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9/5/19

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 09 MAY 2019

DAY.

THURSDAY

TABLED
BY:

HON. WILLIAM
(CHALDO ERSON)

CHEDUNGU

CLERK-AT
TABLE:

WAZO MWALE

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT ON THE CONSIDERATION OF THE 2017/2018 REPORT OF
THE JUDICIARY ON STATE OF THE JUDICIARY AND THE
ADMINISTRATION OF JUSTICE

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2019

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ABBREVIATIONS AND ACRONYMS

CAJ	-	Commission on Administrative Justice
CLE	-	Council for Legal Education
COA	-	Court of Appeal
CoG	-	Council of Governors
CUCs	-	Court Users Committees
DBS	-	Directorate of Building Services
DOJ	-	Department of Justice
EACC	-	Ethics and Anti-Corruption Commission
ECE	-	Early Childhood Education
ELC	-	Environment and Land Court
ELRC	-	Employment and Labour Relations Court
ESAMI	-	Eastern and Southern Africa Management Institute
FIDA Kenya	-	Federation of Women Lawyers Kenya
FIDA-K	-	Federation of Women Lawyers in Kenya
FY	-	Financial Year
GJLOS	-	Governance Justice Law and Order Sector
Hon	-	Honourable
HRMAC	-	Human Resource Management Advisory Committee
ICT	-	Information and Communication Technology
IEBC	-	Independent Electoral and Boundaries Commission
IFMIS	-	Integrated Financial Management Integrated System
IMC	-	Implementation and Monitoring Committee
IPOA	-	Independent Police Oversight Authority
JCE	-	Judiciary Committee on Elections
JPIP	-	Judicial Performance Improvement Project
JSC	-	Judicial Service Commission
KHRC	-	Kenya Human Rights Commission
KLRC	-	Kenya Law Reform Commission
KMJA	-	Kenya Magistrates and Judges Association
KNCHR	-	Kenya National Commission on Human Rights
KPS	-	Kenya Prisons Service
LRF	-	Legal Resources Foundation
MP	-	Member of Parliament
NCAJ	-	National Council for the Administration of Justice
NCLR	-	National Council for Law Reporting
NPS	-	National Police Service
NTSA	-	National Transport and Safety Authority

- OAG - Office of the Attorney General
- ODPP - Office of the Director of Prosecutions
- PAS - Probation and Aftercare Services
- PMMSC - Performance Management and Measurement Standing Committees
- SJT - Sustaining Judiciary Transformation

CHAIRPERSON'S FOREWORD

The Seventh Annual State of the Judiciary and the Administration of Justice Report covers the period from July 1, 2017 to June 30, 2018 and was tabled in the House by the Leader of Majority Party on March 28th, 2019. The report was prepared pursuant to the provisions of Section 5(2) (b) of the Judicial Service Act No.1 of 2011 which requires the Chief Justice to submit to the Clerks of the National Assembly and the Senate, a report on the State of the Judiciary and the Administration of Justice to be placed before Parliament for debate and adoption. Upon tabling, the report was committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

The Committee considered the State of the Judiciary and the Administration of Justice Report for the year 2017/2018 concurrently with the Report for the year 2016/2017. This was done in order to save on time, resources and avoid duplication of work since the matters the Committee was considering in the two reports were the same. For this reason, most of the observations and recommendations made by the Committee in the reports for the two years are similar.


The Committee held six (6) sittings considering the Sixth Annual State of the Judiciary and Administration of Justice Report for the year 2017/2018. While considering the report, Chief Registrar of Judiciary accompanied by other Senior Officers from the Judiciary appeared before the Committee on 2nd May, 2019 and was interrogated on issues in chapters of the report. The Committee unanimously considered and adopted its report at its sitting of 4th May, 2019.

While considering the report and making recommendations, the Committee was guided by the existing procedures and modalities of operations of the National Assembly derived from the Constitution of the Republic of Kenya, Acts of Parliament, the National Assembly Standing Orders, conventions, practices and rulings of the Speaker.

The Committee wishes to express its sincere gratitude to you for the support the House under your leadership accorded it in the consideration of the report judiciary report and compiling this report. The Committee also wishes to appreciate the technical and logistical support accorded to it by the Office of the Clerk of the National Assembly and its secretariat.

I also wish to express my sincere gratitude to Committee Members for their devotion and commitment to duty without which the consideration of the Judiciary report and compilation of this report would not have been possible.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it's my privilege and duty to present to the House a report of the Committee on its consideration of the State of the Judiciary and Administration of Justice Report for the year 2017/2018.

Signed..........Date...09.05.19.....

HON. WILLIAM K. CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

EXECUTIVE SUMMARY

The Sixth Annual State of the Judiciary and the Administration of Justice Report for 2017/2018 was tabled in the House on March 28th, 2019. The report was prepared pursuant to the provisions of Section 5(2) (b) of the Judicial Service Act, No.1 of 2011, which requires the Chief Justice to submit to the Clerks of the National Assembly and the Senate a report on the State of the Judiciary and Administration of Justice to be placed before Parliament for debate and adoption.

This report contains ten (10) Chapters which the Committee interrogated the Judiciary in order to write this report. The Chapters are; Leadership and Management, Access to Justice in Courts, Access to Justice in Tribunals, Jurisprudence, Human Resource Management and Development, Training and Capacity Building within the Judiciary, Infrastructure, Finance and Accounts, Digital Strategy and The State of Agencies and Collaboration in the Justice Sector.

Among the key recommendations the Committee has made in the report are—

- (i) The Judiciary should take necessary action to ensure the Office of the Judiciary Ombudsman is anchored in legislation;
- (ii) The National Assembly and National Treasury should ensure adequate budgetary allocation to the Judiciary to enable it address several issues facing it, most notably for, development of infrastructure and hiring of more Judges and Magistrates to clear case backlog;
- (iii) The Judiciary should develop a policy or draft legislation for enactment providing for timelines within which cases should be heard to address the issue of case backlog and instil public confidence in courts of law.
- (iv) The Attorney-General should submit to the National Assembly for enactment the Tribunals Bill which addresses many issues facing tribunals especially the unwillingness by Ministries to transfer forty (40) Tribunals to the Judiciary which is mandated by the Constitution to be in their charge;

- (v) Agencies and institutions under the umbrella body of the National Council on Administration of Justice should invest in one (1) training institute to save on costs as opposed to each agency wanting to establish its own training institution.

PART 1

1.0 PREFACE

1.1. MANDATE OF THE COMMITTEE

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
 - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
 - (c) study and review all legislation referred to it;
 - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
 - (g) examine treaties, agreements and conventions;

- (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
 - (j) examine any questions raised by Members on a matter within its mandate.
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
- (a) Constitutional affairs;
 - (b) The administration of law and Justice
 - (c) The Judiciary;
 - (d) Public prosecutions;
 - (e) Elections;
 - (f) Ethics, integrity and anti-corruption; and
 - (g) Human rights.

1.2.COMMITTEE MEMBERSHIP

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

No.	NAME	CONSTITU- ENCY	PARTY
1.	Hon. William Cheptumo, M.P. – <i>Chairperson</i>	Baringo North	Jubilee
2.	Hon. Alice Muthoni Wahome, M.P. – <i>Vice Chairperson</i>	Kandara	Jubilee
3.	Hon. John Olago Aluoch, M.P.	Kisumu West	ODM
4.	Hon. Roselinda Soipan Tuya, M.P.	Narok County	Jubilee
5.	Hon. Charles Gimose, M.P.	Hamisi	Ford Kenya
6.	Hon. William Kamoti Mwamkale, M.P.	Rabai	ODM

7.	Hon. Peter Opondo Kaluma, M.P.	Homa Bay	ODM
8.	Hon. Ben Orori Momanyi, M.P.	Borabu	Wiper Democratic Movement
9.	Hon. Johana Ng'eno, M.P.	Emurua Dikirr	KANU
10.	Hon. George Gitonga Murugara, M.P.	Tharaka	Democratic Party
11.	Hon. Anthony Githiaka Kiai, M.P.	Mukurueni	Jubilee
12.	Hon. Gladys Boss Shollei, CBS, M.P.	Uasin Gishu County	Jubilee
13.	Hon. Beatrice Adagala, M.P.	Vihiga County	Amani National Congress
14.	Hon. Jennifer Shamalla, M.P.	Special Interests	Jubilee
15.	Hon. John Munene Wambugu, M.P.	Kirinyaga	Jubilee
16.	Hon. Japheth Mutai, M.P.	Bureti	Jubilee
17.	Hon. Adan Haji Yussuf, M.P.	Mandera West	Economic Freedom Party
18.	Hon. John Kiarie Waweru, M.P.	Dagoretti South	Jubilee
19.	Hon. Zuleikha Hassan, M.P.	Kwale County	ODM

1.3.COMMITTEE'S SECRETARIAT

4. The Committee's secretariat comprises the following-

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms

5. Minutes of sittings of the Committee in respect of the consideration of the State of the Judiciary and the Administration of Justice Annual Report 2017-2018 are attached to this report.

PART 2

2.0 CONSIDERATION OF THE STATE OF THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE ANNUAL REPORT (2017/2018)

6. The State of the Judiciary and Administration of Justice Report covers the period from July 1, 2017 to June 30, 2018. It was prepared in fulfilment of Section 5(2) (b) of the Judicial Service Act No.1 of 2011 which requires that once every year the Chief Justice submits to the Clerks of the National Assembly and the Senate a report on the State of the Judiciary and Administration of Justice to be placed before Parliament for debate and adoption. The Report has been submitted to the National Assembly pursuant to the above provision.
7. The Report indicates the Judiciary's progress in its transformation journey as part of the on-going implementation of Kenya's Constitution 2010. It also records the achievements and challenges experienced by the Judiciary in the FY 2017/2018.

2.1.CHAPTER 1: LEADERSHIP AND MANAGEMENT

8. Chapter one of the report focuses on leadership and management while setting out the mandate of the Judiciary and the source of judicial authority. It also explains the principles that guide the administration of justice that are captured under Article 159 of the Constitution.
9. The chapter notes the progress and challenges in the specific areas of focus in the implementation of the Sustaining Judiciary Transformation (SJT): A Service Delivery Agenda 2017- 2021. The Hon. the Chief Justice established an Implementation and Monitoring Committee (IMC) of the SJT strategic blueprint which is chaired by the Hon. the Deputy Chief Justice and reports regularly to the Hon. the Chief Justice on the progress in the implementation of SJT. The implementation of the strategic blueprint is being executed through a bottom-up approach where each unit, court station, and directorate is required to contextualize the strategic blueprint in a manner that best serves their particular service delivery requirements.
10. These units have submitted, inter alia, their service charters, case backlog clearance strategies and Court User Committee (CUC) work plans and the same have been reviewed by the IMC towards the development of an efficient and effective institution-wide comprehensive action plan monitoring strategy. The key task of the IMC is to monitor and assist each

unit and court station in the implementation of their comprehensive action plans and strategies towards the realization of the wider objectives of the SJT.

11. The chapter details the progress in the undertaking by the Chief Justice to clear cases that are five years or older. At the time the Chief Justice made the undertaking, there was a backlog of 170,186 cases in the entire Judiciary that were over 5 years old. As at 30th June 2018, total case backlog of cases over five years in age stood at 83,468, details of which are covered in Chapter two.
12. The Presidential election petition that was filed in August 2017 led to nullification of the presidential election results by a majority of the Supreme Court judges on 1 September 2017 and the ordering of fresh elections. The Supreme Court subsequently upheld the repeat presidential election results on 20 November 2017. Election petitions increased from 188 in the 2013 general election to 391 in the August 2017 general election. There were 3 presidential election petitions, 35 petitions against the position of Governor, 15 petitions against the seats of senator, 98 election petitions against Members of the National Assembly, 12 petitions against Woman representatives, 139 petitions against positions of Members of County Assemblies, 80 Party List petitions at Magistrates' Courts, and 9 Party List Petitions at the High Court.
13. The Chapter also notes the significant growth in donor funding and partnerships during the period under review, with the major highlight being the launch of the Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD). The PLEAD Programme is a 34 Million Euros Programme for the Kenya Justice system which focuses on the following twelve (12) counties: Wajir, Mandera, Marsabit, Tana River, Isiolo, Lamu, Garissa, Kisumu, Nakuru, Mombasa, Uasin Gishu, and Nairobi. The Programme seeks to strengthen the rule of law and effectiveness in the criminal justice sector for a period of five years.
14. The Chapter also details the number of documents (institutional, policy and legislative) that were developed during the reporting period, as well as the committees and taskforces that the Judiciary established or participated in establishing.
15. One of the pillars of the SJT is to strengthen the Office of the Judiciary Ombudsman. The Chapter indicates that during the reporting period, a total 3515 complaints were lodged. Out of these, 2324 complaints were processed and closed successfully. This represented 66 per cent of the total complaints received.

2.1.1 Committee's observations

16. The Committee observed as follows-

- (i) The Judicial Service Act Schedule 3 Part IV Paragraph 15 delegates specified disciplinary roles to the Chief Justice on behalf of the Judicial Service Commission;**
- (ii) The Chief Justice administratively created the Office of the Judiciary Ombudsman to assist in the performance of the roles set out in Paragraph 15 of Part IV of Schedule 3 of the Judicial Service Act;**
- (iii) That the existence of the Office of the Judiciary Ombudsman is not widely known and therefore the need for awareness creation;**
- (iv) In the past, the Office of the Judiciary Ombudsman was held by a Magistrate. However, issues arose when the Office received complaints against Judges and it became untenable that a Magistrate would handle complaints concerning Judges. Accordingly the Chief Justice designated the Deputy Chief Justice to serve as the Judiciary Ombudsman;**
- (v) That from 16th June to 20th October, 2016, both the offices of the Chief Justice and the Deputy Chief Justice was vacant thus posing a challenge of leadership in the Judiciary. To avoid the occurrence of such a leadership vacuum in future, Parliament has since amended section 5 of the Judicial Service Act to provide that the senior most Judge in the Supreme Court shall act as the Chief Justice should there be a vacancy in both the offices of the Chief Justice and the deputy Chief Justice.**

2.1.2 Committee's recommendations

17. The Committee recommends as follows-

- (i) The Judiciary should submit to the National Assembly for enactment a legislative proposal to entrench the Office of the Judiciary Ombudsman in law;**

- (ii) **The Judiciary should create public awareness on the role and functions of the Office of the Judiciary Ombudsman to increase its effectiveness.**

2.2.CHAPTER 2- ACCESS TO JUSTICE

18. Chapter two is on the theme of access to justice and is divided into two parts. The first part analyses backlog and statistics of cases before the different courts. The chapter provides quantitative and qualitative information from the courts and provides a picture of how courts are performing. In the FY 2017/18, a total of 402,243 cases were filed in the Judiciary out of which 283,788 were criminal cases while 118,455 were civil cases. In the same period, a total of 370,488 cases were resolved in all courts, which comprised 243,821 criminal cases and 126,667 civil cases.
19. Cases filed in the Judiciary rose from 344,180 in the FY2016/17 to 402,243 cases in the FY 2017/18, which is a 15 per cent increase, which is a likely indicator of the rising level of public confidence in the Judiciary.
20. The total number of pending cases rose by 4 per cent from the 533,350 cases at the end of 2016/17 FY to 553,187 cases at the end of FY 2017/18 which comprised of 219,686 criminal cases and 333,501 civil cases. Majority of the pending cases were in the Magistrate courts at 407,631 cases followed by High Court at 97,327 cases. The least number of pending cases were in the Supreme Court at 95 cases. Out of all pending cases, 74 per cent were in Magistrate Courts, 18 per cent in High Court, 4 per cent in ELC and 2.8 per cent in ELRC. The other courts shared 1.52 per cent.
21. At the end of the period under review, the total number of cases classified as backlog stood at 327,928 cases. Out of these cases, 205,762 cases which represents 55 per cent were aged between 1 and 3 years, 84,671 cases representing 23 per cent between 3 and 5 years and 22 per cent were over 5 years representing 82,495 cases.
22. The Magistrate and High Court had the highest case backlog at 260,653 and 76,208 cases respectively. By the end of period under review, the Supreme Court and Kadhis' court had no case backlog aged over 5 years.
23. Effective administration of justice requires strategies beyond the courtroom. Accordingly, the second part of the Chapter describes the various strategies and efforts that have been put in place to broadly enhance and improve access to justice. The initiatives detailed in the chapter include: reduction of

case backlog; digitization of Judiciary processes and enhancement of human resource capacity.

24. Other measures are: improvement of court infrastructure, implementation of performance management and measurement, and entrenchment of alternative dispute resolution mechanisms which the Judiciary has been supporting with an aim of enhancing access to justice in line with the provisions of article 159 of the Constitution. During the period under review, the Judiciary accredited 88 mediators to undertake the Court Annexed Mediation (CAM) process.

2.2.1 Committee's observations

25. The Committee observed as follows-

- (i) Lack of statutory or policy documents providing for timelines within which cases should be heard by courts, and the inadequate number of Judges and Magistrates were major factors contributing to case backlog in the Judiciary;**
- (ii) Delayed conclusion of court cases was frustrating to litigants, and hampered economic growth as it leads to project stalling, funds being held up without use and discouragement of potential local and foreign investors among other effects;**
- (iii) That while several cases were determined on merit through various measures devised and employed by the Judiciary, several other cases were dismissed for want of prosecution as part of the strategies deployed by the judiciary to reduce case backlog;**
- (iv) Whereas mobile courts were necessary in the reduction of case backlog, inadequate funding of other government agencies like the Office of the Director of Public Prosecutions hampered their operations thereby making achievement of desired results difficult;**
- (v) The Judiciary has embraced Alternative Dispute Resolution mechanisms and rolled out Court Annexed Mediation to several counties as a means of reducing backlog of cases which is commendable. Seven Hundred and five (705) matters were filed with a value of 20.8 Billion Kenya shillings and those**

settled were 228 matters with a value of 2.6 Billion Kenya Shillings ;

- (vi) The Judiciary has developed a Performance Management and Measurement framework to monitor the performance of Judges, judicial officers and staff with a view to reducing case backlog;
- (vii) Out of the Judiciary's Magistrates approved establishment of 1200, there were 500 Magistrates leaving a shortfall of 700. The Magistrates have a heavy workload since most cases in the country are filed in Magistrates Courts. For comparative purposes, the Committee observed that a country like Germany with a population of about 80 million had 20,000 Judges and thus Kenya really needs to increase the number of Judges and Magistrates given that our population is about half of that of Germany.
- (viii) Hiring additional Magistrates and increasing the jurisdiction of Magistrates to deal with matters currently a preserve of the High court and Courts of equal status would significantly reduce case backlog;
- (ix) That the current thirty-three (33) Judges in the Environment and Land Courts and the fifteen (15) Judges in the Employment and Labour Relation Courts are inadequate to expeditiously deal with disputes;
- (x) While the Small Claims Courts Act, 2016 has been enacted, the Small Claims Courts have not been operationalized due to a lack of Rules.

2.2.2 Committee's recommendations

26. The Committee recommends as follows-

- (i) The Judiciary should propose legislation for enactment by the National Assembly providing for statutory timelines within which cases should be heard and determined by courts;
- (ii) The National Assembly and the National Treasury should allocate adequate resources to the Judiciary to enable it employ

more Judges and Magistrates for expeditious determination of cases before the courts;

- (iii) The Judiciary should increase the jurisdiction of Magistrates to deal with matters currently a preserve of the High court which would significantly reduce the backlog in the High Court;**
- (iv) The Judiciary should as a matter of urgency submit to the National Assembly for approval Rules to operationalize the Small Court Claims Act, 2016.**

2.3.CHAPTER 3- ACCESS TO JUSTICE- TRIBUNALS

27.Chapter three covers the activities of tribunals. The Constitution places tribunals under the Judiciary, therefore making the bodies a critical part of the Judiciary's broader structure. Previously, the different tribunals were under the respective ministries. There are about sixty (60) tribunals in Kenya. The chapter reports that five tribunal transited to the Judiciary during the reporting period bringing the cumulative figure of those that have been transited by the National Treasury to twenty (20). During the period under review, 5,615 cases were filed while 2,530 cases were resolved. At the close of the financial year, there were 11,100 cases pending in all tribunals. The chapter also contains jurisprudence from the decisions of the tribunals.

28.The Rent Restriction Tribunal had the highest number of filed cases followed by Cooperative Tribunal and Business Premises Tribunal. The case clearance rate for the period under review was 45%. During the period under review, 11,100 cases were pending in all tribunals.

29.Key achievements and developments in Tribunal administration in the Financial Year 2017/2018 include- Induction training for new Tribunal members and secretariat staff, institutionalizing performance management and staff performance appraisals, assessment of Tribunal registries and records, launch of service weeks at the Cooperative Tribunal, launch of Service weeks at the Cooperative Tribunal, assessment of staff working in Tribunals, operationalization of new Tribunals, development of Service Delivery Charters and Strategic Plans, capacity building activities aimed at skills and competency development, and conduct of public awareness initiatives.

2.3.1 Committee's observations

30. The Committee observed as follows-

- (i) Whereas the Constitution of Kenya places all tribunals under the Judiciary, some tribunals had not transited from the parent ministries to the Judiciary thereby posing challenges to the Judiciary in administering them;**
- (ii) There are sixty (60) tribunals in Kenya out of which only twenty (20) are under the Judiciary administratively while the rest are still under their respective ministries;**
- (iii) That many ministries are resistant to transferring tribunals under them to the Judiciary;**
- (iv) Some tribunals did not have chairpersons or had gone for long without chairpersons and members. These include the Competition Tribunal, the Industrial Property Tribunal, the HIV/ AIDS Tribunal, the Energy Tribunal, the Micro and Small Enterprises Tribunal, Business Premises Tribunal, Sports Disputes Tribunal, and the State Corporations Appeals Tribunals;**
- (v) A Bill addressing the issue of transition of tribunals to the Judiciary has been submitted to the Office of the Attorney-General and Department of Justice for onward transmission to the National Assembly for enactment.**

2.3.2 Committee's recommendations

31. The Committee recommends that the Attorney-General, should as a matter of urgency, submit to the National Assembly for enactment the Tribunals Bill to address the aforesaid issues affecting tribunals.

2.4. CHAPTER 4- JURISPRUDENCE

32. Chapter four reviews jurisprudence that emerged from the courts during the period under review. Courts at various levels made several ground breaking

decisions in various areas of law including constitutionality of the mandatory nature of the death penalty, electoral laws, constitutional law, criminal law, family law, land and environment, and employment and labour matters among others, which advanced the course of justice and development of jurisprudence.

33. Decisions covered under this chapter include those from the High Court, the Employment and Labour Relations Court, the Environment and Land Court, the Court of Appeal, and the Supreme Court. The Chapter also includes a list of laws that were declared unconstitutional by the courts during the period under review.

2.4.1 Committee's observations

34. The Committee observed as follows-

- (i) **Article 159 of the Constitution of Kenya provides that judicial authority is derived from the people of Kenya and vests in and is exercised by the courts and tribunals which shall be guided by justice for all and justice without undue delay principals, among others;**
- (ii) **During the period under review, the Judiciary made key decisions most notably in election disputes, constitutional law, criminal law, family law, land, environment, employment and labour matters among others. These decisions contributed to the development of jurisprudence;**
- (iii) **Among the key decisions made by the Supreme Court include the August, 2017 presidential election petition – Raila Odinga and Another vs the Independent Electoral and Boundaries Commission where the Court nullified the election of President Uhuru M. Kenyatta on account of irregularities and illegalities committed by the IEBC in the conduct of the elections;**
- (iv) **In Supreme Court Ref. No. 1 of 2015 the Speaker of the County Assembly of Embusought the Supreme Court's opinion on how assumption to the office of Governor and the Deputy Governor should be effected. The Court issued an advisory opinion and requested Parliament to enact legislation to**

provide for the process of assumption to the office of Governors and Deputy Governors;

- (v) In the case of *Francis Kariako Muruatetu & Another vs the Republic*, the Supreme Court declared the mandatory death sentence provided for under section 204 of the Penal Code as unconstitutional. The Supreme Court thus remitted the petition back to the High Court for sentence rehearing on priority basis and directed the Attorney-General to provide for a mechanism that would guide the sentence rehearing for all death row convicts not later than 31st December, 2018;
- (vi) The Government of Kenya was spending about 1 billion Kenya shillings annually feeding and maintaining death row convicts (Kenya Correctional Services estimates);
- (vii) The ruling by the Supreme Court in *SC Ref No 2 of 2013 Senate and Another vs the National Assembly and Others* on the jurisdiction of the National Assembly and the Senate lacked clarity and was a source of conflict between the two Houses;
- (viii) The decision by the courts clarifying the jurisdiction of Judges of the High Court and that of Judges of Specialized Courts raises issues on the efficient use of Judiciary resources and is a matter that may be addressed through a constitutional amendment;
- (ix) The Judiciary submits that the timeline for hearing of presidential elections petition of fourteen (14) days was inadequate and should be increased to thirty (30) days. This will require a constitutional amendment and legislative proposals to that effect have been rejected by the Committee on two previous occasions;
- (x) The Supreme Court was not meant to be an appellate court for all matters and there is need to review the law to provide clarity as to the matters that can be dealt with by the Supreme Court.

2.4.2 Committee's recommendations

35. The Committee recommends as follows-

- (i) Jurisdiction of judges serving in the Specialized Courts and those of the High Court should be reviewed to enable Judges to be administratively redeployed;**
- (ii) The Judiciary should submit to Parliament for consideration draft legislation increasing the timeline within which the Presidential Election Petition should be heard from fourteen (14) to thirty (30) days.**
- (iii) Parliament should enact legislation on assumption to office by the Deputy Governor and filling of vacancies as and when they arise;**
- (iv) Parliament should enact legislation to clearly delineate the jurisdiction of the Supreme Court.**

2.5.CHAPTER 5- HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

36. Chapter five reports on the development and status of human resource in the Judiciary. The goal of the Judiciary is to ensure that there is adequate human resource to support the operations of the Judiciary. During the period under review, the Judicial Service Commission (JSC) concluded a recruitment process for various officers whereby 67 people were appointed. 49 of the new employees (representing 73 per cent) are female, while 18 of them (27 per cent) are male composed. 42 Resident Magistrates were appointed, 10 Law Clerks and 15 others in different positions of service.
37. The Judiciary had 5,598 employees as at the end of the reporting period. The Judiciary is composed of 155 Judges (2.8 per cent); 513 Magistrates and Kadhis (9.2 per cent) and 4,930 (88.1 per cent) Judicial Staff. There are 2,702 female employees representing 49.2 % and 2,896 are male, representing 51.7% of the Judiciary workforce. 91 members of staff are Persons living With Disabilities (PWDs), representing 1.6 per cent of the Judiciary workforce.
38. The report notes that the Recruitment of 283 judicial staff was put on hold awaiting completion of the Organization Review process. The Human Resource Policies and Procedures Manual Taskforce was constituted to carry out a review of existing Human Resource Policies and Procedures Manual

and identify gaps and capacity weakness in relation to best practices and the public service management standards

39. The Chapter reports a number of policy development during the reporting period, all aimed at ensuring an effective and optimal human resource outlay in the Judiciary. These include the successful conclusion of the Judiciary Organizational Review, and the Judiciary Training Policy and the Records Management Curriculum.

2.5.1 Committee's observations

40. The Committee observed as follows-

- (i) During the reporting period the Judiciary undertook an organizational review in order to restructure the institution in a manner that would ensure better delivery of services. A report on the organizational review and restructuring was submitted to the Judicial Service Commission for adoption. This, together with other ongoing reforms, are expected to ensure that the Judiciary operates at its optimum and that the resources at their disposal (financial and human) are utilized in the most efficient manner;**
- (ii) During the year under review, the Judiciary continued to recruit for various posts and also carried out transfers, promotions and deployment of staff to various court stations to ensure effectiveness and efficiency in the provision of services;**
- (iii) During the year under review, the Judiciary commenced the review of the human resource manual and entrenched performance appraisal system to improve on efficiency and measure the performance of staff;**
- (iv) The Judiciary borrowed aspects of the Parliamentary Service Commission in the provision of medical services to staff whereby it was dealing directly with the service providers for outpatient services thereby saving about Kshs. 50,000,000.00 monthly;**
- (v) The Judiciary experienced delay in service delivery which was majorly occasioned by poor organizational structures. The**

organizational structure has been reviewed and implementation is underway;

- (vi) It was important for the judiciary to consider the welfare and interest of the staff member while undertaking transfers.**

2.5.2 Committee's recommendations

41. The Committee recommends as follows-

- (i) The Judiciary should fast track the implementation of the new organizational structure to guard against delays in service delivery;**
- (ii) The National Assembly should allocate 300 million Kenya Shillings towards the implementation of the new organizational structure with regard to recruitment of new staff; upgrading, promotion and re-designation of staff; transfers and staff movements; and skills and audit documentation as required.**

2.6. CHAPTER 6- TRAINING AND CAPACITY BUILDING WITHIN THE JUDICIARY: THE JUDICIARY TRAINING INSTITUTE

42. Chapter six provides an update on the Judiciary's training and capacity development, a mandate that is executed through the Judiciary Training Institute which was established in 2008 to provide training for Judges and magistrates. The JTI led various activities focusing on innovativeness in learning, research, and training. The JTI Aids in coordinating and synchronizing all training activities within the Judiciary and to ensure that as far as possible, training programs do not interfere with the court diary and the core mandate of the Judiciary which is adjudication of disputes

43. In this regard, JTI oversaw the production of various publication and studies that continue to assist in research and capacity development. The publications focused on areas such as backlog clearance, and election dispute resolution. The JTI also assisted in carrying out capacity and training needs assessment, which formed the basis of the training calendar for the Judiciary.

44. The JTI also supported the development of various policy and institutional document, including the Judicial Code of Conduct, and the Judiciary

Training Policy. Other activities included regional and international partnerships and collaboration in the area of judicial education and capacity development.

2.6.1 Committee's observations

45. The Committee observed as follows-

- (i) The Judicial Training Institute (JTI) conducts in-house training for Judges, Judicial officers and judicial staff. The Institute issues certificates of attendance or participation after completion of training.**
- (ii) The JTI is not an accredited training institution and as such the certificates issued cannot be used for employment or promotion at work;**
- (iii) The Judiciary Training Institute is operating on premises leased from Postbank Kenya Ltd. The Bank has put up the premises valued at 1.2 billion shillings for sale and Judiciary has put a bid to purchase the premises. The Judiciary is engaging the National Treasury to obtain the requisite resources;**
- (iv) Apart from the JTI other Agencies in the justice sector like the ODPP and the EACC are also seeking funding to establish training institutes dedicated to their respective mandates.**

2.6.2 Committee's recommendations

46. The Committee recommends as follows-

- (i) The Judiciary Training Institute should pursue accreditation with the relevant agencies to ensure that the certificates issued are recognized and may be used for employment or promotion;**
- (ii) The National Treasury should provide funding in the next financial year to the Judiciary to purchase the Postbank premises currently being used by the Judiciary Training Institute;**

- (iii) **Agencies and institutions under the umbrella body of National Council on Administration of Justice such as EACC, ODPP, and OAGDJ should have one training institute to be spearheaded by the Judiciary to save on costs as opposed to each agency proposing to have its own school.**

2.7.CHAPTER 7- INFRASTRUCTURE

47. Chapter seven provides updates on the progress with the Judiciary's physical infrastructure across the country. The Sustainability Judiciary Transformation (SJT) blueprint designates infrastructure development as a major pillar in the transformation of the Judiciary.
48. In total, there are 102 court construction and rehabilitation works at various stages of progress and measures have been put in place to complete the projects within the stipulated timeframe and budgetary provisions while maintaining good quality of finishes. Once completed, these courts will provide adequate infrastructure that will improve physical access to courts and reduce the distance travelled in search of justice.
49. During the period under review, there were 54 courts that were undergoing construction and rehabilitation and tender evaluation for construction was going on in one court. There were 13 new construction and rehabilitation initiated during the period under review. The chapter reports that there was drilling and equipping of 13 boreholes, shelving works at 10 courts, and provision of furniture for 11 courts.
50. Policy developments reported include the development of a long-term Judiciary Infrastructure Master Plan to guide the development of physical infrastructure in the Judiciary. This master plan maps out the areas the institution would like to establish and build new courts in the coming 10 years. It also provides basic expectations of a standard court that guides the Directorate of Building Services in the designs. Also, through the involvement of the Court Users Committees, specific court building design specifications are improved. Further, planning is undertaken to ensure that all new buildings are disability friendly, ICT infrastructure is integrated, drilling of a borehole is incorporated where necessary and there is provision of furniture, among others.
51. During the period under review, the following 13 construction and rehabilitation projects were completed; Kigumo, Bomet, Nyando, Molo, Engineer, Othaya, Nkubu, Makindu, Competitions tribunal, Mpeketoni,

Ukwala, Siaya and JSC offices. On average the remaining 41 projects are 73% complete.

52. The projects that had large scopes of works were not completed on time due to various challenges that included delayed payment, lengthy procedure for approvals of variations, unfavourable weather conditions, poor performance by contractors and budgetary cuts.

53. The Judiciary commenced construction of new buildings in order to bring justice closer to the people. The buildings are based on the model designs developed by the Directorate of Building Services officers in-house and will have eight (8) court rooms and twelve (12) chambers for the High Court model and four (4) court rooms and five (5) chambers for the magistrate court model. Other features for both models are registries, service bays, lactation rooms, ramps, gender separated cells, public washrooms, advocates lounge and offices. The new constructions commenced in the reporting period include Habasweini, Isiolo, Wajir, Ol-Kalou, Kakamega, Mukurweini, Mombasa, Makueni, Kangema and Kajiado.

2.7.1 Committee's observations

54. The Committee observed as follows-

(i) Infrastructural development was a major pillar in transformation of the Judiciary as articulated in the Sustaining Judiciary Transformation blue print;

(ii) During the year under review, there were one hundred and two (102) court construction and rehabilitation works across various stations in the country. Out of the courts that were under construction, twenty-eight (28) were being financed by the World Bank of which nineteen (19) were refurbishments and nine (9) were construction of new courts. The Bank is also financing the provision of furniture for eleven (11) courts. These projects are set to be completed by 20th October, 2020. The Government of Kenya is financing the ongoing construction and rehabilitation of fifty-four (54) courts, new construction of thirteen (13) courts, tender evaluation for construction of one (1) court, drilling and equipping of thirteen (13) boreholes, shelving works at ten (10) courts and refurbishment of thirty-one (31) courts.

- (iii) The main challenges experienced by the Judiciary in implementation of projects were inadequate funding; delayed exchequer releases, court injunctions and lack of title documents. The issue of lack of title documents was being handled administratively.**

2.7.2 Committee's recommendations

55. The Committee recommends as follows-

- (i) The Judiciary should ensure proper project planning and implementation to ensure projects are implemented to acceptable standards, in good time and there is value for money;**
- (ii) The Judiciary should ensure that old and ongoing projects are completed before embarking on new ones;**
- (iii) The National Treasury should ensure timely disbursement of exchequer to the Judiciary and other agencies to ensure timely undertaking of projects to avoid possible litigation and escalation of costs as a result of delay;**
- (iv) The Judiciary should take necessary action to ensure that it has title documents for all its land.**

2.8. CHAPTER 8- DIGITAL STRATEGY

56. Chapter eight highlights the Judiciary's developments with regard to ICT and implementation of the digital strategy. The Chapter highlights the progress with the implementation of the Judiciary operation support system comprising various components of digitisation (electronic filing and case tracking). Currently, the solution is under pilot testing phase at the Commercial and Tax Division in Milimani where 333 cases have been filed online and payment of Ksh 1.9 million made through the KCB Mpesa solution. More than 14 law firms are participating in the pilot project. The chapter also reports that a total of 147,789 have been captured in the Case Tracking System. Other planned services include court recording and transcription services, speech to text technology, Enterprise Resource Planning (Judiciary Financial Integrated Management Information system, Judiciary Integrated Performance Management and Accountability System, ICT Online Desk, and the Ombudsman online desk). The ICT Department also developed and concluded the Judiciary ICT Policy and Master Plan.

2.8.1 Committee's observations

57. The Committee observed as follows-

- (i) Emerging trends worldwide in technology had opened a window for innovation in employment. The 4th pillar of the Judiciary Transformation Framework identifies ICT as a key result area. Use of technology is important in the administration of justice like in many other sectors;**
- (ii) Out of the one hundred and thirty-two (132) court stations, only six (6) had not been connected with reliable internet and these were mainly stations in remote areas of the country in the North Eastern region. The Judiciary was working closely with the Ministry of ICT to ensure the stations are connected;**
- (iii) The use of virtual court systems would be a major milestone in the administration of justice in Kenya. The Committee however noted that there was no mention of virtual systems in the report (*Judiciary directed to provide information on this matter*).**

2.8.2 Committee's recommendations

58. The Committee recommends as follows-

- (i) The Judiciary should ensure that the remaining six (6) court stations are connected with reliable internet to facilitate improved service delivery;**
- (ii) There should be continuous training of ICT officers to ensure implementation of the Digital Strategy.**

2.9. CHAPTER 9- FINANCE AND ACCOUNTS

59. Chapter nine presents an analysis of the Judiciary's financial performance covering areas such as funding within the national context, including a comparative analysis of overall budgetary allocation for the arms of government and public institutions. The Chapter also provides information on revenue and deposits from courts.

60. The overall national budget has been growing steadily over the years, from Kshs. 1.5 trillion in the FY 2015/16 to Kshs 1.7 trillion in the FY 2016/17 and Kshs 2.0 trillion in the FY 2017/18. However, Judiciary's budget has not grown in tandem with the overall national budget. While the Executive has been receiving an average of 97 per cent, the Judiciary's share has remained below 1 per cent of the national budget over the years. In the FY 2017/18, the budget went down to 0.7 per cent, negatively impacting on the achievement of planned targets and consequent realization of the Judiciary's mandate.
61. The total approved budget for the FY 2017/18 amounted to Kshs 14.27 billion which comprised of Kshs 12.70 billion recurrent and 1.57 billion development. Out of the allocated funds for development vote 78 per cent (Kshs. 1.23 billion) was from World Bank under the Judicial Performance Improvement Project (JPIP) programme. Hence, only 22 per cent (Kshs 340 million) of the development budget was from Government of Kenya. Total budget allocation declined by 17 per cent from 17 billion in FY 2016/17 to 14.2 billion in FY 2017/18. This led to an accumulation of overall pending bills amounting to Kshs 528 million.
62. In the year under review, there were thirty-eight (38) ongoing projects funded by the Government of Kenya budget. Of these twelve (12) were completed and twenty-six (26) were at various stages of completion.
63. There were twenty-eight (28) projects supported by the World Bank grant through the JPIP. Two were completed and handed over (Kigumo and Makindu). (Some were recently handed over after June, 2018). The whole World Bank loan is spread over 5 years. An extension was given from December, 2018 to October 2020.
64. The Judiciary is a receiver of revenue on behalf of the National Government. Its revenue comprise court fees, fines, forfeitures and other charges paid directly into the Treasury accounts as revenue. The Judiciary has a policy on non-collection of cash hence all revenue is received in all court stations through cashless systems mainly direct banking, M-Pesa and through agency banking. These avenues have minimized the risks associated with the handling of cash and boosted revenue collections and accountability. The total revenue collected in FY 2017-18 amounted to Kshs 2.075 billion compared to Kshs 1.972 billion in FY 2016-17. The increase was as a result of improved cash collection methods.

65. By June 30, 2018, the Judiciary held court deposits and other funds held in trust for third parties amounting to KShs. 5,126,896,135. This was an increase from the KShs 4,367,834,191 that was held at the end of FY 2016/17. Court deposit includes funds retained for construction projects. The funds are refundable as and when court orders are issued or after six months liability period for retention monies.

66. Other matters covered in the chapter include: automation of revenue, expenditure and deposits; delinking of court station accounts from the sub-county treasuries, and the progress realized in the operationalization of the Judiciary Fund. The Judiciary finalised and submitted draft Judiciary Fund Regulations to operationalize the Judiciary Fund.

67. The Report also notes challenges that the Judiciary has faced with regard to finances. These are-

- i. Insufficient resources- This has affected the development and completion of physical infrastructural especially construction of courts in sub-counties and counties, digitization of judiciary processes through full roll out of the ICT infrastructure, human resource capacity improvement especially the hiring of optimal number of judges and magistrates and continuous education, and sufficient finances for the recurrent budget.
- ii. Lack of land ownership documents in some courts- This has hampered the undertaking of infrastructural projects.

2.9.1 Committee's observations

68. The Committee observed as follows-

- (i) There was a drop in allocation of resources to the Judiciary during the year under review and this impacted negatively on operations. In fact Government funding to the Judiciary had always been unstable with much variance between what was approved and what was allocated;**
- (ii) The Judiciary has gazetted regulations to operationalize the Judiciary Fund and is awaiting National Assembly approval. Operationalization of the Fund would guarantee financial stability for the Judiciary;**

- (iii) Despite introducing cashless payment systems at Judiciary for goods and services, some judicial staff in conspiracy with unscrupulous Bank agents had misappropriated funds paid to the institution. In this respect, some staff were facing disciplinary action while others had been dismissed from the judicial service;**
- (iv) During the period under review, the Judiciary improved its budgetary absorption rate from 89% in 2016/ 2017 to 94%;**
- (v) Monies deposited or received by the Judiciary through its bank accounts did not earn interest as the Public Finance Management Act, 2012 prohibited this;**
- (vi) Though there were many models for courts construction, the Judiciary was constructing new courts with the future in mind. For this reason courts constructed in different stations would have some variations in terms of size and other aspects;**
- (vii) Some Judges lack official vehicles while some were operating vehicles in poor mechanical conditions which is demeaning and embarrassing to the Judges considering their status in society;**
- (viii) Whereas Judges were provided with cars for official use, Magistrates do not enjoy the same privilege. Instead, they have a car loan facility. The Committee was concerned with the poor terms and conditions of service accorded to Magistrates yet they handled the bulk of the cases filed in courts.**

2.9.2 Committee's recommendations

69. The Committee recommends as follows-

- (i) The National Assembly and National Treasury should allocate adequate resources to the Judiciary to address financial issues emerging under this Chapter;**
- (ii) The Judiciary should come up with a legislative proposal to amend the PFM Act to enable all monies held in bank accounts maintained by the Judiciary to earn interest.**

2.10. CHAPTER 10- THE STATE OF THE AGENCIES AND COLLABORATION IN THE JUSTICE SECTOR

70. Chapter 10 contains reports from the justice sector agencies as well as a report of activities of the various organs and committees of the National Council for the Administration of Justice. The institutions whose reports of activities are covered under Chapter 10 are: the National Council for the Administration of Justice (NCAJ), Office of the Attorney General and Department of Justice (OAG&DOJ), Office of the Director of Prosecutions (ODPP), the National Police Service (NPS), the Kenya Prisons Service (KPS), the Probation and Aftercare Services, the Community Service Orders Programme (PAS), the Ethics and Anti-Corruption Commission (EACC), the Council of Governors (CoG), the National Council for Law Reporting (NCLR), the Kenya Law Reform Commission (KLRC), the Commission on Administrative Justice (CAJ), the Independent Police Oversight Authority (IPOA), the National Transport and Safety Authority (NTSA), the Kenya National Commission on Human Rights (KNCHR), the Kenya Human Rights Commission (KHRC), the Council for Legal Education (CLE), the Federation of Women Lawyers in Kenya (FIDA-K), the Department of Children Services, the CRADLE, and Legal Resources Foundation (LRF).

71. The Chapter provides specific reports of the institutions above, thereby giving a broad view of the progress and challenges of the main actors in the justice sector. A number of multi-agency activities were undertaken under the aegis of the NCAJ, the main ones being preparedness for elections and multi-donor programmes and activities aimed at various justice initiatives. A review of the reports also demonstrates that the inadequacy of resources continues to be a major challenge among justice sector institutions, the Judiciary included. However, the institutional reports also demonstrate a willingness to collaborate and overcome this and other challenges highlighted in the report.

2.10.1 Committee's observations

72. The Committee observed as follows-

- (i) The National Council on Administration of Justice was responsible for the collaboration of all agencies in the justice sector with a view to ensuring enhanced service delivery and institutional strengthening amongst members;**

- (ii) The National Council on Administration of Justice was underfunded. During the year under review, it was allocated 50 million shillings from the Judiciary which was inadequate to run its programmes and activities. The Council had to source and obtained additional funds from development partners in order to sustain its operations and activities;**
- (iii) The Bail and Bond Implementation Committee had developed a draft Bail and Bond Bill for enactment, this being a major achievement during the year under review;**
- (iv) The Special Taskforce on Children matters had also developed a Children's Bill for enactment;**
- (v) The National Council on Administration of Justice is established under section 34 of the Judicial Service Act;**
- (vi) The National Council for Law Reporting (NCLR) which is primarily mandated to monitor and report on the development of Kenya's jurisprudence through the publication of the Kenya Law Reports, is domiciled in the Office of the Attorney General;**
- (i) It was noted that some Court Users Committees failed to produce their annual reports on activities undertaken due to lack of resources.**

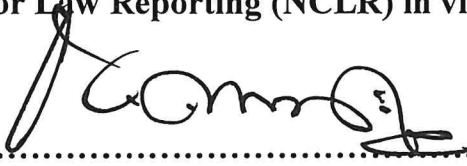

2.10.2 Committee's recommendations

73. The Committee recommends as follows-

- (i) The National Assembly and National Treasury should ensure adequate resource allocation to the National Council on Administration of Justice to enable it carry out its programmes;**
- (ii) The National Council on Administration of Justice should take necessary action to ensure all agencies and Court User Committees prepare and submit annual reports to the council for further action;**
- (iii) The National Council on Administration of Justice should ensure that the draft Bail and Bond Bill and the Children's Bill are finalized and submitted to the National Assembly for enactment as a matter of urgency;**

(iv) There is need to consider whether the National Council on Administration of Justice should be established as a body corporate;

(v) There is need to establish the proper domicile for the National Council for Law Reporting (NCLR) in view of its primary mandate.

Signed..........Date..........

HON. WILLIAM K. CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

ANNEXURE 1

**(Minutes of the Committee on sittings considering and
adopting the Report)**

MINUTES OF THE ONE HUNDRED AND TWENTY-NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 2ND MAY, 2019 AT 9.30 A.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA

PRESENT-

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. William K. Mwamkale, M.P. | | |
| 5. Hon. Peter Opondo Kaluma, M.P. | | |
| 6. Hon. Zuleikha Hassan, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. Japheth Mutai, M.P. | | |
| 9. Hon. John M. Wambugu, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. George G. Murugara, M.P. | | |
| 13. Hon. Jennifer Shamalla, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|----------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai | - | Principal Legal Counsel |
| 3. Halima Hussein | - | Clerk Assistant III |
| 4. Fiona Musili | - | Research Officer |
| 5. Omar Abdirahim | - | Fiscal Analyst |
| 6. Mr. Hakeem Kimiti | - | Audio Recording Officer |
| 7. Simon Maina | - | Support Staff |

IN ATTENDANCE-

JUDICIAL SERVICE COMMISSION-

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi | - | Chief Register, Judiciary |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary |
| 3. Ms. Irene Oman | - | Programme Coordinator |
| 4. Mr. Joseph M. Were | - | Senior Principal Magistrate |

MIN No. 515/2019:-

PRELIMINARIES

The meeting commenced at 9.30a.m with a word of prayer by Chairperson

MIN No. 516/2019:-

**EXAMINATION OF THE JUDICIARY AND THE
ADMINISTRATION OF JUSTICE REPORTS
FOR THE YEARS 2016-2017 AND 2017-2018**

The Committee considered the the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

CHAPTER ONE OF THE REPORTS ON LEADERSHIP AND MANAGEMENT

The chapters state the mandate of the Judiciary and the source of judicial authority. Its further states the progress and challenges in the specific areas of focus in the implementation of the Sustaining Judiciary Transformation (SJT): A Service Delivery Agenda 2017- 2021

Committee's observations

The Committee made the following observations

- (i) The Judicial Service Act Schedule 3 Part IV Paragraph 15 delegates specified disciplinary roles to the Chief Justice on behalf of the Judicial Service Commission and in light of this the Chief Justice administratively created the Office of the Judiciary Ombudsman to assist in the performance of the specified roles
- (ii) The existence of the Office of the Judiciary Ombudsman is not widely known to the people of Kenya and therefore the need for awareness creation

CHAPTER TWO OF THE REPORTS ON ACCESS TO JUSTICE

The Chapters in the reports are about access to justice, analyses on case backlog and statistics of cases before the different courts. The Chapters further described the various strategies and efforts that have been put in place to enhance and improve access to justice. The initiatives detailed in the chapter include: reduction of case backlog; digitization of Judiciary processes and enhancement of human resource capacity.

Committee's observations

The Committee made the following observations;


- (i) Lack of statutory or policy documents providing for timelines within which cases should be heard by courts, and the inadequate number of Judges and Magistrates were major factors contributing to case backlog in the Judiciary;

- (ii) Delayed conclusion of court cases was frustrating to litigants, and hampered economic growth as it would lead to project stalling, funds being held up without use and discouragement of potential local and foreign investors among other reasons;

MIN No. 517/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at five minutes past one in the afternoon.

Signed.....
Chairperson

Date..........

MINUTES OF THE ONE HUNDRED AND THIRTIETH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 2ND MAY, 2019 AT 2.30 P.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA

PRESENT-

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. William K. Mwamkale, M.P. | | |
| 5. Hon. Peter Opondo Kaluma, M.P. | | |
| 6. Hon. Zuleikha Hassan, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. Japheth Mutai, M.P. | | |
| 9. Hon. John M. Wambugu, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. George G. Murugara, M.P. | | |
| 13. Hon. Jennifer Shamalla, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|----------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai | - | Principal Legal Counsel |
| 3. Halima Hussein | - | Clerk Assistant III |
| 4. Fiona Musili | - | Research Officer |
| 5. Omar Abdirahim | - | Fiscal Analyst |
| 6. Mr. Hakeem Kimiti | - | Audio Recording Officer |
| 7. Simon Maina | - | Support Staff |

IN ATTENDANCE-

JUDICIAL SERVICE COMMISSION-

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi | - | Chief Register, Judiciary |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary |
| 3. Ms. Irene Oman | - | Programme Coordinator |
| 4. Mr. Joseph M. Were | - | Senior Principal Magistrate |

MIN No. 518/2019:-

PRELIMINARIES

The meeting commenced at 2.30 p.m with a word of prayer by Hon. Kamoti Mwamkale, MP

MIN No. 519/2019:-

EXAMINATION OF THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE REPORTS FOR THE YEARS 2016-2017 AND 2017-2018

The committee considered the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

CHAPTER THREE OF THE REPORTS ON ACCESS TO JUSTICE- TRIBUNALS

The chapters state the roles of tribunals and its emerging as an influential and consequential institutional framework in the administration of justice. The transition of Tribunals from the Executive to the Judiciary continued rapidly in this financial year, even though the process faced major legal, policy, administrative and infrastructural challenges.

Committee's observations

The Committee made the following observations;

- (i) Whereas the Constitution of Kenya places all tribunals under the Judiciary, some tribunals had not transited from the parent ministries to the Judiciary thereby posing challenges to the Judiciary in administering them;

- (ii) There are sixty (60) tribunals in Kenya out of which only twenty (20) are under the Judiciary administratively while the rest are still under respective ministries;
- (iii) It was noted that many ministries are resistant to transferring tribunals under them to the Judiciary;

CHAPTER OF FOUR OF THE REPORTS ON JURISPRUDENCE

The Chapters are about jurisprudence that emerged from the courts during the periods under review. Courts at various levels made several ground breaking decisions in various areas of law including constitutionality of the mandatory nature of the death penalty, electoral laws, constitutional law, criminal law, family law, land and environment, and employment and labour matters among others, which advanced the course of justice and development of jurisprudence.

Committee's observations

The Committee made the following observations;

- (i) During the period under review, the Judiciary made key decisions most notably in election disputes, constitutional law, criminal law, family law, land, environment, employment and labour matters among others. This contributed to the development of jurisprudence;
- (ii) The Government of Kenya was spending about 1 billion Kenya shillings annually feeding and maintaining death row convicts (Kenya Correctional Services estimates);
- (iii) The decision by the courts clarifying the jurisdiction of Judges of the High Court and that of Judges of Specialized Courts raises issues on the efficient use of Judiciary resources and is a matter that may be addressed through a constitutional amendment;
- (iv) The Judiciary submits that the timeline for hearing of presidential elections petition of fourteen (14) days was inadequate and should be increased to thirty (30) days. This will require a constitutional amendment and legislative proposals to that effect have been rejected by the Committee on two previous occasions;
- (v) The Supreme Court was not meant to be an appellate court for all matters and there is need to review the law to provide clarity as to the matters that can be dealt with by the Supreme Court.

MIN No. 520/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Five O'clock.

Signed.....
Chairperson

Date.....09.05.19.....

MINUTES OF THE ONE HUNDRED AND THIRTY-FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 3RD MAY, 2019 AT 9.00 A.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA

PRESENT-

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. William K. Mwamkale, M.P. | | |
| 5. Hon. Peter Opondo Kaluma, M.P. | | |
| 6. Hon. Zuleikha Hassan, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. Japheth Mutai, M.P. | | |
| 9. Hon. John M. Wambugu, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. George G. Murugara, M.P. | | |
| 13. Hon. Jennifer Shamalla, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai | - | Principal Legal Counsel |
| 3. Halima Hussein | - | Clerk Assistant III |
| 4. Fiona Musili | - | Research Officer |
| 5. Omar Abdirahim | - | Fiscal Analyst |
| 6. Hakeem Kimiti | - | Audio Recording Officer |
| 7. Simon Maina | - | Support Staff |

IN ATTENDANCE-

JUDICIAL SERVICE COMMISSION-

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi | - | Chief Register, Judiciary |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary |
| 3. Ms. Irene Oman | - | Programme Coordinator |
| 4. Mr. Joseph M. Were | - | Senior Principal Magistrate |

MIN No. 521/2019:-

PRELIMINARIES

The meeting commenced at 9.00 a.m with a word of prayer by Hon. Adan Haji, MP

MIN No. 522/2019:-

**EXAMINATION OF THE JUDICIARY AND THE
ADMINISTRATION OF JUSTICE REPORTS
FOR THE YEARS 2016-2017 AND 2017-2018**

The committee considered the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

**CHAPTER FIVE OF THE REPORTS ON HUMAN RESOURCE
MANAGEMENT AND DEVELOPMENT**

The Chapters are on the development and status of human resource and the goal of the Judiciary is to ensure that there is adequate human resource to support the operations of the Judiciary.

Committee's observations

The Committee made the following observations;

- (i) During the reporting period the Judiciary undertook an organizational review in order to restructure the institution in a manner that would ensure better delivery of services. A report on the organizational review and restructuring was submitted to the Judicial Service Commission for adoption. This, together with other ongoing reforms, are expected to ensure that the Judiciary operates at its optimum and that the resources at their disposal (financial and human) are utilized in the most efficient manner;

- (ii) During the year under review, the Judiciary continued to recruit for various posts and also carried out transfers, promotions and deployment of staff to various court stations to ensure effectiveness and efficiency in the provision of services;
- (iii) During the year under review, the Judiciary commenced the review of the human resource manual and entrenched performance appraisal system to improve on efficiency and measure the performance of staff;

CHAPTER SIX OF THE REPORTS ON TRAINING AND CAPACITY BUILDING WITHIN THE JUDICIARY: THE JUDICIARY TRAINING INSTITUTE

The chapters provide an update on the Judiciary's training and capacity development, a mandate that is executed through the Judiciary Training Institute which was established in 2008 to provide training for Judges and magistrates.

Committee's observations

The Committee made the following observations;

- (i) The Judicial Training Institute (JTI) conducts in-house training for Judges, Judicial officers and judicial staff. The Institute issues certificates of attendance or participation after completion of training.
- (ii) The JTI is not an accredited training institution and as such the certificates issued cannot be used for employment or promotion at work;
- (iii) The Judiciary Training Institute is operating on premises leased from Postbank Kenya Ltd. The Bank has put up the premises valued at 1.2 billion shillings for sale and Judiciary has put a bid to purchase the premises. The Judiciary is engaging the National Treasury to obtain the requisite resources;
- (iv) Apart from the JTI other Agencies in the justice sector like the ODPP and the EACC are also seeking funding to establish training institutes dedicated to their respective mandates.

CHAPTER SEVEN ON THE REPORTS ON INFRASTRUCTURE

The Chapters provide updates on the progress with the Judiciary's physical infrastructure across the country. The Sustainability Judiciary Transformation (SJT) blueprint

designates infrastructure development as a major pillar in the transformation of the Judiciary.

Committee's observations

The Committee made the following observations;

- (i) Infrastructural development was a major pillar in transformation of the Judiciary as articulated in the Sustaining Judiciary Transformation blue print;
- (ii) During the year under review, there were one hundred and two (102) court construction and rehabilitation works across various stations in the country. Out of the courts that were under construction, twenty-eight (28) were being financed by the World Bank of which nineteen (19) were refurbishments and nine (9) were construction of new courts. The Bank is also financing the provision of furniture for eleven (11) courts. These projects are set to be completed by 20th October, 2020. The Government of Kenya is financing the ongoing construction and rehabilitation of fifty-four (54) courts, new construction of thirteen (13) courts, tender evaluation for construction of one (1) court, drilling and equipping of thirteen (13) boreholes, shelving works at ten (10) courts and refurbishment of thirty- one (31) courts.
- (iii) The main challenges experienced by the Judiciary in implementation of projects were inadequate funding; delayed exchequer releases, court injunctions and lack of title documents. The issue of lack of title documents was being handled administratively.

MIN No. 523/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at One O'clock.

Signed.....
Chairperson

Date.....

MINUTES OF THE ONE HUNDRED AND THIRTY-SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 3RD MAY, 2019 AT 2:30 P.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA

PRESENT-

- | | | |
|------------------------------------|---|------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. William K. Mwamkale, M.P. | | |
| 5. Hon. Peter Opondo Kaluma, M.P. | | |
| 6. Hon. Zuleikha Hassan, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. Japheth Mutai, M.P. | | |
| 9. Hon. John M. Wambugu, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. George G. Murugara, M.P. | | |
| 13. Hon. Jennifer Shamalla, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|----------------------|---|------------------------------|
| 1. George Gazemba | - | Principal Clerk Assistant II |
| 2. Denis Abisai | - | Principal Legal Counsel |
| 3. Halima Hussein | - | Clerk Assistant III |
| 4. Fiona Musili | - | Research Officer |
| 5. Omar Abdirahim | - | Fiscal Analyst |
| 6. Mr. Hakeem Kimiti | - | Audio Recording Officer |
| 7. Simon Maina | - | Support Staff |

IN ATTENDANCE-

JUDICIAL SERVICE COMMISSION-

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi | - | Chief Register, Judiciary |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary |
| 3. Ms. Irene Oman | - | Programme Coordinator |
| 4. Mr. Joseph M. Were | - | Senior Principal Magistrate |

MIN No. 524/2019:-

PRELIMINARIES

The meeting commenced at 2:30 p.m with a word of prayer by Hon. Anthony Kiai, MP

MIN No. 525/2019:-

EXAMINATION OF THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE REPORTS FOR THE YEARS 2016-2017 AND 2017-2018

The committee considered the State of Judiciary and the Administration of Justice Reports for the years 2016-2017 and 2017-2018 chapter by chapter as follows;

CHAPTER EIGHT OF THE REPORTS ON DIGITAL STRATEGY

The Chapters highlight the Judiciary's developments with regard to ICT and implementation of the digital strategy and the progress with the implementation of the Judiciary operation support system comprising various components of digitization (electronic filing and case tracking).

Committee's observations

The Committee made the following observations;

- (i) Emerging trends worldwide in technology had opened a window for innovation in employment. The 4th pillar of the Judiciary Transformation Framework identifies ICT as a key result area. Use of technology is important in the administration of justice like in many other sectors;
- (ii) Out of the one hundred and thirty- two (132) court stations, only six (6) had not been connected with reliable internet and these were mainly stations in remote areas of the country in the North Eastern region. The Judiciary was working closely with the Ministry of ICT to ensure the stations are connected;

CHAPTER 9- FINANCE AND ACCOUNTS

The Chapters presents an analysis of the Judiciary's financial performance covering areas such as funding within the national context, including a comparative analysis of overall budgetary allocation for the arms of government and public institutions. The Chapters further provides information on revenue and deposits from courts.

Committee's observations

The Committee made the following observations;

- (i) There was a drop in allocation of resources to the Judiciary during the year under review and this impacted negatively on operations. In fact Government funding to the Judiciary had always been unstable with much variance between what was approved and what was allocated;
- (ii) The Judiciary has gazetted regulations to operationalize the Judiciary Fund and is awaiting National Assembly approval. Operationalization of the Fund would guarantee financial stability for the Judiciary;
- (iii) Some Judges lack official vehicles while some were operating vehicles in poor mechanical conditions which is demeaning and embarrassing to the Judges considering their status in society;

CHAPTER TEN OF THE REPORTS ON THE STATE OF THE AGENCIES AND COLLABORATION IN THE JUSTICE SECTOR

The Chapters contains reports from the justice sector agencies as well as a report of activities of the various organs and committees of the National Council for the Administration of Justice.

Committee's observations

The Committee made the following observations;

- (i) The National Council on Administration of Justice was responsible for the collaboration of all agencies in the justice sector with a view to ensuring enhanced service delivery and institutional strengthening amongst members;
- (ii) The National Council on Administration of Justice was underfunded. During the year under review, it was allocated 50 million shillings from the Judiciary which

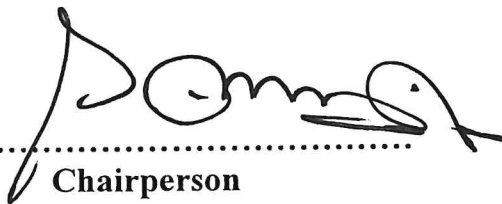
was inadequate to run its programmes and activities. The Council had to source and obtained additional funds from development partners in order to sustain its operations and activities;

- (iii) The Bail and Bond Implementation Committee had developed a draft Bail and Bond Bill for enactment, this being a major achievement during the year under review;
- (iv) The Special Taskforce on Children matters had also developed a Children's Bill for enactment;
- (v) The National Council on Administration of Justice is established under section 34 of the Judicial Service Act;
- (vi) The National Council for Law Reporting (NCLR) which is primarily mandated to monitor and report on the development of Kenya's jurisprudence through the publication of the Kenya Law Reports, is domiciled in the Office of the Attorney General;

MIN No. 526/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Five O'clock.

Signed.....
Chairperson

Date.....09.05.19.....

MINUTES OF THE ONE HUNDRED AND THIRTY-THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 4TH MAY, 2019 AT 9.00 A.M. IN WILDON ROOM, TAMARIND VILLAGE, MOMBASA

PRESENT-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
3. Hon. John Olago Aluoch, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. Peter Opondo Kaluma, M.P.
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Charles Gimose, M.P.
8. Hon. Japheth Mutai, M.P.
9. Hon. John M. Wambugu, M.P.
10. Hon. Beatrice Adagala, M.P.
11. Hon. Anthony G. Kiai, M.P.
12. Hon. George G. Murugara, M.P.
13. Hon. Jennifer Shamalla, M.P.
14. Hon. Adan Haji Yussuf, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. George Gazemba - Principal Clerk Assistant II
2. Denis Abisai - Principal Legal Counsel
3. Halima Hussein - Clerk Assistant III
4. Fiona Musili - Research Officer
5. Omar Abdirahim - Fiscal Analyst
6. Hakeem Kimiti - Audio Recording Officer
7. Simon Maina - Support Staff

IN ATTENDANCE-

JUDICIAL SERVICE COMMISSION-

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi | - | Chief Register, Judiciary |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary |
| 3. Ms. Irene Oman | - | Programme Coordinator |
| 4. Mr. Joseph M. Were | - | Senior Principal Magistrate |

MIN No. 527/2019:-

PRELIMINARIES

The meeting commenced at 9am with a word of prayer by Hon. Beatrice Adagala, MP

MIN No. 528/2019:-

**EXAMINATION OF THE JUDICIARY AND THE
ADMINISTRATION OF JUSTICE REPORTS
FOR THE YEARS 2016-2017**

The Committee considered and unanimously adopted its report on the State of Judiciary and Administration of Justice report for the years 2016/2017 after being proposed by Hon. Peter Kaluma and seconded Hon. Jennifer Shamalla with the following recommendations;

Under Chapter one of the reports on leadership and management the Committee made the following recommendations;

- (i) The Judiciary should submit to the National Assembly for enactment a legislative proposal to entrench the Office of the Judiciary Ombudsman in law;
- (ii) The Judiciary should create public awareness on the role and functions of the Office of the Judiciary Ombudsman to increase its effectiveness.

Under Chapter two of the reports on access to justice the Committee made the following recommendations;

- (i) The Judiciary should propose legislation for enactment by the National Assembly providing for statutory timelines within which cases should be heard and determined by courts;
- (ii) The National Assembly and the National Treasury should allocate adequate resources to the Judiciary to enable it employ more Judges and Magistrates for expeditious determination of cases before the courts;
- (iii) The Judiciary should increase the jurisdiction of Magistrates to deal with matters currently a preserve of the High court which would significantly reduce the backlog in the High Court;
- (iv) The Judiciary should as a matter of urgency submit to the National Assembly for approval Rules to operationalize the Small Court Claims Act, 2016.

Under Chapter three of the reports on Access to Justice- Tribunals the Committee made the following recommendations;

- (i) The Committee recommends that the Attorney-General, should as a matter of urgency, submit to the National Assembly for enactment the Tribunals Bill to address the aforesaid issues affecting tribunals.

Under Chapter four of the reports on jurisprudence the Committee made the following recommendations;

- (i) Jurisdiction of judges serving in the Specialized Courts and those of the High Court should be reviewed to enable Judges to be administratively redeployed;
- (ii) The Judiciary should submit to Parliament for consideration draft legislation increasing the timeline within which the Presidential Election Petition should be heard from fourteen (14) to thirty (30) days.
- (iii) Parliament should enact legislation on assumption to office by the Deputy Governor and filling of vacancies as and when they arise;
- (iv) Parliament should enact legislation to clearly delineate the jurisdiction of the Supreme Court.

Under Chapter five of the reports on Human Resource Management and Development jurisprudence the Committee made the following recommendations;

- (i) The Judiciary should fast track the implementation of the new organizational structure to guard against delays in service delivery;
- (ii) The National Assembly should allocate 300 million Kenya Shillings towards the implementation of the new organizational structure with regard to recruitment of new staff; upgrading, promotion and re-designation of staff; transfers and staff movements; and skills and audit documentation as required.

MIN No. 529/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at One O'clock.

Signed.....


Chairperson

Date.....

09.05.19.....

**MINUTES OF THE ONE HUNDRED AND THIRTY-FOURTH SITTING OF
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
HELD ON THURSDAY, 4TH MAY, 2019 AT 3.00 P.M. IN WILDON ROOM,
TAMARIND VILLAGE, MOMBASA**

PRESENT-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
3. Hon. John Olago Aluoch, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. Peter Opondo Kaluma, M.P.
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Charles Gimose, M.P.
8. Hon. Japheth Mutai, M.P.
9. Hon. John M. Wambugu, M.P.
10. Hon. Beatrice Adagala, M.P.
11. Hon. Anthony G. Kiai, M.P.
12. Hon. George G. Murugara, M.P.
13. Hon. Jennifer Shamalla, M.P.
14. Hon. Adan Haji Yussuf, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Gladys Boss Shollei, CBS, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. George Gazemba - Principal Clerk Assistant II
2. Denis Abisai - Principal Legal Counsel
3. Halima Hussein - Clerk Assistant III
4. Fiona Musili - Research Officer
5. Omar Abdirahim - Fiscal Analyst
6. Hakeem Kimiti - Audio Recording Officer
7. Simon Maina - Support Staff

IN ATTENDANCE-

JUDICIAL SERVICE COMMISSION-

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Anne Amadi | - | Chief Register, Judiciary |
| 2. Mr. Conrad M. Bosire | - | Chief of Staff, Judiciary |
| 3. Ms. Irene Oman | - | Programme Coordinator |
| 4. Mr. Joseph M. Were | - | Senior Principal Magistrate |

MIN No. 530/2019:-

PRELIMINARIES

The meeting commenced at 3.00 p.m with a word of prayer by Hon. Anthony Kiai, MP

MIN No. 531/2019:-

**EXAMINATION OF THE JUDICIARY AND THE
ADMINISTRATION OF JUSTICE REPORTS
FOR THE YEARS 2017-2018**

The Committee considered and unanimously adopted its report on the State of Judiciary and Administration of Justice report for the years 2017/2018 after being proposed by Hon. John Munene and seconded Hon. Beatrice Adagala with the following recommendations;

Under Chapter six of the reports on Training and Capacity Building within the Judiciary: The Judiciary Training Institute the Committee made the following recommendations;

- (i) The Judiciary Training Institute should pursue accreditation with the relevant agencies to ensure that the certificates issued are recognized and may be used for employment or promotion;
- (ii) The National Treasury should provide funding in the next financial year to the Judiciary to purchase the Postbank premises currently being used by the Judiciary Training Institute;
- (iii) Agencies and institutions under the umbrella body of National Council on Administration of Justice such as EACC, ODPP, and OAGDJ should have one

training institute to be spearheaded by the Judiciary to save on costs as opposed to each agency proposing to have its own school.

Under chapter seven of the reports on Infrastructure the Committee made the following recommendations;

- (i) The Judiciary should ensure proper project planning and implementation to ensure projects are implemented to acceptable standards, in good time and there is value for money;
- (ii) The Judiciary should ensure that old and ongoing projects are completed before embarking on new ones;
- (iii) The National Treasury should ensure timely disbursement of exchequer to the Judiciary and other agencies to ensure timely undertaking of projects to avoid possible litigation and escalation of costs as a result of delay;
- (iv) The Judiciary should take necessary action to ensure that it has title documents for all its land.

Under chapter eight of the reports on Digital Strategy the Committee made the following recommendations;

- (i) The Judiciary should ensure that the remaining six (6) court stations are connected with reliable internet to facilitate improved service delivery;
- (ii) There should be continuous training of ICT officers to ensure implementation of the Digital Strategy.

Under chapter nine of the reports on Finance and Accounts Strategy the Committee made the following recommendations;

- (i) The National Assembly and National Treasury should allocate adequate resources to the Judiciary to address financial issues emerging under this Chapter;
- (ii) The Judiciary should come up with a legislative proposal to amend the PFM Act to enable all monies held in bank accounts maintained by the Judiciary to earn interest.

Under chapter ten of the reports on the State of the Agencies and Collaboration in the Justice Sector the Committee made the following recommendations;

- (i) The National Assembly and National Treasury should ensure adequate resource allocation to the National Council on Administration of Justice to enable it carry out its programmes;
- (ii) The National Council on Administration of Justice should take necessary action to ensure all agencies and Court User Committees prepare and submit annual reports to the council for further action;
- (iii) The National Council on Administration of Justice should ensure that the draft Bail and Bond Bill and the Children's Bill are finalized and submitted to the National Assembly for enactment as a matter of urgency;
- (iv) There is need to consider whether the National Council on Administration of Justice should be established as a body corporate;
- (v) There is need to establish the proper domicile for the National Council for Law Reporting (NCLR) in view of its primary mandate.

MIN No. 532/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Four O'clock.

Signed.....
Chairperson

Date.....03 05, 19

ANNEXURE 2

**(List of Members who attended the Sitting that
adopted the report)**

KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


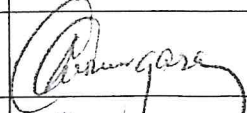
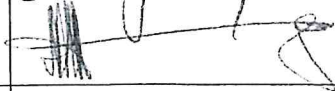
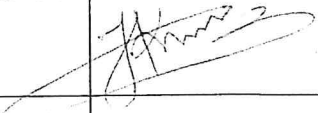
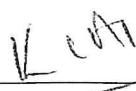
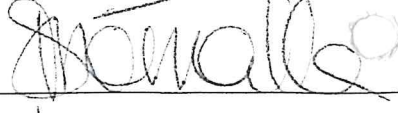
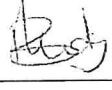

ATTENDANCE REGISTER FOR MEMBERS

DATE...4/6/2019..... TIME...2 PM.....

VENUE...Weldon Room, Jaramina Hotel.....

AGENDA.....

D.	NAME	SIGNATURE
	Hon. William Cheptumo, M.P. – Chairperson	
	Hon. Alice Wahome, MP. - Vice Chairperson	
	Hon. John Olago Aluoch, MP.	
	Hon. Roselinda Soipan Tuya, MP.	
	Hon. Ben Momanyi, MP.	
	Hon. Mwamkale William Kamoti, MP.	
	Hon. Peter Opondo Kaluma, MP.	
	Hon. Charles Gimose, MP.	

9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Zuleikha Hassan, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	
13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	
16.	Hon. Jennifer Shamalla, MP.	
17.	Hon. Beatrice Adagala, MP.	
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	



GEORGE GAZEMBA, ACI Arb
For: CLERK OF THE NATIONAL ASSEMBLY