The events of Kisumu yesterday were purely an ODM affair. The violence said everything about ODM's violent brand of politics," Barasa said.

But in a quick rejoinder, Raila allies—Sam Alandi (Abege Uteri), Abdulwahid Nasir (Mbita), Peter Masera (Suna West), Mark Nyamata (Uritu), Lilian Gogo (Bungwe) and nominated MP Godfrey Otwai—dismissed the claims.

They said the chaos was stage-managed by the DP team for political mileage.

INVESTIGATION

Police stations in sorry state — senators

ALLAN OTENOY: Senators are investigating the status of police stations in the country amid concerns most of them are congested and in a sorry state.

Spokesman Kenneth Lusaka ordered the inquiry after the senators raised the alarm over what they termed as disturbing revelations about the conditions of the premises. The stations are nearly inoperable as they

REPORT SAYS POLICE PREMISES ARE CONGESTED AND ARE HARDLY EVER FUMIGATED

are dilapidated and small in size. They said people in police custody are undergoing untold pain, contrary to the provisions of the Constitution and laws on human rights.

ODM-nominated Senator Beatrice Kwaribaka sparked the debate on the status of the stations as she called on the National Security, Defence and Foreign Relations committee to launch an inquiry.



REPUBLIC OF KENYA THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT – FIFTH SESSION

In the matters of consideration by the National Assembly:

1. The Elections (Amendment) Bill, (National Assembly Bill No. 41 of 2021)
2. The Election Campaign Financing (Amendment) Bill, (National Assembly Bill No. 37 of 2021)

PUBLIC HEARINGS/SUBMISSION OF MEMORANDA

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

The Elections (Amendment) Bill, (National Assembly Bill No. 41 of 2021) seeks to amend the Elections Act No. 24 of 2011 to provide that persons nominated to County Assemblies by political parties pursuant to Article 177 of the Constitution, shall be persons who are registered voters in the county in which they are nominated.

The Election Campaign Financing (Amendment) Bill, (National Assembly Bill No. 37 of 2021) seeks to amend the Election Campaign Financing Act No. 42 of 2013 to align its provisions with the Elections Act, 2011 and to enable its implementation since the existing provisions do not take into consideration the current socio-economic and political structures that has hindered its full implementation.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 126 and have been committed to the Constitutional Implementation Oversight Committee for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118 (1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the aforementioned Bills. The Committee will also be conducting public hearings on the said Bills in the following Counties from 9.00 am to 3.00 pm as indicated below:

COUNTY	VENUE	DATE
1. Nyamira	Ekenyero Education Hall	Friday, 19th November, 2021
2. Bungoma	Red Cross Hall, Kanduyi	Friday, 19th November, 2021
3. Hombay	CDP Hall, Kabunde	Saturday, 20th November, 2021
4. Bura	Port Victoria Social Hall, Port Victoria Town	Saturday, 20th November, 2021
5. Embu	CDP Hall Kirithi	Friday, 26th November, 2021
6. Kisumu	ACK, Katus Hall	Friday, 26th November, 2021
7. Maru	Kamundi Memorial Hall,	Saturday, 27th November, 2021
8. Laikipia	Nanyuki Social hall	Saturday, 27th November, 2021
9. Kiifi	Makio Hall, Mjengo	Friday, 3rd December, 2021
10. Kwale	Kwale Cultural Centre	Saturday, 4th December, 2021
11. Nairobi	County Hall, Parliament Buildings	Tuesday, 7th December, 2021
12. Mombasa	County Assembly of Mombasa Chambers	Friday, 10th December, 2021
13. Lamu	Mwanafala Hall	Saturday, 11th December, 2021

Due to the need to comply with the Ministry of Health, COVID-19 containment measures, members of the public are encouraged to prepare written memoranda on the said Bills and submit to the Committee at the above-mentioned venues during the scheduled public hearings.

The representations or written submissions may also be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday, 10th December, 2021 at 5:00 pm.

Copies of the Bills are available at the National Assembly Table Office or be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly-house-business/bills.

MICHAEL R. SIALAL CBS
CLERK OF THE NATIONAL ASSEMBLY
12th November, 2021



REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FIFTH SESSION**

the matter of consideration by the National Assembly:-
1 Term 2022 Budget Policy Statement and the 2022 Medium Term
Debt Management Strategy

PARTICIPATION/SUBMISSION OF MEMORANDA

of the Constitution provides that, "Parliament shall facilitate public participation and legislative and other business of Parliament and its Committees".

the provisions of Section 25(7) of the Public Finance Management Act, 2012, the Medium Term Policy Statement and the 2022 Medium Term Debt Management Strategy Paper Parliament on Tuesday, 30th November, 2021 for consideration.

provisions of Article 118(1)(b) of the Constitution, Section 25(7) of the Public Finance Act 2012 and Standing Order 232 of the National Assembly, the Budget and Appropriations interested members of the public to submit their representations on the Medium Term Policy Statement and the 2022 Medium Term Debt Management Strategy.

ns or written submissions may be forwarded to the Clerk of the National Assembly, 0100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, ad to clerk@parliament.go.ke; to be received on or before Wednesday, 15th December,

mentioned documents are available at the National Assembly Table Office or be accessed parliamentary website at: www.parliament.go.ke/the-national-assembly/house-business/

MICHAEL R. SIALAL, CBS
CLERK OF THE NATIONAL ASSEMBLY
9th December, 2021

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FIFTH SESSION**

In the matters of consideration by the National Assembly:-

1. The Elections (Amendment) Bill, (National Assembly Bill No. 41 of 2021)
2. The Election Campaign Financing (Amendment) Bill, (National Assembly Bill No. 37 of 2021)

**RE-ADVERTISEMENT
PUBLIC HEARINGS/SUBMISSION OF MEMORANDA**

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

The Elections (Amendment) Bill, (National Assembly Bill No. 41 of 2021) seeks to amend the Elections Act No. 24 of 2011 to provide that persons nominated to County Assemblies by political parties pursuant to Article 177 of the Constitution, shall be persons who are registered voters in the county in which they are nominated.

The Election Campaign Financing (Amendment) Bill, (National Assembly Bill No. 37 of 2021) seeks to amend the Election Campaign Financing Act No. 42 of 2013 to align its provisions with the Elections Act, 2011 and to enable its implementation since the existing provisions do not take into consideration the current socio-economic and political structures that has hindered its full implementation.

With reference to the notification for public hearings and request for submission of memoranda advertisements on the aforementioned Bills, that appeared in the Daily Nation, Standard and Star Newspapers of Friday, 12th November, 2021, the National Assembly wishes to inform the general public that, the public hearings which were scheduled for Tuesday, 7th December, 2021 at County Hall, Parliament Buildings, Nairobi County; Friday 10th December, 2021 at the County Assembly of Mombasa Chambers, Mombasa County; and Saturday, 11th December, 2021 at Mwanarafa Hall, Lamu County, have been rescheduled as indicated hereunder:-

No.	COUNTY	VENUE	DATE
1.	Mombasa	Kenya School of Government, Hall	Friday, 28 th January, 2022
2.	Lamu	Mwanarafa Hall	Saturday, 29 th January, 2022
3.	Nairobi	County Hall, Parliament Buildings	Tuesday, 1 st February, 2022

Pursuant to the provisions of Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3), the Constitutional Implementation Oversight Committee will be conducting public hearings on the aforementioned Bills in the said Counties and venues from 10.00 am to 3.00 pm as indicated above.

Due to the need to comply with the Ministry of Health's COVID-19 containment measures, members of the public are encouraged to prepare written memoranda on the Bills and submit to the Committee at the above mentioned venues during the scheduled public hearings.

Representations may also be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi or emailed to clerk@parliament.go.ke, to be received on or before Friday, 28th January, 2022 at 5:00 pm.

Copies of the Bills are available at the National Assembly Table Office or be accessed from the parliamentary website at: www.parliament.go.ke/the-national-assembly/house-business/bills.

MICHAEL R. SIALAL, CBS
CLERK OF THE NATIONAL ASSEMBLY
9th December, 2021



REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/21 County: NAKURU Venue: Klerenge Education Hall

	NAME	ID CARD NO	SIGNATURE
1.	TOM MABAGA	11700308	
2.	MARGRET UBARE	12503861	
3.	THOMAS MUSE OBONYA	6936634	
4.	EVANS MACHINI SAKOKE	1322537	
5.	DAVID ONDIRA	7316718	
6.	THOMAS MOKIMBE KIBWALO	7607576	
7.	PARKHURST		
8.	Mary Mogeke	24066383	
9.			
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12.			

	NAME	ID CARD NO	SIGNATURE
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Name:
Committee Clerk

Signature

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/2021 County ... Nyeri Venue: Kenyatta Education Hall

	NAME	ID CARD NO	SIGNATURE
1.			
2.	AKIMU MURUBE OMEGO	7304887	<i>Akimo</i>
3.	Dr Charles Nyamero Djechi	1600402	<i>Charles</i>
4.	Gladys Mwangi (CEM Health)	10784190	<i>Gladys</i>
5.	Stephen Onwonga (CEM Trade)	0353633	<i>Stephen</i>
6.	Samuel Kaito	6420231	<i>Samuel</i>
7.	IRACE KAKATI CP	10003737	<i>Irace</i>
8.	WILLIAM TOROITCHI/CIC	11863374	<i>William</i>
9.	NELSON JANGI O.C.S	19000085	<i>Nelson</i>
10.	SAMUEL KIROGO NGARUWA	33189899	<i>Samuel</i>
11.	JAPHETH OPOKUSA	10851260	<i>Japheth</i>
12.	Jackline N. UGKONE	20597239	Jackline

	NAME	ID CARD NO	SIGNATURE
13.	MARY EDWINA BAMBONYA	3159711	Mbambo
14.	RICHARLES NYAMIRAO EGECH	16002402	Mbambo
15.	ATIMU MURKE GMEGO	7304887	Mbambo
16.	THOMAS MOSE ERANDI	6934634	Mbambo
17.	EVANS MATHINI SAROKI	1322-537	Mbambo
18.	DAVID OMBARA	7316718	Mbambo
19.	THOMAS Mwendee KIBUKA	7607576	Mbambo
20.	PAULINE R. MURHISI	22354209	Mbambo
21.	LILIAN B. MOMBENA	9110559	Mbambo
22.	ZABLON D. DUCHIKU	13568882	Mbambo
23.	DAVID K GERANCHI	0305122	Mbambo
24.	JENIPHER OMOLO	8202833	Mbambo
25.	PATRICK ARISA KIRIAKO	1207177	Mbambo
26.	EVANS D. NYAMBORA	22545649	Mbambo
27.	Richard M. Nyamunyamu	22736196	Mbambo
28.	Margaret Nj. Njokoti	12899849	Mbambo
29.	David Amurega Mbarika	1600302	Mbambo
30.	Rev Lawrence Kibura Mwangi	2536065	Mbambo

Name:
Committee Clerk

Signature



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/2021 County Bungoma Venue: Red Cross Social Hall

	NAME	ID CARD NO	SIGNATURE
1.	JASON M. WEXESA	6794089	<i>[Signature]</i>
2.	MOSES N. WANJAMIA	22928035	<i>[Signature]</i>
3.	SHIFA RAMADHAN JABUCHE	0131766	<i>[Signature]</i>
4.	DANID K. SIMMY	8325017	<i>[Signature]</i>
5.	LINET ANGARWA	9901032	<i>[Signature]</i>
6.	DESER A. ISOMI	1666682	<i>[Signature]</i>
7.	FRANCIS MAKOKHA	0435807	<i>[Signature]</i>
8.	NAFIALY NJORGE	34722766	<i>[Signature]</i>
9.	JAMES KIDANDA	092115771	<i>[Signature]</i>
10.	Shadrack Wanjala	1159955	<i>[Signature]</i>
11.	MOSES NELSON MATIBILA	35111966	<i>[Signature]</i>
12.	VERONICA MUSAABU MATAMU	28565967	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	Wahid Juma KASIMBA	32237351	
14.	Charles Mchanga	8785237	
15.	MARTIN WANKWENI	23889043	
16.	MILIND STANWICH	26417852	
17.	Bonnie Limwi	3030000	
18.	John Mwanjama SIKI	11787498	
19.	OSWALD O SULLUS	99280105	
20.	MONICA DBUYA	9151850	
21.	MUSA KIRESA	3673556	
22.	Christopher Shikutu	11328558	
23.	Christopher Simya	26641925	
24.	Kennedy Nyongesa	28712971	
25.	NOBERT WATIKI	22452190	
26.	Felix Dronwa	22595115	
27.	Herina Mwandira	30521590	
28.	MORAH KILISA RABASA	32598301	
29.	Patricia Mwangi	12661509	
30.	Emilia Mulefi	125811570	

Name: E. Libendi
 Committee Clerk

Signature:



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY


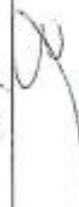















CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/21 County: BUNGOMA..... Venue: Red Cross School Hall

	NAME	ID CARD NO	SIGNATURE
1.	IMAM MALUK M. KIFANGI	13715136	
2.	BSP CAZISTUS BARIASA	10857409	
3.	PETERSON OREILLO	3456706	
4.	RICHARD MANIASI	3913458	
5.	EMMANUEL J. KATSA	0682419	
6.	HYPOLITUS NATEMBEYA LUKOSI	13718019	
7.	ADNAN A. NYANANDA	4023183	
8.	ROBERT W. ENAFWA	20080184	
9.	JOSEPH W. LUKIBISI	12939067	
10.	CHRISTINE WABIKI	12703933	
11.	NUSES M. KIKEMBA	23889038	
12.	ELBA W. BIRIGWA	35800816	

	NAME	ID CARD NO	SIGNATURE
13.	Abigail N. Walaka, Advocate	26402777	
14.	GB (ST 024) Moses Nyaka	040317	
15.	MICHAEL NANGUNDA NSONGA	6087849	
16.	Malesi wafuta	365665	
17.	IAN (MBAZA)	38420374	
18.	EED-LINK KATILAKUNNY	12581610	
19.	Zaiden Bayab	22632582	
20.	AMOS KHISA	34868681	
21.	Wahyudin MUDOM	24966571	
22.	XHERBY XUMOI	25171588	
23.	TOM SIMIYU	24887110	
24.	HASSAN INDASSIO	26285417	
25.	SIMON WAMALISA	32268331	
26.	EVANS MASIKA	28709414	
27.	OMAR BAKAR, 1581	25946737	
28.	BUNNY TIMOTHY	24466226	
29.	GEORGE MUKESA TUMA	20955214	
30.	Vincent Tuma	24462541	

Name: E. Libendi

Committee Clerk

Signature



REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/2021 County Bungoma Venue: Red Cross Hall

	NAME	ID CARD NO	SIGNATURE
1.	STEPHEN AMBARAKI	10801281	
2.	CHRISTINUS WAFUKA	22-957210	
3.	MARK TAFUSI	22597202	
4.	PETER S. ASANAS	1125758	
5.	MAURICE WAKESA	30388469	
6.	MODESTA WANJONJI	29112487	
7.	DAVIS KILIZI	27118324	
8.	BENSON MACHARE	22618008	
9.	WISSA MAMUKO	2688477	
10.	GEORGE M. WANYONYI	2098086	
11.	SIMON T. MUKHISA	20650299	
12.	WILLINGTON W. SINDIGA	243683115	

	NAME	ID CARD NO	SIGNATURE
13.	D David Munguira	9025194	D
14.	Doris H WANDUSNY	03603280	D
15.	VEDONICA ALARIN	21102767	D
16.	EMMANUEL LANTOJA	00902845	D
17.	MIRINI LIENFELD	04805599	D
18.	NATHANIEL WILKINSON	13578570	D
19.	JONCE N. MISTICO	2242025	D
20.	Franice Wanjalo	4441383	D
21.	ELGRIA MUKHTSLA	6090562	D
22.			
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Name: E. Libenda
Committee Clerk

Signature: [Signature]

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/4/26 County ... Bungoma Venue: Red Cross Hall

	NAME	ID CARD NO	SIGNATURE
1.	SAMUEL OCHIENO OMBIETH	30955667	<i>[Signature]</i>
2.	MOSES BARRA	29913086	<i>[Signature]</i>
3.	AMOSIES WAMBALO	32208522	<i>[Signature]</i>
4.	LIONARD W. WANJALA	29710591	<i>[Signature]</i>
5.	ENOS SIMIGU	35803583	<i>[Signature]</i>
6.	Brian Wanjala	38496635	<i>[Signature]</i>
7.	MAURICE WANJALA	22211671	<i>[Signature]</i>
8.	MARGREY HRELIKI	9515536	<i>[Signature]</i>
9.	Fred Sanara Khaamba WETAMBUKO	28818633	<i>[Signature]</i> <i>[Signature]</i>
10.	JAMES MUKHURANA	0127534	<i>[Signature]</i>
11.	Daniel Barasa	32399246	<i>[Signature]</i>
12.	JOSEPH BARASA	8782009	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	MVAKIETE WISYANNA	60576862	
14.	LUCAS PAUL WITLO	04788832	
15.	AMINDA RASHIDS	96881411	
16.	JOSEPH MASWA	0311950	
17.	GODFREY AWINYA	22842894	
18.	IBDI SHIONDO	21746417	
19.	SAMUKA NYWA	0423570	
20.	ALICE WANSIKE	10430443	
21.	ROXANE NDORE M. WAMBATI	06223681	
22.	L. NUSO		
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Name *E. Libondi*
 Committee Clerk

Signature *E. Libondi*

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/21 County Bungoma Venue: Red Cross Hall

	NAME	ID CARD NO	SIGNATURE
1.	MARITHA N. KIBORONGA	8414505	AK
2.	CLEOPHAS M. MUTAMBO	4391653	Emmanuel
3.	RICHARD N WANGIGA	0549267	RD
4.	FELYSTA N SANGUWA	27159364	FB
5.	PIUS MABONGA	2097872	Muz
6.	MOSES WADAKANA	6876727	W.M.I.J
7.	LINUS O. EKISA	3355319	SP
8.	METRINE N. MAKHARU	20827170	MUR
9.	LEONARD J. NANDEMO	12849930	FEAF
10.	TRINE N. WAMALIA	13158541	CE
11.	CHRISTINE KABELE	11020854	SK
12.	GEOFFREY W. KHAMBA	20688927	SK

	NAME	ID CARD NO	SIGNATURE
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Name: *E. Libondi*
 Committee Clerk

Signature: *E. Libondi*



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 19/11/2021 County: Baringo..... Venue: ...

	NAME	ID CARD NO	SIGNATURE
1.	MUSE STEPHEN	22447446	
2.	NYANDORI LENENCIA	28058481	
3.	CHRISTOPHER OTIATO	2580238	
4.	MARYDALINE A. MACHO	4228313	
5.	ARI NGUU	25160341	
6.	STANLEY O HALUSA	33625032	
7.	POLLY CURTIS OKELO	23321275	
8.	FRANCIS DUFAMU	0698571	
9.	MARSELG. N. MUSATHI	13168132	
10.	STEVEN J. OBIINGU	9104870	
11.			
12.			

	NAME	ID CARD NO	SIGNATURE
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Name: E. Libardi
 Committee Clerk

Signature: [Signature]



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date:..... County HEMARETA..... Venue: C.D.F. Hall, Katunde

	NAME	ID CARD NO	SIGNATURE
1.	DOMINICK O. NYARUKU	22558325	
2.	ATUPAMU L. MASES	26164169	
3.	ROBERT V.O. LANSIO	9122756	
4.	JOSHUA C. ODHOGO	5957785	
5.	HANJIRA OUKO	12597842	
6.	JOSEPH ABUJA OUGOLA	11349901	
7.	DANA B. KENNEDY	21799663	
8.	BOB OLANDO	32178930	
9.	HASSAN DUEÑO D	23023783	
10.	MEHEMIAT O. NYABARA	27266394	CMUB
11.	JOSEPH WASONENA OSORIO	30696691	
12.	JAMES O. OMBUNG'	9797031	

ROSE A OJOLA 9544902 R

JANE BYNBE
Maurice Kaundo

1259679

	NAME	ID CARD NO	SIGNATURE
13.	Shirles Gary Kleru	7953273	
14.	ROBERT OUKO ODHUMBOD	20095025	
15.	ERIC RUVI OCHAM		
16.	Phillip Agola Brumun	5958188	
17.	PAUL OGENO AGESTA	1508703	
18.	Peter Ouyango Nkani	9396839	
19.	Samson KRONCHA	5851108	
20.	SHAWKE DAWYA	08275689	
21.	MARY ATEAD	-	NO
22.	LUCY DWILLI	29993692	
23.	DANST OIMTA	31408591	
24.	Celestine Beryl	80257932	
25.	Carolyne Aunra	86600034	
26.	Shella Oime	-	
27.	Anthony S. Tugengr	6646909	
28.	JOHN ODARO NDANU	210331744	
29.	CARDINE AKINYI	12461786	GA
30.	SUSAN ABHIMABD	1512205	

Name:

PETER OMBODI
 OTSINA Aboungu

11215659
 23112304
 Signature

Committee Clerk

- (22)
- (23)
- (34)

Reese Calene
 Petera Engenale Engang

1948245
 21306416



CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 20/11/21. County: Homabay Venue: S.D.F. Hall, Kericho.....

	NAME	ID CARD NO	SIGNATURE
1.	TOM OIENO OSONGO	13656841	<i>[Signature]</i>
2.	DONNIC OCHENGE OMBORI	8584831	<i>[Signature]</i>
3.	DISMAS N. NUNBERE	20779263	<i>[Signature]</i>
4.	BELLA AMOUR	25357197	<i>[Signature]</i>
5.	RONICA AOKO OUMA	25576065	<i>[Signature]</i>
6.	WENDY AKOITH ODHUMBO	28065128	<i>[Signature]</i>
7.	Mercy Rachel	36158435	<i>[Signature]</i>
8.	LILIAN ACHIENG	34156436	<i>[Signature]</i>
9.	DAIZY AKOITH	36168732	<i>[Signature]</i>
10.	ELIAS OYUKI OCHAM	8148607	<i>[Signature]</i>
11.	JOSEPH OUSIN OCHAMBA	1680543	<i>[Signature]</i>
12.	DICKERUS OUMA OUMBO	29946564	<i>[Signature]</i>

BLACK Tyson Odoyo 37932432
 Colvince Otiemo Manyola 38911294
 Kennedy Akendo Amolo 23376081

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Jeshua Etygn Dawa

22327241

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Michael Stine Duth

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Denish Bende

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ABR

Bonack Dimpang

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Victor Omond Ayika

34116081

Outgoing

Kevin Omond

33693944

Wep

Judith Afiwe Donyo

50711533

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Granton Aila

26392502

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Nafali Fkinyi

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Levanth Odum

35743276

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SARCO Omond

3898805

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GEDAGE OUYAGG

13895995

Out

VICTOR ODHINE

29383344

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SAMUEL ODIMWA

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JOAN DICKO

0958847

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BRIAN ODDIA

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OTIEND ALDICE

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BRIAN OCHYENG

36211419

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SILAS OCHIENG

33733294

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Dumo Sumwal Dako

34886711

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Keneth Odora

35743276

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Mohamed Otiend

23104309

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Gezi Odundu

2538612

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FELIX

OMONDI OYAGG

29214127

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REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY



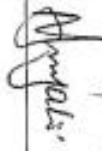




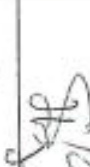







CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 20/04/2021 County .. Busia Venue: Post Victoria Town Hall

	NAME	ID CARD NO	SIGNATURE
1.	NON CHIRHA MUTERU	10319788	<i>Agatha Muteru</i>
2.	VINCENT JUMA ARWABA	10667369	<i>Vincent Arwaba</i>
3.	PETERSON N-AMUNDA GITAGA	5839116	<i>Peter</i>
4.	ROBERTA-NAMULU	9340508	<i>Roberta</i>
5.	JOHN KUDOMBI ONOR	4793249	<i>John Onor</i>
6.	JOHN AFULA BENSON	22988715	<i>John Benson</i>
7.	CANUTE DWAGWANDA	0263164	<i>Canute</i>
8.	OMONI MBEKE	21269926	<i>Omoni Mbeke</i>
9.	PAUL FARRICK AGDYA	5339190	<i>Paul Farrick Agdya</i>
10.	PETER OMENO	4210482	<i>Peter Omeno</i>
11.	GODFREY WATJALA	25871253	<i>Godfrey Watjala</i>
12.	EDWIN OCHIENG ONYANGO	20233220	<i>Edwin Ochieng Onyango</i>

	NAME	ID CARD NO	SIGNATURE
13.	PAUL JUMA OTIENO	6180289	
14.	VINCENI MICHAEL DRAGO	4009500.	
15.	MICHAEL NICHOLAS WANJIRA	83397153	
16.	BENJAMIN DUMA	26955499	
17.	AHEREN OUMA	26043861	
18.	CHARLES OBARE	8130416	
19.	BETHWEL MANGO	13671531	
20.	DAVID WAKURU	22190699.	
21.	CHARLES PAMBAT	7508964	
22.	ANDREW DRUKU	30329805	
23.	ELIAS AISI	31481654	
24.	VINCENT JUMA LUSOKO	22876564	
25.	DONALDUS AMBANI EGASH	14630819	
26.	DIANA KENNEDY	23321429	
27.	DUMA CHRISTOPHER ODEKA	10120790	
28.			
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Name: E. Libender

Committee Clerk

Signature

E. Libender

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY










CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 20/11/24 County: BUNYA Venue: JICA Victoria Town Hall

	NAME	ID CARD NO	SIGNATURE
1.	OTANDO J. NELSON	14530692	<i>[Signature]</i>
2.	AUSTINE MDEGE	2794666	<i>[Signature]</i>
3.	WILLIAM N. JUMA	7506030	<i>[Signature]</i>
4.	MICHAEL OUMA	5685382	<i>[Signature]</i>
5.	PASCHAL O. NARDI	4210756	<i>[Signature]</i>
6.	JOSEPH M. OBAYI	0250354	<i>[Signature]</i>
7.	ALFRED M. BMBWORI	16003784	<i>[Signature]</i>
8.	CORNEL ODEBA MANDU	2056417	<i>[Signature]</i>
9.	JOHN O. ONWANO	0359434	<i>[Signature]</i>
10.	ANACLET M. WAMBURA	1012024	<i>[Signature]</i>
11.	CHRISTOPHER SIRINDA	10120281	<i>[Signature]</i>
12.	MANNUEL O. OJIAABO	25025494	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	PASCAL P. WATYAWA	4226459	
14.	PAUL K. ODELL	9346289	PHILLIPS
15.	KIRADIANGU ALPHONSE	25197374	
16.	PANTHALAMSI OYIJEH	0256368	
17.	NICHOLAS DIACA OSURI	4225816	
18.	GREGORY R. WAMBO	4009668	BULLS
19.	JOHN B. ABWOTA	8616462	
20.	ABUKU BULLUMAH	8373542	
21.	WENYAMA NODH	20053914	
22.	Prox Dnyango		
23.	MOSIN M. EDWARDS	1816821	ME
24.	DICKSON OKEHO	28099676	
25.	CHRISPINOS PROWBO	29316667	Pro
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Name: F. Libardi
 Committee Clerk

Signature: 

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE












PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 20/11/21. County: Busia


Venue: Post Victoria Town Hall

	NAME	ID CARD NO	SIGNATURE
1.	Pj. Jothan Osimbo	7509173	
2.	EDWIN WANDERA	25638876	
3.	ROBERT MUKUNDI	20218548	
4.	Juliana Nabwoie	1909500	
5.	Judith Neneah Ombudie	87896730	
6.	Mathilda Naira	26250751	
7.	BENSON OBUKO OLUMBE	5682077	
8.	ANTHONY WANJA	11422413	
9.	MOSES ORALO KAYWA	1916024	
10.	REBANO KADIMO	4809263	
11.	CORNET EBANDA	7030512	
12.	ALFRED W SIDUWA	20898731	

	NAME	ID CARD NO	SIGNATURE
13.	ANDEBA SELWIN	26664241	
14.	MURRAY MURDOCH	22338571	
15.	WALTERS	30110249	
16.	BISOP DAVID MURRAY JIMMIE	9320504	
17.	CLEMENT D. SUMBA	22976244	
18.	OSMRO BENDRO	28660719 2297615625	
19.	SIMON MANGALE	27608887 DNYAAMBA	
20.	TULIUS MUGABE	0012450003	
21.	PASIOR LAWRENCE NYUYE	8072941	
22.	BENSON EBIRI	30152430	
23.	MODLING MUYEKHERA	5683760	
24.	MICHAEL MANKUN SIOFENO	22196464	
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Name: E. Libendi

Committee Clerk

Signature: 



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY








CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS FOR CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/11/21. County E.N.B.U. Venue: (D.F. HALL... KIRITIRI

	NAME	ID CARD NO	SIGNATURE
1.	ARITHUR MURUNGI	8310732	
2.	Joseph Msanu	33816465	
3.	Samson NYAKI KIRITO	25283052	
4.	Sharon Nzomo	14073213	
5.	NEBERT NGARI	23794526	
6.	ELIAS MUMYI	24297410	
8.	LUCY N. KETHARA	13364703	
9.	JUDY KIAMBU	29475371	
10.	JULIET NJIEUH	30044062	
11.	FAITH MWANGANGI	37126595	
12.	MARTIN NJUGUNA	29544496	
	DIANA NGARI	36832818	

	NAME	ID CARD NO	SIGNATURE
13.	Edwin Nboye Kura	33232147	
14.	Jerald Kennedy NURDIE	2853-3700	
15.	Melvin Bonface Nteyeng	33887986	
16.	Nesid Njery Njune	27527862	
17.	DAVID -K. NENYI	24830802	
18.	Salome Nbandi Muri	84-601450	
19.	Samuel Mbandi Muri	122498186	
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Name: Committee Clerk

Signature:

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY



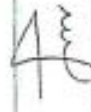
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/04/2021 County: E. N. B. U. Venue: C.F. HALL, KIRITIRI

	NAME	ID CARD NO	SIGNATURE
1.	IRENE MUTHONI NJERU	9284666	<i>[Signature]</i>
2.	ANNA MUTU MACHUKU	9285085	<i>[Signature]</i>
3.	HENRY KINUTHIA K.	2024848	<i>[Signature]</i>
4.	PASTOR ELASTUS O. MUKAMBWA	0884991	<i>[Signature]</i>
5.	PASTOR JOSEPH M. MWANGI	0516196	<i>[Signature]</i>
6.	MARGARET I. KACHIBA	13263195	<i>[Signature]</i>
7.	PETER N. NGOY	8067988	<i>[Signature]</i>
8.	JEREMIAH M. MUTHINI	9522835	<i>[Signature]</i>
9.	Rebecca NDUKU	0428436390	<i>[Signature]</i>
10.	REV. Julius Kipikutui	0721230545 9172994	<i>[Signature]</i>
11.	DAVID IPERI	20752299	<i>[Signature]</i>
12.	SAMUEL M. KOMU	22466626	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	Nyamawo1 ETTAKA	12902784	
14.	ABELER T M. KIMIRI	2742259	
15.	Wenslaus WODONGOLA	29793773	
16.			
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Name: Committee Clerk

Signature

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/11/21. County ... ENDAU Venue: LOF...HALL...KIRSTIRI

	NAME	ID CARD NO	SIGNATURE
1.	SAMUEL MUKHEI	13339640	
2.	BONIFACE MUMBO	23065490	
3.	BENJAMIN NKIUE	1151493	
4.	NANCY LUCY NI NGOBI	9678974	NANCY
5.	JONATHAN WAMU	8660641	
6.	STEPHEN MACHARIA MUGO	9284666	
7.	JEREMIAH MACHARIA NJERU	11606655	
8.	HAROLD MURIMI KIPAL	28460124	
9.	JACOB MURITHI	20197292	
10.	KEVIN MACHARIA	03433204	
11.	JOHNSON WAMU	27407490	
12.	NICHOLAS NYAGA	04356289	

	NAME	ID CARD NO	SIGNATURE
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Name: Committee Clerk

Signature



TWELFTH PARLIAMENT - (FIFTH SESSION)


THE NATION ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

- PUBLIC HEARINGS OF CONSIDERATION OF:
 1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
 2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/11/21. County: ... Venue: ... C.O.F. HALL, KIRITIKI

	NAME	ID CARD NO	SIGNATURE
1.	PROF. GOSFREY NGURU	3462008	<i>[Signature]</i>
2.	SOMNIE NGARU MONTI	0341888	ANM
3.	JOSEPH WAMBUA MUTUMA	23293871	<i>[Signature]</i>
4.	PIUS NZIHI SILA	8660908	<i>[Signature]</i>
5.	JAMES MATHERI KILLOI	1898143	<i>[Signature]</i>
6.	BERNARD W. WANSANDI	0442026	<i>[Signature]</i>
7.	SAMUEL M. NDETI	25700195	<i>[Signature]</i>
8.	JIMMY MUGO WATUIKA	0356121	<i>[Signature]</i>
9.	ANTHONY MUSAHA	23778183	<i>[Signature]</i>
10.	MARY MDUNGE MUTUS	1092748	<i>[Signature]</i>
11.	MATHIAS NDISO	11210193	<i>[Signature]</i>
12.	NANCY W. NJUGUNA	10043772	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	Simon Ngeru	0883879	
14.	MARY Njiragu	2163794	Murithi.
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Name: Committee Clerk

Signature

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY







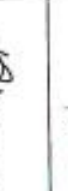











CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/11/20 County .. R.N.I.O.Y.G.A. Venue: A.C.H. KUBUR HALL

	NAME	ID CARD NO	SIGNATURE
1.	Peter Murene Kabibu	10496632	<i>PA.</i>
2.	Robert Mwaniki Nyagi	11501044	<i>Robert Mwaniki Nyagi</i>
3.	CAROLINE WAMARWA	1064516	<i>Caroline</i>
4.	SARAH MURAGE	11330347	<i>Sarah</i>
5.	Patrick Ayegor Amos	2927122	<i>Patrick</i>
6.	Poline WANGARA	22252208	<i>Poline</i>
7.	FELIX MURUTHI KUBUR	23923177	<i>Felix</i>
8.	BARKARI GAKKO KIBICHO	8630664	<i>Barkari</i>
9.	DARIS KALUKI NJOGI	20959252	<i>Daris</i>
10.	MOHAMMED KANGAO	12484172	<i>Mohammed</i>
11.	EZEKIEL MUMMI NSEMUN	27856564	<i>Ezekiel</i>
12.	TIMOTHY CROSBY MURULLU	23006160	<i>Timothy</i>

	NAME	ID CARD NO	SIGNATURE
13.	Stephen Muriuki	29907870	
14.	Alphias Njiru	9550216	
15.	Stanley Wairua	20923492	
16.	James Kithoo	0091695	
17.	Evelyn Wambui	2886573	
18.	Judy Wandiri	21582162	
19.	Nedania Njorai	21972907	
20.	Agnes Wanjau	9718084	
21.	Ann Muthiri	2020889	
22.	Philip Wachira	2953459	
23.	James G. George	1670168	
24.	Polly Njithi Festus	4468379	
25.	Wansa B. James	2895408	
26.	Miso Mithae	0317972	
27.	Stephen I Wanjau	13451723	
28.	Francis Njeru M.	13473342	
29.	Danson N. Sumbi	21380511	
30.	Francis M. Mwangi	20898085	

Name:
Committee Clerk

Signature

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY




















CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/11/2021 County: Kiambu Venue: ACK-Kurur Hall

	NAME	ID CARD NO	SIGNATURE
1.	Dominic Mathina	8528729	
2.	Justin Gichobi	4950794	
3.	Douglas Mugo	0318474	
4.	Paul Kirang'i	11288638	
5.	MARY MUTHONI	23267873	
6.	Mercy Wanja	31038316	
7.	CAROLINE GATERE	13772417	
8.	YUSSUF OMAR	320504065	Y.O.
9.	GEORGE AGOGI	10865862	
10.	SARAH KARUKI	23944471	
11.	Hellen Wanjiru	70543039	
12.	ESTER WAMBUI	11599936	

	NAME	ID CARD NO	SIGNATURE
13.	Rahar Nyagwera	239956	
14.	Purnty Uanjira	23429956	
15.	Dambeck Mwarura	23 10648504	
16.	SAMES Mwangi Toret	23925091	
17.	MARIO MUAITHI NYAGA	29953165	
18.	ROSE MUAITHI	26713462	
19.	Johnstone GITHA NJORGE	3560496	
20.	LENAED MURUKI NBECE	11599690	
21.	SHADRACK NYAGA NDAMBURI	13563793	
22.	Tony Githingi Nyamwa	9303170	
23.	Peter Kubiingi Gator	21921614	
24.	BENJAMIN ISABICHO WANJANI	23331262	
25.	HAURA MOHAMMED	93220230	
26.	Kelvin Mwangi Nguni	11355060	
27.	Daphnet & Pharaiza		
28.	RAKAB. NYAWIRA	22818090	
29.	FRANCOIS MUTEGI	13263481	
30.	DAVID MUTHIKE	20278335	

Name:
Committee Clerk

Signature

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 26/11/26 County ... Kituyaga Venue: ACK Kuus Hall

	NAME	ID CARD NO	SIGNATURE
1.	Lucy Njeri	234699	
2.	LAWRENCE MICHINI	24217226	
3.	PATRICK MIBUTE	1356250K	
4.	JOTHAN KINYUA	57963706	
5.	Lawrence Mwei	11171436	
6.	Ernest Mwangi	97522812	
7.	Simon MUTHIKE WANJA	23071840	
8.	MORFAR KARANTA MBUGUA	27853993	
9.	ATHN KAHINI MBUKO	23039725	
10.	Samuel Muthiee	4237552	
11.	JOTHAN MURRAY	22547860	
12.	Catharine Cukunju	13636144	

	NAME	ID CARD NO	SIGNATURE
13.	Daniel W. Kanyanya	5753155	<i>Danyanya</i>
14.	Cybus N. Kanyanya	26524595	<i>Cybus</i>
15.	Zulfah Muteem	2173279	<i>Zulfah</i>
16.	MARJAM WAIRIMU	5100869	<i>Maji</i>
17.	Alex Githugi	2901998	<i>Alex</i>
18.	Peterand N Gwanda	10233219	<i>Peterand</i>
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Name:
Committee Clerk

Signature



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY



CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

- PUBLIC HEARINGS ON CONSIDERATION OF:
 1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
 2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 27/11/2020 County: NERO

Venue: KWANZA MEMORIAL HALL

	NAME	ID CARD NO	SIGNATURE
1.	NIRANGWI D. MURITHI	1857802	<i>[Signature]</i>
2.	ZANGLER KILWA	7469233	<i>[Signature]</i>
3.	SHARACK GIUMA	10146205	<i>[Signature]</i>
4.	JANE MAMBIA	21127204	<i>[Signature]</i>
5.	SILIANA WANGI RUI	1654997	<i>[Signature]</i>
6.	SUSAN GAKU ISMAH	23778135	<i>[Signature]</i>
7.	CECILIA GAITI	3746229	<i>[Signature]</i>
8.	JAPHET NTEERE	2370316	<i>[Signature]</i>
9.	WOSKHA KIMATHI MUMINA	21578659	<i>[Signature]</i>
10.	Gregory Gitonga	11696449	<i>[Signature]</i>
11.	PAUL NJAGI	10203239	<i>[Signature]</i>
12.	Solomon Mutunga	701438	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	Isaiam Muthiah Koodath	87522790	
14.	Keligi Maccenas A. Rajan	14413546	
15.	Solomon MATEA	21607970	
16.	Peter Mulanka	0447041	
17.	Charity Ndoguqa	8075690	
18.	Celina JORAN Melvin	4469458	
19.	Zavena Muniaki Mbui	5172224	
20.	ANANIS MUGURE WAKAT	13227768	
21.	MHUS NUGUMBI SPINNET	16032125	
22.	PATRIK KAHARAHA	24868342	
23.	RUTHY ANAPPA	36175895	
24.	MACCENAS MACEA WAKAT	25236941	
25.	Joe Anisa	5545775	
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Name:
Committee Clerk

Signature

REPUBLIC OF KENYA



TWELFTH PARLIAMENT (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE





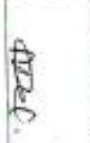




PUBLIC HEARINGS FOR CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 27/11/2022 County: NERU

Venue: KALINDI MEMORIAL HALL

	NAME	ID CARD NO	SIGNATURE
1.	JOHN MWENJA	11257992	
2.	FAITH MARENA	22132180	
3.	GEORGE KIBITI	770598	
4.	JOHANN KABCIRIA	0451741	
5.	JULIUS KAMENYI	10146775	
6.	SILAS KIBINI	7768922	
7.	GERALD GATOMBA	3747281	
8.	EUTICIUS THURAMIRA	31667158	
9.	Lucy Kambog	20615220	
10.	Christina Murgina	20608826	
11.	Zakayo MURERWA	2371498	
12.	JOHN KIHIA	31551590	

	NAME	ID CARD NO	SIGNATURE
13.	DICKSON MURTI	24647643	
14.	GILGONG MURRITHI	34518733	
15.	RUGANDA MURRAY	31495867	
16.	NOELINE A. TUMA	32634317	
17.	MASES M. MUNIATHA	319232574	
18.	IRAGI ALEX	35830494	
19.	JULIUS AICHUNGE	76775592	
20.	GEORGE KINOTI	7731518	
21.	JEFFERSON M. KILANGE	10609501	
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Name:
Committee Clerk

Signature:

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 03/02/2021 County: KILIFI Venue: Nakuru Hall

	NAME	ID CARD NO	SIGNATURE
1.	PATIENCE DAMA DADU	14497774	<i>[Signature]</i>
2.	SAMIRU HASSANI B7749	32058180	<i>[Signature]</i>
3.	Sopina Romel	10830849	<i>[Signature]</i>
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	NAME	ID CARD NO	SIGNATURE
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Name:
 Committee Clerk

R. Lubovich

Signature

R. Lubovich



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 03/12/2021 County KILIFI Venue: M. K. Hall

	NAME	ID CARD NO	SIGNATURE
1.	DANIEL HUAMBESI NYALA	3932933	[Signature]
2.	HARON PETE MUNDI	11876095	[Signature]
3.	JANISS LEWIS	11262756	[Signature]
4.	JIBRI MONGO	5013471	[Signature]
5.	EUGEN NWARANSU	32118761	[Signature]
6.	DANIEL TEMBO	22214451	[Signature]
7.	DANIEL S. KARISK	2127164	[Signature]
8.	GRADYS KANZE	8458248	[Signature]
9.	M. J. KENYA	5022988	No.
10.	PETER HUAMBESI	11602366	[Signature]
11.	EMMA MUMBA	29805869	[Signature]
12.	FESTUS MUMBA	26222079	[Signature]

	NAME	ID CARD NO	SIGNATURE
13.	FREDRICK TUNGE	30337370	
14.	JAMES L KUTO	30897008	
15.	FRASID A. MUSAANT	0687027	
16.	Margaret Banda	9773918	
17.	TAYIB AMIRESEN	9474263	
18.	ADWAKU. RAFI	32326362	
19.	ANNA YLISON	24967668	
20.	MARK MKOKA	36568753	
21.	Bama Karis	9962358	
22.	Aharina Karisa	5033624	
23.	SAMSON KAPISA	35425828	
24.	BETHRICE TATI	0706482884	
25.	NURU SALIM	13625863	
26.	Khyas ZIRO	20200770	
27.	OMAR M. BRIDWA	24314400	
28.	MUSA ICITANDI MUDI	5011182	
29.			
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Name: E. Libandi
 Committee Clerk

Signature:

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 4/12/21 County KWAKWE

Venue: Kwale Cultural Centre

	NAME	ID CARD NO	SIGNATURE
1.	SOPIA MOHAMMED	8435373	<i>[Signature]</i>
2.	SUBIRA HASSAN MWADZILUME	25071331	<i>[Signature]</i>
3.	HALIMA MBWAZIA	28975939	<i>[Signature]</i>
4.	Fatuma Racheli	0687464	<i>[Signature]</i>
5.	MESALIM AT KUNGURU	27836392	<i>[Signature]</i>
6.	MBEVU KUNGURU	90342253	<i>[Signature]</i>
7.	JUMA GANTONI	2430732	<i>[Signature]</i>
8.	NIKUMANYA MOHAMMED	8435286	<i>[Signature]</i>
9.	FATUMA HUSSEN HASSAN	2208374	3
10.	ANNA VIOGDI	12488459	<i>[Signature]</i>
11.	FADHILI MUSENEMU	27763430	<i>[Signature]</i>
12.	MWALEWE M. GASARE	14598232	<i>[Signature]</i>

	NAME	ID CARD NO	SIGNATURE
13.	JUDITH JONES	27447671	Judith
14.	KENNETH BURTON	0758473019	Burton
15.	RANDALLA SIMONS	273248519	Simons
16.	HASAN ALI MURAD	11601475	Ali
17.	RAMP IDB GENRO	24348778	Ramp
18.	M. VANDERGRAD TSMR	2442186	Vandergrad
19.	WALTER MATHSON	22422002	Mathson
20.	SUMMA RENNIE	16521168	Rennie
21.	A.		
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Name:
Committee Clerk

Signature

E. Libera

E. Libera

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY











CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 4/12/20 County Venue: Kwale
 Cuthbert Anbe
 Cuthbert Anbe
 Cuthbert Anbe

	NAME	ID CARD NO	SIGNATURE
1.	HASAN SAID RANDANI	11600769	
2.	ABDALLA MOHAMMED SAMIA	28909513	
3.	RAMAHAN J. VINYU	0658843	
4.	ABBASI M. SAWA	27697110	
5.	JUMA M. KAZUNGU	4622875	
6.	GIATU P. MGANDI	2206226	
7.	SALDI MWALEJA	5421823	
8.	AHUMAH MOHAMED MWATIBENDA	26280254	
9.	HALFANI J. MNASIRANI	22871076	
10.	ELIJAH V. ZANI	5334501	
11.	NASIRI MAULIDI ALMARI	1168207	
12.	BACARI MNYIKA		

	NAME	ID CARD NO	SIGNATURE
13.	MESARI CHERRY NUNDA	2207737	
14.	Mohamed M Almusi	1168141	
15.	COMBO. M. KPLUK	10505473	
16.	Miganda Mwanjaneuo	0666314	
17.	NEUBO RASHID	12901276	
18.	MERRY TERESA KALUWE	2266085	
19.	STANWINI TOWA MSEMWE	31483558	FS M
20.	MISHELIA MARENO MTHAWA	309778886	M. M. M.
21.	MUSOPKUMA MUSA G. KRASATI	8593284	M. M. S
22.	PHEEN KAVULANI LUSIMBA	1787747	P. K. L.
23.	FATUMA AH BORA	24095590	F. B. B.
24.	Mushi Mbugua Mwachangwa	36740614	
25.	JARLINE RUTH KACHA	8619010	
26.	Juma Mohamed Mwatobwa	0469444	J. M. M.
27.	RASHID MWAHAMED MWAUKUWA	0469411	
28.	SAIDI SIOLEHE MWAHINYAMBWI	2031864	
29.	RIZKI JUMA TANDIKO	12902938	
30.	AMINA MWAHACHAHE	21706850	

Name:
Committee Clerk



Signature
.....










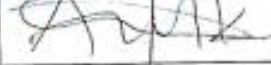
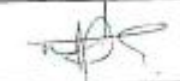

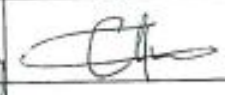
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

PUBLIC HEARINGS IN NAIROBI COUNTY ON CONSIDERATION OF:

1. The Election Campaign Financing (Amendment) Bill, (NA Bill No. 37 of 2021) and
2. The Elections (Amendment) Bill, (NA Bill No. 41 of 2021)

Date: 01/03/2022 County: NAIROBI Venue: COUNTY HALL CHAMBER - PARLIAMENT

NAME	ORGANISATION	DESIGNATION	SIGN
1. Rev. Fr. JOSEPH MUTIE	IRCK - DTC-K	IRCK / Chairman / General Sec.	
2. James Duce, MBS	KLAB	CBO	
3. Paula Douch	NCK	Communications	
4. Anthony Ngachia	NCK	Programs	
5. Mary Mutie	IRCK	Community Affairs	
6. Dr. Tom Nyasi	NCEC	Director - Corporate Affairs	
7. Caroline Leuthpau	NGEC	Commissioner	

	NAME	ORGANISATION	DESIGNATION	SIGN
8.	THOMAS KOTIEK	NGEC	Commissioner	
9.	Pr. Joyce M. Mubunda	NGEC	Chairperson	
10.	Belly Saugwa - W (NBS)	NGEC	CEO	
11.	Hon. Priscilla NYORASI	EBs NGEC	Commissioner	
12.	Desire Nyamwera	NGEC	A.D. legal	
13.	Auseine MURCESE	CAF	LEGAL	
14.	Millyniah Kruba	CAF	LEGAL	
15.	OLaibon Rut Tobira	CAF	LEGAL	
16.	Rev. Chris Kinyanjui	NCCK	General secretary	
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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

&
DEPARTMENT OF JUSTICE

① D.A.S.C
20/12/21

Our Ref: AG/LDD/1113/1/16
AG/LDD/24/1/48

17th December, 2021

The Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842-00100
NAIROBI.

② Liben PI
please desk
fafa
20/12/21

③ Chambers
please
note
fafa
20/12/21

RE: SUBMISSION ON THE ELECTION CAMPAIGN FINANCING
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 37 OF
2021) AND THE ELECTIONS (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 41 OF 2021)

Reference is made to your letter dated 18th November, 2021 and Ref. No.
KNA/DAA&OSC/TPWH/CIOC/2021(44) requesting for comments from this
Office on the above captioned Bills.

We have reviewed the above captioned Bills and hereby submit our comments
in the annexed matrix as directed.

fafa
L. M. MURILA
CHIEF STATE COUNSEL
FOR: ATTORNEY-GENERAL

Copy to: 1. P. Kihara Kariuki, EGH
Attorney-General.

2. Kennedy-Ogeto, CBS
Solicitor-General.

NATIONAL ASSEMBLY
RECEIVED
17 DEC 2021
DEPUTY CLERK
J.W.N
P. O. Box 41842 - 00100, NAIROBI

SHERIA HILL, SE, HARAMBILE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 222 746/222 5135507/19445555-0732529945
E-MAIL: info@nassembly.go.ke WEBSITE: www.nassembly.go.ke

CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 51607-00200, Nairobi-Kenya TEL: Nairobi 2224020/2240037
E-MAIL: headoffice@co-opbank.co.ke WEBSITE: www.co-opbank.co.ke

NATIONAL ASSEMBLY
RECEIVED

20 DEC 2021

DIRECTOR
AUDIT/APPROPRIATIONS/SELECT COMMITTEES
Time:..... Sign:.....

MATRIX ON THE ELECTIONS CAMPAIGN FINANCING (AMENDMENT) BILL, 2021
AND THE ELECTIONS (AMENDMENT) BILL, 2021

THE ELECTIONS CAMPAIGN FINANCING (AMENDMENT) BILL, 2021 PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
<p>1. Clause 2 which proposes to amend section 2 of the Act by deleting the definition of the expression "expenditure committee".</p> <p>"expenditure committee" means a committee established by a candidate, a political party or a referendum committee to regulate spending by a candidate, a political party or a referendum committee during an election or a referendum campaign period as the case may be;</p>	<p>We are in agreement with the proposal.</p>	<p>The effect of these proposals is to remove expenditure committees and the functions from the Act. The provisions relating to the expenditure committee can be covered under section 3 of the Act which mandates the Commission under sub section (1) (f) to provide a framework for the reporting of campaign expenses; and (1) (g) advise a candidate, a political party or a referendum committee or any matter relating to campaign expenses. These are the main functions of the expenditure committee.</p>
<p>2. Clause 3 which proposes to repeal section 7 of the Act.</p> <p><i>Section 7 of the Act which is proposed to be repealed.</i></p> <p><i>7. Party expenditure committee</i> (1) A political party intending to contest in an election shall, in accordance with the constitution and rules of the political party, constitute a party expenditure committee which shall consist of nine members—</p> <p>(a) three of whom shall be persons nominated by the governing body of that political party, of whom one shall be the secretary-general of the party;</p> <p>(b) not more than one of whom shall be from one region; and</p> <p>(c) not more than two-thirds of whom shall be of one gender.</p> <p>(2) The appointment of members of the referendum expenditure</p>		<p>Sections 5 and 29 also mandate the Commission to make rules and regulations to regulate election campaign financing and to provide guidelines for expenditure rules for political parties and independent candidates.</p>

<p>committee referred to in subsection (1) shall take into account regional and other diversity of the people of Kenya.</p> <p>(3) The members of a party expenditure committee shall not include members of a party candidate expenditure committee.</p> <p>(4) The party expenditure committee referred to in subsection (1) shall—</p> <p>(a) open a party expenditure committee account into which all the money in respect of the election campaign of that party shall be deposited;</p> <p>(b) be signatories to the party expenditure committee account;</p> <p>(c) advise the political party on all financial matters related to the party nomination or to the party campaign expenditure;</p> <p>(d) manage the party expenditure committee account of the political party and keep the books of account updated and available for inspection and</p> <p>(e) receive party nomination and campaign expenditure reports from each party candidate;</p> <p>(f) monitor the campaign expenditure of the party candidate and ensure that the party candidate complies with party nomination and campaign expenditure rules;</p> <p>(g) compile the expenditure reports received from the party candidates and submit to the Commission the preliminary nomination expenditure report and the final campaign</p>			
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<p>expenditure report; and</p> <p>(h) submit to the Commission the final campaign expenditure report of the political party.</p> <p>(5) A political party shall, as soon as reasonable, notify the Commission of any changes in the membership of the party expenditure committee.</p>	
<p>3. Clause 4 which proposes to repeal section 8 of the Act.</p> <p><i>Section 8 of the Act which is proposed to be repealed.</i></p> <p><i>8. Independent candidate expenditure committee</i></p> <p>(1) An independent candidate intending to contest in an election, shall, constitute an independent candidate expenditure committee.</p> <p>(2) The independent candidate expenditure committee referred to in subsection (1) shall consist of three members nominated by the candidate.</p> <p>(3) The independent candidate expenditure committee shall—</p> <p>(a) open an independent candidate expenditure committee account into which all the money in respect of the election campaign of that candidate shall be deposited;</p> <p>(b) be signatories to the independent candidate expenditure committee account;</p> <p>(c) advise the independent candidate on all financial matters related to the campaign expenditure; and</p> <p>(d) manage the candidate</p>	

<p>expenditure committee account of the independent candidate and keep the books of account updated and available for inspection:</p> <p>(e) receive expenditure reports from the independent candidate; and</p> <p>(f) compile and submit to the Commission the final campaign expenditure report of the independent candidate with respect to the election period.</p>	
<p>4. Clause 5 which proposes to repeal section 9 of the Act.</p> <p><i>Section 9 of the Act which is proposed to be repealed.</i></p> <p><i>9. Referendum expenditure committee</i></p> <p>(1) A national referendum committee intending to campaign in a referendum shall constitute a referendum expenditure committee which shall consist of nine members—</p> <p>(a) three of whom shall be persons nominated by the national committee established under section 51 of the Elections Act;</p> <p>(b) not more than one of whom shall be from one region; and</p> <p>(c) not more than two-thirds of whom shall be of one gender.</p> <p>(2) The appointment of members of the referendum expenditure committee referred to in subsection (1) shall take into account regional and other diversity of the people of Kenya.</p> <p>(3) The referendum expenditure committee referred to in subsection (1) shall—</p>	

<p>(a) open a referendum expenditure committee account into which all the money in respect of the referendum campaign shall be deposited;</p> <p>(b) be signatories to the referendum expenditure committee account;</p> <p>(c) advise the national committee on all financial matters related to referendum campaign expenditure;</p> <p>(d) manage the referendum expenditure committee account of the relevant national committee and keep the books of account updated and available for inspection; and</p> <p>(e) receive campaign expenditure reports from each constituency committee;</p> <p>(f) monitor the campaign expenditure of the national committee and the constituency committees and ensure that the committees comply with campaign expenditure rules; and</p> <p>(g) compile and submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report.</p> <p>(5) A national committee shall, as soon as reasonable, notify the Commission of any changes in the membership of the referendum expenditure committee.</p>	
<p>5. Clause 6 which proposes to repeal section 10 of the Act.</p> <p><i>Section 10 of the Act which is proposed to be repealed.</i></p> <p><i>10. Submission of expenditure reports</i></p>	

<p>(1) A party candidate shall submit to the political party of that candidate and to the Commission—</p> <p>(a) a preliminary nomination expenditure report, within twenty-one days of the political party nomination; and</p> <p>(b) the final expenditure report within, three months after elections.</p> <p>(2) A political party shall within three months after the elections submit a final expenditure report to the Commission.</p> <p>(3) An independent candidate shall within three months after the election, submit the final expenditure report to the Commission.</p> <p>(4) A referendum committee shall, within three months after the referendum submit the final expenditure report to the Commission.</p> <p>(5) The expenditure reports submitted under subsections (1)(b), (2), (3), and (4) shall include records showing all transactions and income and expenditure statement.</p>		
<p>6. Clause 7 which proposes to repeal section 16 of the Act and substitute the following new section 16—</p> <p>16 (1) A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be.</p> <p>(2) A candidate who, or a political party or a referendum committee</p>	<p>We are in agreement with the proposal.</p>	<p>The proposed amendment will require a candidate, political party or referendum committee to disclose the amounts received for a campaign. Further, section 29(2) (d) of the Act mandates the Commission to make regulations prescribing procedures for disclosure of the amount of contributions made to a candidate or to a party, the nature of these contributions and the</p>

which fails to disclose funds or donations is required under this Act commits an offence.

Section 16 of the Act which is proposed to be repealed.

16. Disclosure of funds

(1) A candidate who, or a political party or a referendum committee which, receives contributions under this Act shall issue a receipt for any contribution exceeding twenty thousand shillings.

(2) Where contributions are received from a harambee, the authorised person shall keep a record of the specific details of the harambee including the venue, date, organiser of the harambee and total contributions.

(3) A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be.

(4) The disclosure of funds under this section shall, for purposes of this Act and in the absence of any other factors, be sufficient evidence that the candidate, political party or referendum committee has complied with the requirement for disclosure of funds.

(5) The disclosure of funds shall be confidential and details of such funds shall not be divulged except where such information is the subject of a complaint or an investigation, or is the subject of proceedings in a court of law.

(6) A candidate who, or a political

intended expenditure by candidate or a party. A additional requirements relation to the disclosure ar nature of contributic received during campaign c be provided in ti regulations.

<p>party or referendum committee which fails to disclose funds or donations as required under this Act commits an offence.</p>		
<p>Clause 8 which proposes to repeal section 17 of the Act.</p> <p><i>Section 17 of the Act which is proposed to be repealed.</i></p> <p><i>17. Surplus campaign funds</i> (1) A candidate, political party or a referendum committee shall—</p> <p>(a) within three months after the date of an election or referendum, notify the Commission of any surplus campaign funds held in the expenditure committee;</p> <p>(b) within three months after the date of an election or referendum, submit the surplus campaign funds to—</p> <p>(i) in the case of a political party campaign finance committee, to the political party;</p> <p>(ii) in the case of a party candidate, to the political party that nominated the candidate for purposes of the activities of the youth, women and persons with disability;</p> <p>(iii) in the case of an independent candidate or a referendum committee, to a charitable organisation preferred by that independent candidate or referendum committee, as the case may be;</p>	<p>We are in agreement with the proposal.</p>	<p>The proposed amendment is in line with the proposed amendments to section 7, 8, 9 and 10 that seek to remove expenditure committees.</p>
<p>(c) within three months after the date</p>		

3.	<p>of an election or referendum, report to the Commission in respect of the action taken under this section.</p> <p>Clause 9 which proposes to repeal section 21 of the Act.</p> <p><i>Section 21 of the Act which is proposed to be repealed.</i></p> <p><i>21. Dispute resolution</i></p> <p>(1) Any person may lodge a complaint with the Commission alleging that a breach of this Act has been committed.</p> <p>(2) The Commission may investigate a breach of this Act.</p> <p>(3) Where a complaint has been filed or a breach detected under this section, the Commission shall hear and determine that complaint—</p> <p>(a) within seven days, if filed before an election;</p> <p>(b) within fourteen days, if filed after an election.</p> <p>(4) In determining a complaint, and subject to section 4, the Commission shall have the powers to—</p> <p>(a) request for the attendance of any person believed to have information related to the complaint;</p> <p>(b) call for any information believed to be relevant in the determination of the complaint.</p> <p>(5) Where the Commission makes a finding that there is a breach of a provision of this Act, the Commission may make any of the following orders—</p> <p>(a) order the rectification of any</p>	<p>We are in agreement with the proposal.</p>	<p>Any disputes arising under the Act can be handled under the dispute resolution mechanism set out under the Election Act, 2011.</p>
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<p>record;</p> <p>(b) issue a formal warning;</p> <p>(c) impose a fine as may be specified under the regulations;</p> <p>(d) prohibit the errant candidate, political party or referendum committee from campaigning for a specified period or within a specified area;</p> <p>(e) prohibit media coverage of the errant candidate, political party or referendum committee within a specified period;</p> <p>(f) disqualify the errant candidate, political party or referendum committee from contesting in that election or referendum, as the case may be.</p> <p>(6) Where the offence is discovered after an election and an order of disqualification is made, the candidate or the political party shall be disqualified from contesting in the subsequent by- election or general election.</p> <p>(7) Where an order of disqualification is made under this section, the order shall be—</p> <p>(a) registered in the High Court, in the case of presidential, parliamentary, governor elections or referendum; and</p> <p>(b) registered in the resident magistrate's court in the case of county assembly elections.</p>			
<p>4. Clause 11 which proposes to amend section 26 in subsection (3) by inserting the words "if required by the Commission" immediately after</p>		<p>We are in agreement with the proposal.</p>	<p>The proposed amendment will enable the Commission to determine whether the information made available</p>

	<p>the words "shall."</p> <p><i>Section 26 of the Act which is proposed to be amended</i></p> <p>26. Records</p> <p>(1) For purposes of financial accountability under this Act, a candidate, a political party, a referendum committee or an organization registered to campaign in support of a candidate, a political party or a referendum committee shall keep records of—</p> <p>(a) funds received for campaign expenses indicating the amount and the nature of funds received;</p> <p>(b) names, postal, physical and electronic addresses of contributors;</p> <p>(c) funds spent for nomination expenditure and campaign expenditure, as the case may be; and</p> <p>(d) in case of an organization registered to campaign in support of a candidate, a political party or a referendum committee, the name of the candidate, the political party or the referendum committee that the organization supported.</p> <p>(2) The Commission shall on request, make available for inspection information submitted by a candidate, a political party or a referendum committee under this Act.</p> <p>(3) A request for information referred to under subsection (2) shall be subject to confidentiality requirements of the Commission.</p>		for inspection requires to be treated with confidentiality
5.	<p>Clause 12 which proposes to repeal section 27 of the Act.</p> <p><i>Section 27 of the Act which is proposed to be repealed.</i></p>	We are in agreement with the proposal.	The audit of accounts relating to the campaign expenses of a candidate, a political party or a referendum committee do not fall under the mandate of

<p>27. <i>Audit of accounts</i></p> <p>The Auditor-General may, on the request of the Commission, audit the accounts relating to the campaign expenses of a candidate, a political party or a referendum committee.</p>		<p>the Auditor-General as provided under Article 229 (4) and section 7 of the Public Audit Act and as such he may not have capacity to handle such audits. The Commission may, through regulations prescribe the manner of auditing the accounts relating to the campaign expenses of a candidate, a political party or a referendum committee.</p>
<p>6. Clause 13 which proposes to repeal section 28 of the Act.</p> <p>28. Claims and objections</p> <p>(1) A person who objects to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee may file a claim to the Commission in the prescribed form and manner and within the prescribed time.</p> <p>(2) The claim submitted under subsection (1), shall be determined within—</p> <p>(a) seven days, if filed before an election; and</p> <p>(b) fourteen days, if filed after an election.</p>	<p>We are in agreement with the proposal.</p>	<p>The provision of section 28 of the Act may pose a challenge to the Commission as the timelines stipulated under subsection (1) are too close to and after an election at which time the Commission will be handling elections and election related matters such settlement of election disputes as provided under Article 88(4)(e) of the Constitution and section 74 of the Elections Act, 2011. The Commission is also mandated to declare election results within seven days after the election as per Article 138(10). handle petitions challenging election of the President elect within seven days of the declaration of results and determination of the validity of presidential elections within fourteen days after filing of the petition as stipulated under Article 139 etc.</p>
<p>7. Clause 14 which proposes to amend section 29 subsection (2) by inserting the following new paragraph immediately after paragraph (h) —</p> <p>(i) prescribe the manner of audit of accounts relating to the campaign</p>	<p>We are in agreement with the proposal.</p>	<p>The proposed amendment will enable the Commission make detailed regulations in relation to audit of accounts and procedure for claims.</p>

expenses of a candidate, a political party or a referendum committee.

(j) prescribe the procedure for claims objecting to any matter relating to campaign finance expenditure submitted by a candidate, political party or a referendum committee.

29. Provisions on delegated powers

(1) The Commission may make regulations for the better performance of its functions under this Act, and such regulations shall be laid before the National Assembly for approval before they are published in the Gazette.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), the Commission may make regulations—

(a) providing for spending limits for the different elections;

(b) providing guidelines for expenditure rules for political parties and independent candidates;

(c) prescribing the manner in which contributions may be made;

(d) prescribing procedures for disclosure of the amount of contributions made to a candidate or to a party, the nature of these contributions and the intended expenditures by a candidate or a party;

(e) prescribing mechanisms and procedures for reporting on and monitoring the spending limits;

(f) prescribing the manner in which

records shall be prepared and maintained:	(g) prescribing procedures for the determination of claims and objections; and	(h) prescribing anything which is required to be prescribed for purposes of this Act.
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THE ELECTIONS (AMENDMENT) BILL, 2021

1. Clause 2 which proposes to amend section 34 by inserting the following new subsection immediately after subsection (8) — “(8A) A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is to be nominated.”	We are in agreement with the proposal.	The proposed amendment will ensure that the persons nominated in line with Article 177 of the Constitution are registered voters in that county.
<i>34 of the Act which is proposed to be amended.</i>		
<i>34. Nomination of party lists members</i> (1) The election of members for the National Assembly, Senate and county assemblies for party list seats specified under Articles 97(1)(c) and 98(1)(b)(c) and (d) and Article 177(1)(b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.		
(2) A political party which nominates a candidate for election under Article 97(1)(a) and (b) shall submit to the Commission a party list in accordance with Article 97(1)(c) of the Constitution.		

(3) A political party which nominates a candidate for election under Article 98(1)(a) shall submit to the Commission a party list in accordance with Article 98(1)(b) and (c) of the Constitution.

(4) A political party which nominates a candidate for election under Article 177(1)(a) shall submit to the Commission a party list in accordance with Article 177(1)(b) and (c) of the Constitution.

(4A) In the case of a person nominated pursuant to Article 177(1)(c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission.

(5) The party lists under subsections (2), (3) and (4) shall be submitted in order of priority.

(6) The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.

(6A) Upon receipt of the party list from a political party under subsection (1), the Commission shall review the list to ensure compliance with the prescribed regulations and—

(a) issue the political party with a certificate of compliance; or

(b) require the political party to amend the party list to ensure such compliance failing which the Commission shall reject the list.

(6B) For purposes of subsection (6A), the Commission may, by notice in the gazette, issue regulations prescribing

<p>guidelines to be complied with in preparation of party lists.</p>		
<p>(7) The party lists submitted to the Commission shall be valid for the term of Parliament.</p>		
<p>(8) A person who is nominated by a political party under subsections (2), (3) and (4) shall be a person who is a member of the political party on the date of submission of the party list by the political party.</p>		
<p>(9) The party list shall not contain a name of a candidate nominated for an election.</p>		
<p>(10) A party list submitted for purposes of subsections (2), (3), (4) and (5) shall not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.</p>		

2) LIBERAL lead

PLEASE FOR 31/1/22
FOR 31/1/22
FOR 31/1/22



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

3) FOR 31/1/22
PLEASE NOTE FOR 31/1/22

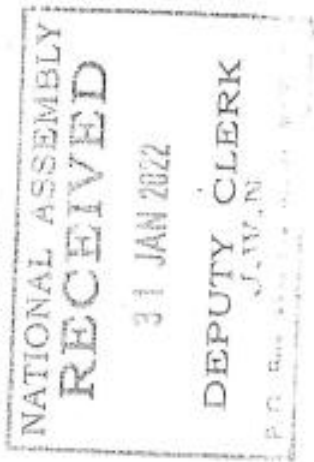
THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM

TO THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE OF PARLIAMENT

ON
THE FOLLOWING BILLS;

1. The Election Campaign Financing (Amendment) Bill, (National Assembly Bill No. 37 of 2021)
2. The Elections (Amendment) Bill, (National Assembly Bill No. 41 of 2021)



Independent Electoral & Boundaries Commission (I.E.B.C)

Anniversary Towers, Off University Way
P.O. Box 45371-00100, Nairobi-Kenya
Telephone: +254 (0) 20 29925

1) The IEBC Memorandum on CIOC Election Campaign Financing and Elections Act Amendment Bills, February 2021

5

I. INTRODUCTION

1. The Independent Electoral and Boundaries Commission (IEBC) established under Article 88 of the Constitution is responsible for the conduct or supervision of referenda and elections to any elective body or office established by the Constitution and any other elections prescribed by an Act of Parliament.
2. The IEBC is a Constitutional Commission established under Chapter 15 of the Constitution with particular reference to Article 249 which sets out the object of Constitutional Commissions.
3. The general functions of the IEBC and other Commissions as we are aware are set-out under Article 252(1). However, the specific mandate of the Commission is primarily governed by Article 88(4) of the Constitution and the IEBC Act.
4. The Commission notes the Bills under reference and makes submissions:

II. THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)

Purpose of the Bill

5. The Bill seeks, among others, to amend the Election Campaign Financing Act, 2013 to align its provisions with the Elections Act, 2011 and to enable its implementation since the existing provisions do not take into consideration the current socio-economic and political structures which have hindered its full implementation.
6. We welcome this Bill and wish to make some general comments as follows:

General Comments

7. The Commission in consultation with the Justice and Legal Affairs Committee of Parliament (JLAC) has also developed amendments to the Election Campaign Financing Act which seek to address areas identified as ambiguous, conflicting and un-implementable.

Specific Comments

8. This Bill intends to review provisions of the Act that have contrary proposals to those under review by the Commission's Election Campaign Financing (Amendment) Bill, 2021 thus may require joint consultations:





III. THE ELECTIONS (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)

Purpose of the Bill

9. The Bill seeks to amend the Elections Act, 2011 to provide that persons nominated to County Assemblies by Political Parties pursuant to Article 177 of the Constitution shall be persons who are registered voters in the county in which they are nominated.

10. We note the proposals in the Bill and wish to make some general comments as follows:

General Comments

11. The Commission in consultation with the Justice and Legal Affairs Committee of Parliament (JLAC) has also developed amendments to the Elections Act, 2011.

12. The Commission's Election Amendment Bill was informed by extensive discussions at operational and administrative level including comparative analysis of other similar electoral systems and electoral management and identifies with reforms around the conduct of elections generally with a focus on voter eligibility and registration, and candidate eligibility and nomination.

Special Comments

13. The Bill proposes a deliberative legislative intervention to ensure that persons nominated to the County Assembly are resident in that particular county so as to prevent cross-county nominations. This goes against the constitutional prescription that one may register anywhere and stand for election anywhere, the law does not prescribe any exception to any category of persons.

CONCLUSION

14. The Commission requests this Honourable Committee to consider the proposals herein.



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W.W. CHEBUKATI

CHAIRMAN



THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)				
No.	Provision of the Bill	Issue Addressed	Observation /Proposal	Rationale/Justification
1.	Clause 2: Section 2 of the Act is amended by deleting the definition of the expression "expenditure committee".	Seeks to do away with the concept of reporting through additionally established structures.	The Commission adopts the proposal as it is in line with the Commission's proposal that seeks to introduce a self-regulating mechanism	This will avoid duplication of roles. Political Parties already have structures and mechanisms within the political party composition that may be effectively utilized to report. Independent Candidates are then expected to inform the Commission on their intended reporting structures.
2.	Clause 3-6: Deletion of Sections 7-10 that provide for establishment of the Committees and reporting by the Committees	Seeks to do away with all proposed reporting committees for candidates and political parties.	The Commission adopts the proposal as it is in tandem with the proposed amendments in No. 1 above.	The provision aligns with the object of No.1 above.
3.	Clause 7: The principal Act is amended by deleting section 16 and substituting therefore the following new section 16— (1) 'A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be. (2) A candidate who, or a political party or	Seeks to do away with 'Disclosure of Funds' by a party or candidate through the appointed authorized official and leaves it generally to the party while making it a penalty not to do so.	The provision leaves the reporting structure open-ended thus an opportunity for abuse.	It is important to identify the appropriate structure. Who reports and how? This guarantees transparency.

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)				
No.	Provision of the Bill	Issue Addressed	Observation /Proposal	Rationale/Justification
	referendum committee which fails to disclose funds or donations as required under this Act commits an offence.			
4.	Clause 8-The principle Act is amended by repealing Section 17.	Seeks to delete provisions governing how to manage surplus funds (monies received beyond the prescribed limit)	The Commission's proposal in its Bill is to enable political parties determine where the funds go, however Independent Candidates are guided to donate to a charitable organization.	There must be direction on how to treat surplus funds as this would technically be considered as 'illegal funds'
5.	Clause 9-The principle Act is amended by repealing Section 21.	Seeks to delete provisions on Dispute Resolution that provide for how complaints are to be lodged and determined before the Commission.	By deleting , the Bill ought to provide an alternative means of addressing complaints raised.	There is need to provide guidance on where complaints on breach of the Act may be lodged given these would be tantamount to pre-election disputes.
6.	Clause 10-The principle Act is amended by repealing Section 25.	Seeks to delete provisions on dissolution of expenditure committees.	The Commission adopts the proposal as it is in line with the Commission's proposal to equally delete it.	The provision aligns with the object of No.1 above.
8.	Clause 11-Section 26 of the principal Act is amended in subsection (3) by inserting the words "if required by the Commission" immediately after the words "shall."	Seeks to do away with mandatory submission of information to the Commission unless requested by Commission.	The amendment is superfluous as sub-section (2) already addresses this by the words- "The Commission shall on request...."	Not necessary.
9.	Clause 12-The principle Act is amended by repealing Section 27.	Seeks to delete provisions on Audit of Accounts.	The Commission adopts the proposal as it is in line with the	This would align with the proposed direction to embrace a self-regulating mechanism.

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)				
No.	Provision of the Bill	Issue Addressed	Observation /Proposal	Rationale/Justification
			<p>Commission's proposal to equally delete it.</p> <p><u>However, we propose adoption of the Commission's proposal to:</u></p> <ol style="list-style-type: none"> i. Enable parties to rely on structures for audited accounts under the Political Parties Act, 2011 and for Independent candidates to establish their own measures. ii. Provide for donation reports and declarations thereof by the Party or Independent Candidate Treasurer. 	
10.	Clause 13-The principle Act is amended by repealing Section 28.	Seeks to do away with provisions on "Claims and Objections"	Appears to be aligned to the proposed deletion on Dispute Resolution under Clause 9-No. 5 above.	No.5 above refers.
11.	Clause 14- Section 29 of the principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraphs (h)	Seeks to expand the areas to be covered by Regulations to be developed in respect to the governing provisions of the Act.	Proposal adopted with hindsight that procedures for handling claims as per No. 10 above and audit of accounts as per Clause 10-No. 9 above have been relegated to regulations however the same would need then to be equally considered	Enables the Commission to regulate based on the existing socio-economic and political situation at hand.

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)

No.	Provision of the Bill	Issue Addressed	Observation /Proposal	Rationale/Justification
	(i) prescribe the manner of audit of accounts relating to the campaign expenses of a candidate, a political party or a referendum committee;		with respect to dispute resolution processes as per Clause 9-No. 5 above.	
7	(j) prescribe the procedure for claims objecting to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee; and.			

THE ELECTIONS (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)

No.	Provision of the Bill	Issue Addressed	Observation /Proposal	Rationale/Justification
1.	<p>The Principal Act is amended in Section 34 by inserting the following new subsection immediately after subsection (8)-</p> <p>(8A)- A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is to be nominated."</p>	<p>Seeks to qualify the existing provision to ensure that such nominee belongs to the particular ward-</p> <p>(8) A person who is nominated by a political party under subsections (2), (3) and (4) shall be a person who is a member of the political party on the date of submission of the party list by the political party.</p>	<p>Conflicts with the provisions of the Constitution.</p> <p>Qualifications on eligibility to stand for election as governed by the Constitution and Elections Act simply require that one is a 'registered voter'.</p>	<p>If an aspirant for MCA position is allowed to register anywhere and stand for election elsewhere it only follows that the same principle applies to nominated MCA's.</p> <p>Article 90 of the Constitution on Allocation of party list seats only provides one exception under 2 (c)-The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—</p> <p>(c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.</p>



When replying please quote

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clerk@parliament.go.ke

Dear Mr. Sialai,

**SUBMISSION OF MEMORANDA ON THE ELECTIONS (AMENDMENT) BILL,
2021 (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)**

Reference is made to your letter Ref. KNA/DAA&OSC/CIOC/2021(44) of 18th November 2021, and your letter Ref. KNA/DAA&OSC/CIOC/2022(1) of 26th January 2022.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

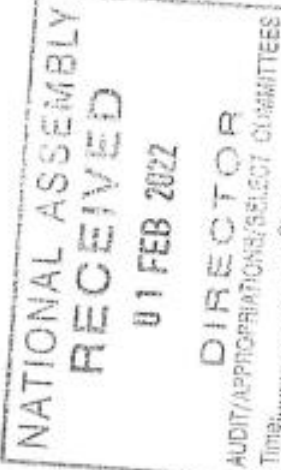
In line with its mandate, the Commission wishes to submit the attached memorandum on the Elections (Amendment) Bill, No 41 of 2021 for your consideration.

Yours sincerely,



Betty Sungura-Nyabuto, MBS
COMMISSION SECRETARY/CEO

Encl.



"Gender Equality and Non-Discrimination"

31st January 2022

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NATIONAL GENDER AND EQUALITY COMMISSION





MEMORANDUM ON THE ELECTIONS (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)

Date: 31st January 2022

Submitted to: clerk@parliament.go.ke

S/NO	SECTION/CLAUSE	PROPOSAL	JUSTIFICATION
1.	(8A) A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is to be nominated	<p>Amend the clause by adding the following proviso:</p> <p>Provided that nominations for persons with disabilities shall be accompanied by a certificate of registration certified by the National Council for Persons with Disabilities (NCPWD) and in the case of youth nominees, a proof from the registrar of persons that such a nominee is a youth from the date of nomination till the expiry of five years or remainder of the term of representation.</p>	<p>There has been persistent abuse of section 34 to the extent majority of the nominees representing youth are not youth and nominees representing PWDS are not persons with disabilities.</p> <p>To rectify this, the nominated persons must be at the time of nomination be youth and remain such for the period of the term while persons with disabilities must have been registered and provide a copy of registration from the National Council for Persons with Disabilities (NCPWD).</p> <p>This proviso will ensure that only the intended nominees are nominated and that such nominees represent the issues and</p>

			interest of the constituents that they are nominated for.
2.	27 (1) A political party shall submit its nomination rules to the Commission at least six months before the nomination of its candidates. (2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.	Amend section 27 (1) by deleting the words “ six months ” and replacing them with the words “ five months ”. Amend section 27 (2) by deleting the words “ ninety days ” and replacing them with the words “ sixty days ”	The proposed amendment seeks to align the Elections Act with the new times provided for in the Political Parties Act in respect to Coalition Parties . The net effect of the new proviso to section 10 of the Political Parties is that Coalition Parties must submit new nomination rules to the Commission since there are no coalition parties at present.

General observations

1. The Commission (NGEC) supports the Bill on grounds that only registered voters representing the issues of marginalised groups, youth and persons with disabilities would be able to comprehensively appreciate the issues and interests of the special interest groups in the wards, constituencies, counties and the entire country. Such registered members, are deemed to have a strong social connection with the special interest groups and as such would ably pass the principle of meaningful representation.
2. The Bill rectifies the common abuse of the section being amended by political parties thus, ‘nominating persons not registered as voters in that county’.
3. The proposed suggestions and comments by the Commission (NGEC) seeks to address the current abuse where some counties have nominees representing the youth, persons with disabilities or marginalized groups but whom are not themselves ‘youth’, or PWD, or from marginalized groups respectively and as appropriate.



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 Toll Free: 0800720187
 www.ngeckenya.org
 Email: info@ngeckenya.org

When replying please quote

Ref: No: NGEC/CS/NAS/005/VOL. I (60)

31st January 2022

NATIONAL GENDER AND EQUALITY COMMISSION

Michael R. Sialai, CBS
 Clerk of the National Assembly
 Clerk's Chambers
 Parliament Building
 P.O. Box 41842-00100
 NAIROBI
 clerk@parliament.go.ke

QAA SC
 R.

Dear *Mr. Sialai,*

SUBMISSION OF MEMORANDA ON THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 37 OF 2021)

Reference is made to your letter Ref. KNA/DAA&OSC/CIOC/2021(44) of 18th November 2021, and your letter Ref. KNA/DAA&OSC/CIOC/2022(1) of 26th January 2022.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

The Commission supports the proposed amendment Bill for the reason that it eliminates the rigorous procedures of disclosure of campaign finance. By reducing the compliance threshold to simplified procedures for disclosure of campaign funds received, the Bill paves way for implementation of the Election Campaign Finance Act, 2013.

The full implementation of the Election Campaign Finance Act No 42 of 2013 will pave way for a meaningful monitoring and evaluation of its applications, and enforcement. These shall provide the country with necessary lessons useful for either further revision or

"Gender Equality and Non-Discrimination"

improvement of the law, and contribute towards formulation of better and robust regulatory frameworks on campaign financing in Kenya.

Yours sincerely,



**Betty Sungura-Nyabuto, MBS
COMMISSION SECRETARY/ CEO**



**SUBMISSIONS ON THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 37 OF 2021) AND THE ELECTIONS (AMENDMENT)
BILL NATIONAL ASSEMBLY BILL NO. 41 OF 2021)**

Your letter dated 18th November, 2021 requesting submission of comments on the above legislative proposals refers.

The Kenya Law Reform Commission makes the following suggestions and proposals in relation to the proposed amendments:

S/No	Provision of the draft Bill	Suggestion and the rationale	Proposed amendment
1.	Amendment of section 2 of the Election Campaign Financing Act (the Act) by deleting the definition of the expression "expenditure committee"	This suggestion is proper since the subsequent amendments seek to repeal the provisions relating to the establishment of the expenditure committee. However, it would be good if all related terms are also deleted since they suffer the same fate.	Delete the definitions of the terms "expenditure account" and "expenditure report"
2.	Deletion of sections 7 to 10 the Act.	The sections relate to establishment of expenditure committees and expenditure reports for political parties, independent candidates and referenda. If the policy is to do away with these committees, it is necessary to remove all references to the committees in the Act.	Amend section 6 of the Act to remove all references to the committees. It is proposed that the following section be inserted in the Bill as the new clause 3: 3. Section 6 of the principal Act is amended— (a) in subsection (1) by— (i) deleting paragraphs (c) and substituting therefor "(c) an agent of a political party"; (ii) deleting paragraph (d) and substituting therefor (d) an agent

				of a referendum committee”; (b) by deleting subsection (2); (c) by deleting subsection (3); (d) by deleting subsection (6); and (e) by deleting subsection 7.
3.	Amendment of section 16 of the Act	The proposed amendment simplifies the requirements for disclosure of funds.	No proposed changes	
4.	Amendment of section 17 of the Act by repealing it.	Section 17 deals with surplus campaign funds. Its repeal therefore leaves a gap on how surplus campaign funds will be accounted for; this leaves room for abuse and money laundering.	The intention of Article 88 (4) (i) of the Constitution is to give the IEBC the mandate and responsibility to regulate the amount of money that may be spent by or on behalf of a candidate or a political party.	
5.	Amendment of section 21 of the Act by repealing it.	Deals with dispute resolution and gives the IEBC powers to punish errant candidates or political parties.	No proposed changes	
6.	Amendment of section 25 of the Act by repealing it.	Deals with registration and dissolution of expenditure committees	No proposed changes	
7.	Amendment of section 26 of the Act.	Enhances clarity	No proposed changes	
8.	Amendment of section 28 of the Act by repealing it.	This is flowing from the proposed repeal of section 21.	No proposed changes	
9.	Amendment of section 29 of the Act by providing for powers to prescribe manner of audit of accounts and procedure for claims objecting any matter under the Act.	Since the Commission shall have powers to prescribe manner of audit of accounts, it may not be necessary to retain section 27 of the Act which provides that the Auditor-General to audit accounts relating to campaign expenses.	Repeal section 27.	

NB: The proposed single amendment to section 34 of the Elections Act is in our view proper and we have no further additions to make.

We seek your indulgence for submitting our comments later than the required date of 17th December, 2021. Thank you for your continued support and cooperation.

Yours

A handwritten signature in black ink, appearing to read "Joash Dache". The signature is written in a cursive style with a large, stylized initial "J".

Joash Dache, MBS
SECRETARY/CEO



48



COUNCIL OF GOVERNORS

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Our Ref: COG/6/11 Vol. 3 (37)

31st January, 2022

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Building
NAIROBI

Dear

Mr. Sialai, EBS,

① DAA SC
8
3111

INVITATION TO A PUBLIC HEARING ON THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 37 OF 2021) AND THE ELECTIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)

This has reference to the above matter and to your letter dated 26th January, 2022 under Ref: KNA/DAA&OSC/CIOC/2022(1).

We have reviewed the two Bills and wish to state that in our view the legislative proposals therein are not contentious and we therefore support the Bills.

Please accept assurance of our highest esteem and consideration.

Yours

Susanway,

Mary Mwiti
Chief Executive Officer



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Please refer 01/21





COUNCIL OF GOVERNORS

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Our Ref: COG/6/11 Vol. 3 (37)

31st January, 2022

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Building
NAIROBI

Dear *Mr. Sialai, EBS,*

INVITATION TO A PUBLIC HEARING ON THE ELECTION CAMPAIGN FINANCING
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 37 OF 2021) AND THE ELECTIONS
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2021)

This has reference to the above matter and to your letter dated 26th January, 2022 under Ref:
KNA/DAA&OSC/CIOC/2022(1).

We have reviewed the two Bills and wish to state that in our view the legislative proposals
therein are not contentious and we therefore support the Bills.

Please accept assurance of our highest esteem and consideration.

Yours

S. Mwangi

Mary Mwiti
Chief Executive Officer

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INTER-RELIGIOUS COUNCIL *of* KENYA

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Email: info@iirck.or.ke www.interreligiouscouncil.or.ke

MEMORANDUM
TO
THE NATIONAL ASSEMBLY
ON

THE ELECTION CAMPAIGN FINANCING AMENDMENT BILL 2021.

1ST FEBRUARY 2022



The Election Campaign Financing Amendment Bill of 2021

A. Introduction

Inter-Religious Council of Kenya (IRCK) appreciates the opportunity to present this memorandum making input on the Election Campaign Financing Amendment Bill of 2021. This follows the publication of the call for public participation in line with Article 118(1)(b) of the Constitution of Kenya 2010. The undersigned, on their own behalf and on behalf of the endorsing institutions that have congregated under the umbrella name IRCK submit this memorandum in this regard.

B. IRCK

The Inter-Religious Council of Kenya (IRCK) is the national coalition of the main faith communities in Kenya. Established as a Society under the Societies Act, IRCK is purposed on the harnessing the spiritual, moral and social resources of religious leaders and their communities for peaceful coexistence and interreligious harmony in the country and to address the social, economic and justice issues affecting Kenyans.

C. General Comments

Campaign finance issues have a significant impact on the quality of elections. Without adequate financing, candidates and parties have little chance of campaigning effectively or conveying their messages to voters. At the same time, state authorities and citizens have a legitimate interest in ensuring that the campaign finance system is equitable, transparent and limits the potential for corruption. So, campaign finance regulations must balance two needs: on the one hand, the need to respect freedom of expression and, on the other, the need to ensure a fair electoral process.

We are concerned that the proposed amendments seem to water down the oversight on campaign finances by doing away with the requirements for campaign finance committees, complaints resolution, disclosure of source of funds and audit of accounts. This is against the backdrop of the rejection of the Campaign Finance Regulations gazetted by the IEBC. It is worrying that since the passage of the Election Campaign Finance Act in 2013 it has not been applied at any election. For a truly level playing field in elections it is imperative that the campaign finance system is equitable and transparent, and limits the potential for corruption of the democratic process.

The proposals contained in this memorandum have been drawn from broad consensus arrived at following consultative meetings with our members.



**D. SPECIFIC COMMENTS ON THE ELECTION CAMPAIGN FINANCING
AMENDMENT BILL OF 2021**

Provisions in the Bill	Stakeholder Proposal	Rationale
<p>Clause 2: Proposes the repeal of the definition of "expenditure committee"</p>	<p>Retain the definition.</p>	<p>Expenditure committees are crucial for two reasons:</p> <ol style="list-style-type: none"> 1. It takes pressure off the party and the candidate. The need to ensure availability of funds and how it is expended is left to a committee, leaving the party and the candidate free to participate in the elections. 2. It enables supervision and oversight of campaign expenses and may lead to less wastage and savings for the candidate. Oversight ensures sources of funds are legitimate and legal, ensures proper records are kept, and ensures the candidate and party abide by all laws and regulations.
<p>Clause 3: Proposes repeal of section 7 which requires political parties to establish expenditure committees.</p>	<p>Retain Section 7</p>	<p>Expenditure committees help political parties to manage their campaign expenses and ensure compliance with laws and regulations. This will improve accountability and transparency.</p> <p>Campaign financing refers to all contributions and expenses, monetary and in-kind, made to and incurred by political parties and candidates for electoral purposes. Such activities could include, for example, renting temporary offices and hiring staff; paying for campaign-related communications and transport; holding electoral rallies, conducting door-to-door campaigning, production of campaign materials and campaign advertising in mass media.</p> <p>To ensure a transparent and fair campaign finance system, campaign finance must be distinguished from political party financing which encompasses monetary and in-kind contributions to and expenses</p>



		<p>incurred by political parties in their routine activities. The expenditure committees with separate accounts is the best way to achieve this.</p>
<p>Clause 4: Proposes repeal of section which requires independent candidates to establish expenditure committees.</p>	<p>Retain Section 8</p>	<p>Expenditure committees help candidates to manage their campaign expenses and ensure compliance with laws and regulations.</p> <p>This will improve accountability and transparency.</p>
<p>Clause 5: Proposes repeal of Section 9 of the Act which provides for the establishment of referendum expenditure committees.</p>	<p>Retain Section 9.</p>	<p>Expenditure committees helps in the management of campaign expenses and ensures compliance with laws and regulations.</p> <p>This will improve accountability and transparency.</p>
<p>Clause 6: Proposes repeal of Section 10 of the Act which provides for</p>	<p>Delete Section 10 (1)(a) which requires preliminary reports within 21 days of party primaries from each candidate.</p> <p>Retain the rest of Section 10.</p>	<p>The post party primaries period is a very hectic period for candidates, as they are actively campaigning. The requirement to submit accounts within 21 days of the party primaries is too tedious and does not add much value. The requirement to submit a final report three months after the elections is sufficient.</p> <p>It is important for transparency and accountability to require all candidates and political parties to submit reports of their expenses and source of funds. This will reduce corruption, and ensure that the legitimacy of campaign funds.</p>
<p>Clause 7: Proposes repeal of parts of Section 16 that provides for disclosure of funds to do away with:</p> <ul style="list-style-type: none"> • Issuing of a receipt for any contributions over 20,000/- Kenya shillings. • Maintaining records of any fundraisers held including date, venue and total sum collected. • The provision that the information provided can be revealed where a complaint is raised. 	<p>Retain Section 16 in entirety.</p>	<p>Issuing of receipts for money is a useful accounting mechanism, and helps with tracking donations or alleged contributions.</p> <p>Maintaining records of fundraisers is a useful tool for promoting accountability and transparency.</p> <p>Where a complaint is raised, it is imperative that disclosure. Confidentiality cannot apply in such circumstances.</p>



<p>Clause 8: Proposes repeal of Section 17 which provides for surrender of surplus campaign funds to the political party to be used in promoting SIGs and in the case of an independent candidate to a charity of their choice. The section includes reporting obligations to the Commission on the amount of the surplus funds, and action taken.</p>	<p>Retain Section 17</p>	<p>Money raised for campaigns is not for profit or personal gain, and must not be retained by the candidate. It is therefore crucial and good citizenship to ensure that any surplus funds are deployed towards common good.</p>
<p>Clause 9: Proposes repeal of Section 21 of the Act which provides for dispute resolution.</p>	<p>Retain Section 21</p>	<p>The section provides a process for resolving any disputes and gives powers to the Commission to hear and determine disputes.</p> <p>This is very progressive as it provides a quick, cost-effective and speedy process for resolving any disputes. Court processes are usually slow and costly.</p> <p>Deleting the section leaves complainants at the mercy of the courts. It is vital that complainants have the option to approach the commission to handle disputes. This will be a quasi-judicial process, less formal and less tedious.</p>
<p>Clause 10: Proposes repeal of Section 25 of the Act which provides for registration and dissolution of expenditure committees.</p>	<p>Retain Section 25</p>	<p>Follows from proposals above for retaining expenditure committees.</p>
<p>Clause 11: Proposes amendment of Section 26(3) to include the wording "if required by the commission" immediately after the word shall.</p>	<p>Retain the section as is.</p>	<p>The amended section would read as below.</p> <p>A request for information referred to under subsection (2), shall <i>if required by the Commission</i> be subject to confidentiality requirements of the Commission.</p> <p>Subsection (2) provides that a person or entity can ask for information, and subsection (3) qualifies that the information shall be subject to the confidentiality rules of the Commission.</p> <p>The proposed amendment does not add any value to the overall intention of the section. It causes confusion as to the intention of the drafter. The amendment should be excluded.</p>



<p>Clause 12: Proposes repeal of Section 27 of the Act that provides that the Auditor General may on request of the Commission audit accounts of any political party, candidate or referendum committee.</p>	<p>Retain Section 27.</p>	<p>One of the main purposes of campaign financing legislation is to improve accountability and transparency in elections, and to reduce corruption and use of illicit funds in elections.</p> <p>Audit is a key component of overseeing accounts, and is therefore crucial in enabling the Act achieve one of its over-arching goals.</p>
<p>Clause 13: Proposes repeal of Section 28 of the Act which provides for who may file claims and objections under the Act, and the time limits for disposing of the same.</p>	<p>Retain Section 28</p>	<p>This follows from the suggestion above to retain the dispute resolution clause.</p> <p>The section requires claims to be determined within 14 days. This is beneficial to the candidates or political parties as they shall be rid of the complaint timeously;</p> <p>The section should be retained as it clarifies who may lodge a complaint and provides timelines for concluding the complaint.</p>
<p>Clause 14: Provides for amendment to Section 29 to include the following two new sub-clauses:</p> <p>prescribe the manner of audit of accounts relating to the campaign expenses of a candidate, a political party or a referendum committee;</p> <p>prescribe the procedure for claims objecting to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee;</p>	<p>We support the proposed amendments.</p>	

E. CONCLUSION

Honourable Chairman, it is now our request to the Committee that these proposals be considered urgently before enactment of the law.

For Inter-Religious Council of Kenya



Rev. Fr. Joseph Mutie
Chairman





NATIONAL COUNCIL OF CHURCHES OF KENYA

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0721-380333, 0714-6007174, 0733755736 E-mail: genficon@nccck.org Website: www.nccck.org

GENERAL SECRETARIAT

MEMORANDUM BY THE NATIONAL COUNCIL OF CHURCHES OF KENYA TO THE NATIONAL ASSEMBLY ON THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL 2021

JANUARY 2022

Michael R Sialai, CBS
Clerk of the National Assembly
P. O. Box 41842, 00100
NAIROBI

1. Preamble

The National Council of Churches of Kenya (NCCCK) is a committed promoter of constitutionalism and the rule of law, and has been a lead actor in this sector for more than 100 years. Besides fighting for the rights of workers and opposing the conscription of boys, the NCCCK in the early days was a key driver in the formulation of the Devonshire White Paper. In the leadup to independence, the NCCCK made contribution to and supported the drafting of the Constitution. From the early 1980s, the NCCCK strongly championed for constitutional review when few other institutions could voice the interests of the citizens. Upon promulgation of the Constitution of Kenya 2010, the NCCCK alongside other faith institutions committed to support its implementation and to continue advocating for good governance, peace and cohesion in the country.

The NCCCK therefore appreciates the role of the Legislature (National Assembly, Senate and County Assemblies) in formulating and enacting legislation that give effect to the provisions of the Constitution of Kenya 2010. We are therefore pleased to submit the following views on the Election Campaign Financing (Amendment) Bill 2021 currently being considered by the Honorable Members.

2. Background

The NCCCK recognizes that campaign financing plays a major role in the quality of elections and democratization of the country. Whereas candidates and parties have limited capacity to campaign effectively without adequate funding, they nonetheless

have a responsibility to account for such funds to ensure transparency and forestall corruption. Campaign financing regulations are therefore required to ensure balance, equitability and freedom of expression.

The NCCCK is therefore concerned that the Campaign Financing (Amendment) Bill 2021 will ostensibly water down the oversight on campaign financing. This is especially so in consideration that the Bill is being debated against a background of rejection of the Campaign Financing Regulations by the National Assembly in August 2021.

Further, it is a concern to the NCCCK, and all Kenyans, that the Election Campaigning Act has not been applied in any elections despite having been passed in 2013. It is critical that the Campaign Financing system be operationalized to limit the potential for corruption in the democratic process.

3. Recommendation on the Election Campaign Financing (Amendment) Bill 2021

In view of the foregoing, the NCCCK has undertaken extensive consultations and recommends the following amendments on the Election Campaign Financing (Amendment) Bill 2021.

Provisions in the Bill	Stakeholder Proposal	Rationale
Clause 2: Proposes the repeal of the definition of "expenditure committee"	Retain the definition	<p>Expenditure Committees are crucial for two reasons:</p> <ol style="list-style-type: none"> 1. It takes pressure off the party and the candidate. The need to ensure availability of funds and how it is expended is left to a committee, leaving the party and the candidate free to participate in the elections. 2. It enables supervision and oversight of campaign expenses and may lead to less wastage and savings for the candidate. Oversight ensures sources of funds are legitimate and legal, ensures proper records are kept, and ensures the candidate and

<p>Clause 3: Proposes repeal of Section 7 which requires political parties to establish Expenditure Committees</p>	<p>Retain Section 7</p>	<p>party abide by all laws and regulations.</p>
		<p>Expenditure Committees help political parties to manage their campaign expenses and ensure compliance with laws and regulations. This will improve accountability and transparency.</p> <p>Campaign financing refers to all contributions and expenses, monetary and in-kind, made to and incurred by political parties and candidates for electoral purposes. Such activities could include, for example, renting temporary offices and hiring staff, paying for campaign-related communications and transport, holding electoral rallies, conducting door-to-door campaigning, production of campaign materials and campaign advertising in mass media.</p> <p>To ensure a transparent and fair campaign finance system, campaign finance must be distinguished from political party financing which encompasses monetary and in-kind contributions to and expenses incurred by political parties in their routine activities. The expenditure committees with separate accounts is the best way to achieve this.</p>
<p>Clause 4: Proposes repeal of Section 8 which requires independent candidates to establish Expenditure Committees</p>	<p>Retain Section 8</p>	<p>Expenditure committees help candidates to manage their campaign expenses and ensure compliance with laws and regulations.</p>
<p>Clause 5: Proposes repeal of Section 9 of the Act which provides for the establishment of referendum Expenditure Committees</p>	<p>Retain Section 9</p>	<p>This will improve accountability and transparency.</p> <p>Expenditure Committees helps in the management of campaign expenses and ensures compliance with laws and regulations.</p>

			This will improve accountability and transparency.
Clause 6: Proposes repeal of Section 10 of the Act which provides for submission of expenditure reports	Delete Section 10 (1)(a) which requires preliminary reports within 21 days of party primaries from each candidate. Retain the rest of Section 10.	The post party primaries period is a very hectic period for candidates, as they are actively campaigning. The requirement to submit accounts within 21 days of the party primaries is too tedious and does not add much value. The requirement to submit a final report three months after the elections is sufficient.	
Clause 7: Proposes repeal of parts of Section 16 and introduces new	Retain Section 16 in entirety	It is important for transparency and accountability to require all candidates and political parties to submit reports of their expenses and source of funds. This will reduce corruption, and ensure that the legitimacy of campaign funds. Issuing of receipts for money is a useful accounting mechanism, and helps with tracking donations or alleged contributions. Maintaining records of fundraisers is a useful tool for promoting accountability and transparency.	
Clause 8: Proposes repeal of Section 17 which provides for surrender of surplus campaign funds to the political party to be used in promoting SIGs and in the case of an independent candidate to a charity of their choice.	Retain Section 17	Where a complaint is raised, it is imperative that disclosure is made. Confidentiality cannot apply in such circumstances. Money raised for campaigns is not for profit or personal gain, and must not be retained by the candidate. It is therefore crucial and good citizenship to ensure that any surplus funds are deployed towards common good.	
The section includes reporting obligations to the Commission on the amount of the surplus funds, and action taken.			

<p>Clause 9: Proposes repeal of Section 21 of the Act which provides for dispute resolution.</p>	<p>Retain Section 21</p>	<p>The section provides a process for resolving any disputes and gives powers to the Commission to bear and determine disputes.</p> <p>This is very progressive as it provides a quick, cost-effective and speedy process for resolving any disputes. Court processes are usually slow and costly.</p> <p>Deleting the section leaves complainants at the mercy of the courts. It is vital that complainants have the option to approach the commission to handle disputes. This will be a quasi-judicial process, less formal and less tedious.</p>
<p>Clause 10: Proposes repeal of Section 25 of the Act which provides for registration and dissolution of Expenditure Committees</p>	<p>Retain Section 25</p>	<p>Follows from proposals above for retaining Expenditure Committees</p>
<p>Clause 11: Proposes amendment of Section 26(3) to include the wording "if required by the commission" immediately after the word shall.</p>	<p>Retain the section as is</p>	<p>The amended section would read as below:</p> <p>A request for information referred to under subsection (2), shall <i>if required by the Commission</i>, be subject to confidentiality requirements of the Commission.</p> <p>Subsection (2) provides that a person or entity can ask for information, and subsection (3) qualifies that the information shall be subject to the confidentiality rules of the Commission.</p> <p>The proposed amendment does not add any value to the overall intention of the section. It causes confusion as to the intention of the drafter. The amendment should be excluded.</p>

<p>Clause 12: Proposes repeal of Section 27 of the Act that provides that the Auditor General may on request of the Commission audit accounts of any political party, candidate or referendum committee.</p>	<p>Retain Section 27</p>	<p>One of the main purposes of campaign financing legislation is to improve accountability and transparency in elections, and to reduce corruption and use of illicit funds in elections.</p> <p>Audit is a key component of oversighting accounts, and is therefore crucial in enabling the Act achieve one of its over-arching goals.</p> <p>This follows from the suggestion above to retain the dispute resolution clause.</p>
<p>Clause 13: Proposes repeal of Section 28 of the Act which provides for who may file claims and objections under the Act, and the time limits for disposing of the same.</p>	<p>Retain Section 28</p>	<p>The section requires claims to be determined within 14 days. This is beneficial to the candidates or political parties as they shall be rid of the complaint timeously.</p> <p>The section should be retained as it clarifies who may lodge a complaint and provides timelines for concluding the complaint.</p>
<p>Clause 14: Provides for amendment to Section 29 to include the following two new sub-clauses: prescribe the manner of audit of accounts relating to the campaign expenses of a candidate, a political party or a referendum committee; prescribe the procedure for claims objecting to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee;</p>	<p>We support the proposed amendments.</p>	<p>The clause provides for audit mechanism for political parties which is good for Kenya.</p>

4. Conclusion

In conclusion, we in in the NCKK urge the National Assembly to amend the Election Campaign Financing (Amendment) Bill 2021 as per the matrix above. It is prudent that the primary Act is not watered down to ensure transparency and protection of the democratic dispensation of the country.

On our part, we remain committed to supporting the implementation of the Constitution of Kenya 2010 and promoting constitutionalism and rule of law.

Signed on this 31st day of January 2022 at *Jumua Place, Nairobi*, on behalf of the Member Churches and Organizations (attached) of the National Council of Churches of Kenya:



Rev. Canon Chris Kinyanjui
GENERAL SECRETARY

NCCK MEMBER CHURCHES

1. Africa Brotherhood Church
2. African Christian Churches and Schools
3. African Church of the Holy Spirit
4. African Independent Pentecostal Church of Africa
5. African Interior Church
6. African Israel Niveneth Church
7. African Orthodox Church of Kenya
8. Anglican Church of Kenya
9. Church of Africa Sinai Mission
10. Church of Christ in Africa
11. Church of God East Africa
12. Coptic Orthodox Church
13. Episcopal Church of Africa
14. Evangelical Lutheran Church of Kenya
15. Free Methodist Church in Kenya
16. Free Pentecostal Fellowship in Kenya
17. Friends Church in Kenya
18. Full Gospel Churches of Kenya
19. Kenya Assemblies of God
20. Kenya Evangelical Lutheran Church
21. Kenya Mennonite Church
22. Lyahuka Church of East Africa
23. Maranatha Faith Assemblies
24. Methodist Church in Kenya
25. National Independent Church of Africa
26. Overcoming Faith Center Church of Kenya
27. Pentecostal Evangelical Fellowship of Africa

28. Presbyterian Church of East Africa
29. Reformed Church of East Africa
30. Salvation Army
31. Scriptural Holiness Mission
32. Zion Harvest Mission

NCCK ASSOCIATE MEMBERS

1. Bible Society of Kenya
2. Christian Churches Education Association
3. Christian Health Association of Kenya
4. Christian Hostels Fellowship
5. Fellowship of Christian Unions
6. Kenya Ecumenical Church Loan Fund
7. Kenya Students Christian Fellowship
8. Kenya United Independent Churches
9. Public Law Institute
10. Scripture Union
11. St Pauls University
12. Young Mens Christian Association
13. Young Womens Christian Association

NCCK FRATERNAL MEMBERS

1. African Evangelistic Enterprise
2. Daystar University
3. Trans World Radio
4. Trinity Fellowship
5. World Vision



NATIONAL COUNCIL OF CHURCHES OF KENYA

Supreme Place, Lathika Road, P.O. Box 45009, 00100 GPO Nairobi | Tel: +254 20 27212349, 2080814 10111,
0721-565277 | 0714 606971-58, 0733728730 | E-mail: general@ncck.org | Website: www.ncck.org

GENERAL SECRETARIAT

MEMORANDUM BY THE NATIONAL COUNCIL OF CHURCHES OF KENYA TO THE NATIONAL ASSEMBLY ON THE ELECTIONS (AMENDMENT) BILL 2021

JANUARY 2022

Michael R. Sialai, CBS
Clerk of the National Assembly
P. O. Box 41842, 00100
NAIROBI

1. Preamble

The National Council of Churches of Kenya (NCCK) is a committed promoter of constitutionalism and the rule of law, and has been a lead actor in this sector for more than 100 years. Besides fighting for the rights of workers and opposing the conscription of boys, the NCCK in the early days was a key driver in the formulation of the Devonshire White Paper. In the leadup to independence, the NCCK made contribution to and supported the drafting of the Constitution. From the early 1980s, the NCCK strongly championed for constitutional review when few other institutions could voice the interests of the citizens. Upon promulgation of the Constitution of Kenya 2010, the NCCK alongside other faith institutions committed to support its implementation and to continue advocating for good governance, peace and cohesion in the country.

The NCCK therefore appreciates the role of the Legislature (National Assembly, Senate and County Assemblies) in formulating and enacting legislation that give effect to the provisions of the Constitution of Kenya 2010. We are therefore pleased to submit the following views on the Elections (Amendment) Bill 2021 currently being considered by the Honorable Members.

2. Background

The NCCK appreciates that nomination to the County Assembly, provided for in Article 177 of the Constitution of Kenya 2010, contributes to democracy in Kenya. The Elections Act provides qualifications for persons nominated.

The Elections (Amendment) Bill 2021 is intended to amend the Elections Act by introducing registration as a voter within the county as a basis for nomination.

3. Recommendation on the Elections (Amendment) Bill 2021

In view of the foregoing, the NCCCK recommends that the Elections (Amendment) Bill 2021 be adopted.

After broad consultations, the NCCCK finds that the requirement that a person nominated to a County Assembly be registered as a voter within that county is prudent. This is because it will ensure that a person nominated to a County Assembly is already invested in that county.

4. Conclusion

In conclusion, we in in the NCCCK urge the National Assembly to pass the Elections (Amendment) Bill 2021.

On our part, we remain committed to supporting the implementation of the Constitution of Kenya 2010 and promoting constitutionalism and rule of law.

Signed on this 31st day of January 2022 at *Sumnia Place, Nairobi*, on behalf of the Member Churches and Organizations (attached) of the National Council of Churches of Kenya:



Rev. Canon Chris Kinyanjui
GENERAL SECRETARY

NCCK MEMBER CHURCHES

- | | | | |
|-----|--|-----|------------------------------------|
| 1. | Africa Brotherhood Church | 28. | Presbyterian Church of East Africa |
| 2. | African Christian Churches and Schools | 29. | Reformed Church of East Africa |
| 3. | African Church of the Holy Spirit | 30. | Salvation Army |
| 4. | African Independent Pentecostal Church of Africa | 31. | Scriptural Holiness Mission |
| 5. | African Interior Church | 32. | Zion Harvest Mission |
| 6. | African Israel Niveneh Church | | |
| 7. | African Orthodox Church of Kenya | | |
| 8. | Anglican Church of Kenya | | |
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| 26. | Overcoming Faith Center Church of Kenya | | |
| 27. | Pentecostal Evangelical Fellowship of Africa | | |

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2. Daystar University
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4. Trinity Fellowship
5. World Vision



REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (SIXTH SESSION)





THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE
ADOPTION OF REPORT ON ELECTIONS (AMENDMENT) BILL, 2021.

ATTENDANCE REGISTER

Venue: *Media Centre* Date: *17/2/2022* Time: *11:30am*

	HON. MEMBER	SIGNATURE
1.	Hon. Alois M. Lentoimaga, M.P. (Chairman)	
2.	Hon. Peter Kaluma, M.P. (Vice Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P.	
4.	Hon. Raphael Wanjala, M.P.	
5.	Hon.(Dr.) Christine Ombaka, M.P.	<i>Chabaka.</i>
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Yussuf Hassan Abdi, M.P	
8.	Hon. T. J Kajwang, M.P.	
9.	Hon. Anthony Oluoch, M.P.	
10.	Hon. Catherine Wambilianga, M.P.	

HON. MEMBER	SIGNATURE
11. Hon. Didimus Barasa, M.P.	
12. Hon. (Col.) Geoffrey King'angi, M.P.	VIRTUAL
13. Hon. Abdi Shaurie, M.P.	
14. Hon. Fabian K. Muli, M.P.	
15. Hon. Daniel Rono, M.P.	
16. Hon. Simon Ng'ang'a King'ara, M.P.	
17. Hon. Joash Nyamoko, M.P.	
18. Hon. Bernard Okoth, M.P.	
19. Hon. Peris Tobiko, CBS, M.P.	
20. Hon. Purity Ndirici, M.P.	
21. Hon. Japheth Kiplangat Mutai, M.P.	
22. Hon. Halima Mucheke, M.P.	
23. Hon. Moses Kirima, M.P.	

Name: E. Libindi Signature  Date 17/2/2022
 Committee Clerk

Name:  Signature Date 23/2/2022
 Director, Committee Services

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (SIXTH SESSION)


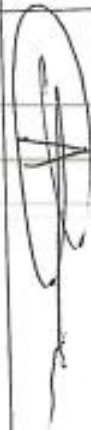








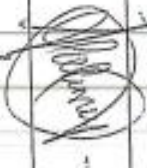

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE
ADOPTION OF REPORT ON ELECTION CAMPAIGN FINANCING
(AMENDMENT) BILL, 2021.

ATTENDANCE REGISTER

Venue: *Media Centre* Date: *17/11/2022* Time: *11:30am*

	HON. MEMBER	SIGNATURE
1.	Hon. Alois M. Lentoimaga, M.P. (Chairman)	
2.	Hon. Peter Kaluma, M.P. (Vice Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P.	
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21. Hon. Japheth Kiplangat Mutai, M.P.	
22. Hon. Halima Muecheke, M.P.	
23. Hon. Moses Kirima, M.P.	

Name: E. Libendi Signature:  Date: 17/2/2022
 Committee Clerk

Name:  Signature: Date: 23/2/2022
 Director, Committee Services

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FIFTH SESSION)











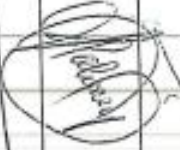

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER

Venue: *Media Centre* Date: *17/2/2022* Time: *11:30am*

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9.	Hon. Anthony Oluoch, M.P.	
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16.	Hon. Simton Ng'ang'a King'ara, M.P.	
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22.	Hon. Halima Mucheke, M.P.	
23.	Hon. Moses Kirima, M.P.	

Name: F. Libandi Signature:  Date: 17/2/2012
 Committee Clerk

Name:  Signature:  Date: 23/2/2012
 Director, Committee Services