



*Paper laid  
by Hon. Kenya  
Kilonzo  
on Thursday,  
Jan 3, 2013  
Ampt*

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION

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REPORT OF THE SELECT COMMITTEE  
ON DELEGATED LEGISLATION ON THE PETITION BY THE KENYA  
NATIONAL UNION OF TEACHERS ON THE LEGAL STATUS OF LEGAL  
NOTICE NO. 16 OF 2003

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Clerks Chambers,  
Parliament Buildings,  
NAIROBI.

December, 2012

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## PREFACE

**Mr. Speaker,**

On Thursday 13th March, 2012, the Hon. Martha Karua, M.P tabled a Petition signed by twenty one (21) members of the Kenya National Union of Teacher (hereafter referred to as KNUT) and related to a Collective Bargaining Agreement (CBA) entered into between the Teachers Service Commission (TSC) and KNUT in 1997. The CBA resulted into the gazettelement of the Teachers Service Commission (Remuneration of the Teachers) Order, 1997 vide Legal Notice No. 534 of 1997 (hereafter referred to as Legal Notice No. 534 of 1997).

In the petition, the petitioners contend that, when they demanded for the full implementation of the 1997 CBA, they were given another Teachers Service Commission (Remuneration of the Teachers) (Amendment) Order, 2003 gazetted vide Legal Notice No. 16 of 2003 (hereafter referred to as Legal Notice No. 16 of 2003) which in effect revoked and altered the terms and condition including allowances negotiated and agreed between the KNUT and the TSC in 1997.

In particular, the petitioners contend that the Legal Notice No. 16 of 2003 is a nullity because according to them, Legal Notice No. 16 of 2003 was not arrived at through the laid down procedure for negotiation of teacher's terms and condition of service set out under section 13 and 14 of the TSC Act, (Cap. 212), Laws of Kenya (repealed by the TSC Act No. 20 of 2012).

**Mr. Speaker Sir,**

The petitioners' prayer was that the Parliament of the Republic of Kenya;

1. Legal Notice No. 16 of 2003 be declared illegitimate; and

2. A declaration that Legal Notice No. 534 of 1997 is still in force and has not been revoked and therefore immediate implementation of Legal Notice No. 534 of 1997 with regard to teacher's allowance.

**Mr. Speaker Sir,**

Following the tabling of the petition and in line with the Standing Order No. 210 (1), the Chair referred *this petition to the Select Committee on Delegated Legislation to investigate the matter and report to the House.*

Pursuant to the directive, the Committee held a total of four meetings to examine the matter. Mr. Speaker Sir, we further wish to report to the House that, despite four (4) invitations to appear before the Committee, the Hon. Minister for Education for one reason or the other, failed to appear before the Committee and the Committee therefore resolved to table its report without the benefits of the Minister's evidence.

**Mr. Speaker,**

The Committee on Delegated Legislation is established under Standing Order 197 to, among other functions;

- i) ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinize such instruments to ensure that they are consistent with parent statutes;
- ii) Unless otherwise provided for either expressly or by implication under any written law, all subsidiary legislation shall be tabled before the House upon publication in the Kenya Gazette; and
- iii) The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled.

**Mr. Speaker,**

The membership of the Committee was as follow:-

- (i) The Hon. Amina Abdalla, M.P - Chairperson

- (ii) The Hon. Ababu Namwamba, M.P. (later appointed as a Cabinet Minister)
- (iii) The Hon (Dr) Julius Kones, M.P
- (iv) The Hon. Olago Aluoch, M.P.
- (v) The Hon. Baiya Njoroge, M.P.
- (vi) The Hon. B.C. Muturi Mwangi, MP
- (vii) The Hon. Fahim Twaha, MP
- (viii) The Hon. Gitobu Imanyara, MP
- (ix) The Hon Kiema Kilonzo, M.P

**Mr. Speaker,**

In its examination of the matter, the Committee sought to answer the following questions: -

*Whether the Teachers Service Commission (Remuneration of the Teachers) (Amendment) Order, 2003, Legal Notice No. 16 of 2003 is ultra vires the parent statute i.e. section 13 and 14 of the TSC Act, (Cap. 212), Laws of Kenya (repealed by the TSC Act No. 20 of 2012).*

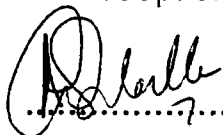
The Committee held a meeting with the senior officials of KNUT led by the Chairperson Mr. Wilson Sossoin and also examined additional information submitted before it. The findings of the Committee are contained in this report.

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

**Mr. Speaker,**

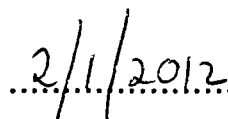
It is our pleasant duty, on behalf of the Committees to present and commend this report to the House for adoption.

Signed:

 .....

Hon. Amina Abdalla, MP, Chairperson.

Date:

 .....

## INTRODUCTION

1. On Thursday, 13<sup>th</sup> September, 2012, the Member for Gichungu (Hon. Martha Karua) tabled a Petition signed by twenty one (21) members of the Kenya National Union of Teacher and related to a Collective Bargaining Agreement (CBA) entered into between the Teachers Service Commission (TSC) and KNUT IN 1997. The CBA resulted into the gazettelement of the Remuneration of the Teacher's Order vide Legal Notice No. 534 of 1997.

2. Pursuant thereto the Chair directed as follows:-

*"I direct that this petition be committed to the Committee on Delegated Legislation."*

3. Pursuant to the directive, the select Committee on Delegated Legislation held meetings to examine the matter.

### Meetings of the Committee

4. The Committee held a total of four meetings, the first one being on September 17, 2012, wherein the Committee sought to seek the advice of the Office of the Legal Counsel, Kenya National Assembly, to furnish the Committee with a legal opinion on the status of Legal Notice No. 534 of 1997 and Legal Notice No. 16 of 2003 and on the maintainability of the Petition as a whole.

5. Thereafter, on 20<sup>th</sup> September 2012, the Committee held a meeting with the representative of KNUT who were represented by its senior officials led by the Chairperson of KNUT. Despite his request for a meeting with the Committee and subsequent four invitations to appear before the Committee, the Minister for Education for one reason or the other did not appear before the Committee. The report was adopted at the Committee's meeting of December 19, 2012.

## EVIDENCE BY THE CHAIRPERSON OF KNUT, MR. WILSON SOSSION

6. Appearing before the Committee on September 20, 2012, the Chairperson of KNUT accompanied by other key official of the Union informed the Committee as follows:-

- (a) That, section 13 of the TSC Act, (Cap. 212), Laws of Kenya (repealed by the TSC Act No. 20 of 2012) (hereafter referred to as the repealed Act) established the Teacher's Service Remuneration Committee (TSRC) which is a committee established for the purpose of considering the remuneration payable to teachers in the Teachers Service and is chaired by an independent and neutral chair;
- (b) That, under section 14 of the repealed Act, once the Committee has deliberated, reviewed and agreed on the remuneration payable to teacher's, its recommendations are transmitted to the Minister for gazette as an Order and that once gazette, it is irreversible ;
- (c) That, on 2<sup>nd</sup> July 1997, there was a TSRC meeting chaired by the late Hon. Taita Towett, which upon agreeing on a review of the teacher's remunerations, submitted its signed minutes to the Minister as per the repealed Act;
- (d) That, this was the only TSRC meeting and KNUT is not aware of any other subsequent TRSC meeting;
- (e) That, the then Minister for education, ignored the minutes of the TSRC meeting of 1997 and gazetted general salary raise under Legal Notice No. 180 of 1997 which was objected to by KNUT forcing them to go on strike in September, 1997 which was only called off upon the intervention of the then President who ordered for revocation of Legal Notice No. 180 of 1997 by Legal Notice No. 534 of 1997;

- (f) That, on 13<sup>th</sup> October, 1997, there was a return to work formula in which the government undertook to improve the teacher's remuneration over a period of five years. The agreement contained a **schedule "A"** indicating how the teacher's salary increment would escalate in percentage over the five year period. **Schedule "B"** indicated how the allowance (house, medical; responsibility; special; hardship and commuter allowances) would be improved over the period to end in 2001.
- (g) That, the government failed to live up to its promise and on 3<sup>rd</sup> December 2002, it was agreed that the teachers' salaries as reflected in the Teachers Remuneration Order, 1997 would be paid over a period of ten years ending in 2013. The government proceeded to honor the payments of salaries as per **schedule "A"**; while leaving the allowances in **schedule "B"** in suspended animation.
- (h) That, in May, 2003, pursuant to a series of meetings, the government agreed to shorten the period of payment as agreed in 2002 from ten (10) years to six (6) years and that in the subsequent year the two parties would meet to see whether the period can be reduced to five (5) years depending on the growth of the national economy.
- (i) That, on 1<sup>st</sup> March, 2007, the KNUT and the government agreed to reduce the period agreed earlier from six (6) to five (5) years. This marked the fulfillment of salaries as per **schedule "A"** of the Teachers' Remuneration Order, 1997. However, KNUT kept reminding the government that there was a **schedule "B"** of the 1997 agreement that was yet to be fulfilled.
- (j) That, during the on-going teacher's strike, it has come to the attention of KNUT about the existence of the **Teachers Service Commission (Remuneration of Teachers)(Amendment) Order, 2003** gazetted on 21<sup>st</sup> February, 2003 as



**Legal Notice No. 16 of 2003** which purported to amend Legal Notice No. 534 of 1997.

(k) That, KNUT submits that:-

- i. It is not aware of Legal Notice No. 16 of 2003 and that it is a stranger to the same;
- ii. any variation to Legal Notice No. 534 of 1997 must be done through a circular and KNUT has never seen a circular to that effect;
- iii. Legal Notice No. 16 of 2003 did not originate from TSRC as provided for under the law and the same should not have varied the benefits previously accorded to teachers downwards;
- iv. There was no other TSRC after the 1997 one was disbanded and there was an attempt to establish a TSRC in 2009 but the same collapsed.
- v. Legal Notice No. 16 of 2003 varies the allowances which are at the core of teacher's benefits;
- vi. It destroys Legal Notice No. 534 of 1997.

(l) Further, the union opposes the legitimacy of this Legal Notice No. 16 of 2003 for the following reasons:

- The procedural structure of negotiating of teacher's terms and condition of service as at 1997 is provided for in TSC Act Cap. 212 (now repealed) at Section 13 onwards. A perusal of this section will reveal that Legal Notice No. 16 of 2003 did not pass through any procedure as stipulated by the TSC Act;
- Teacher's terms and condition of service and any variation thereto are negotiated by the TSRC. The minutes of the Committee form part of the formal proceedings. The committee makes recommendation to the Minister for Education, who gazettes the

terms of service in accordance with the recommendations of the Committee;

- TSRC was not convened to discuss the proposed amendments all the amendments contained in the Legal Notice No. 16 of 2003 were not negotiated by TSRC;
- The union has verified its record of Gazette Notices and it is evident that the Notice was never published but just appeared when the strike notice expired.

(m) That, Legal Notice No. 534 of 1997 has been saved by the new TSC Act No. 20 of 2012 at section 50 and the same remains binding to TSC as it forms part of the agreement and decisions of the commission entered into under the repealed TSC Act.

(n) That, all the Legal Notices with respect to teacher's remuneration gazetted after Legal Notice No. 534 of 1997 do not meet the standards of the TSC Act:

(o) That, in conclusion, KNUT therefore pray that the law should be followed as it were irrespective of errors of omission and commission from TSC and KNUT and therefore Legal Notice No. 534 of 1997 should be recognized and the other Legal Notices including Legal Notice No. 16 of 2003 should be nullified.

7. On the claim that KNUT is demanding for a 300% salary increment, the Chairperson informed the Committee that the 300% increase was not tied to Legal Notice No. 534 of 1997 but rather it was a new demand based on new economic realities and that these were new issues to be dealt with under the proper framework.
8. Asked why KNUT was blatantly disobeying court orders, the chairperson informed the Committee that there has never been a strike in Kenya which had not been declared illegal and furthermore, KNUT has never been served with any court orders.

## COMMITTEE OBSERVATIONS AND FINDINGS:

9. In its observations, the Committee sought to answer the following questions-
- (i) Whether the Committee has the mandate or jurisdiction to deal with this matter?
  - (ii) What is the legal status of a Gazette Notice?
  - (iii) What is the legal status of Legal Notice No. 16 of 2003?

### Mandate of the Committee on Delegated Legislation:

10. The Select Committee on Delegated Legislation is established by Standing Order 197 of the Standing Orders of the National Assembly provides as follows-

*197. (1) there shall be a select committee to be designated the Committee on Delegated Legislation.*

*(2) The Committee shall ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinize such instruments to ensure that they are consistent with parent statutes.*

*(3) Unless otherwise provided for either expressly or by necessary implication under any written law, all subsidiary legislation shall be tabled before the House upon publication in the Kenya Gazette.*

*(4) The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled.*

11. A plain reading of the Standing Order No. 197 (2) indicates that the core mandate of the Committee is to ensure that statutory instruments are consistent with parent statutes. However, the Committee is alive to the limitations imposed upon its mandate by the provisions of Section 34(1) of the Interpretation and General Provisions Act (Cap. 2. Which states:

*34. (1) All rules and regulations made under an Act shall, unless a contrary intention appears in the Act, be laid before the National Assembly without unreasonable delay, and, if a resolution is passed by the Assembly within twenty days on which it next sits after the rule or regulation is laid before it that the rule or regulation be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new rule or regulation.*

### What is the legal status of a Gazette Notice?

12. The preliminary question on the legal status of a Gazette Notice was conclusively answered by the joint sitting of the Departmental Committee on Justice and Legal Affairs and the Committee on Delegated Legislation in its report on the appointment of the Director and two assistant directors of the Kenya Anti- Corruption Commission adopted by the House in September, 2009.
13. In its report, the joint Committees found that:

“The Committee also considered whether the Gazette Notices under which the appointments were made were subsidiary legislation thus subject to the jurisdiction of the Committee on Delegated legislation.

The committee noted that Standing Order No. 197 makes reference to the term “subsidiary legislation” without specifically defining the same. Indeed the word “subsidiary legislation” is used interchangeably with the term “delegated legislation” in that Standing Order.

In the absence of such definition the Committee used the definition of the term as used in section 3 of the Interpretation and General Provisions Act, Cap 2 Laws of Kenya, as follows:

*"Subsidiary legislation" means any legislative provision (including a transfer or delegation of powers or duties) made in exercise of a power in that behalf conferred by a written law, by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument.*

From the foregoing it is clear that Gazette Notice No. 9300 and No. 9301 is subsidiary legislation because if the notices are issued by the President in exercise of a power in that behalf conferred by the Anti-Corruption and Economic Crimes Act. As such the notice falls within the mandate of the committee on delegated legislation and are liable to be recommended for annulment under Standing Order 197(4).

The committee rejects the argument that Parliament does not have power to annul Gazette Notices. How can a Parliament which has power to amend the constitution, power to enact and amend statutes, power to annul rules and regulations not have power to annul mere Gazette Notices, especially when such Gazette Notices are published in flagrant disregard of the enabling law?”

14. The Committee holds that the above finding is the correct interpretation of the law and the position still holds today.

### Legal Status of Legal Notice No. 16 of 2003

15. The authority to review the remuneration of teacher's service between 1997 and 2003 was set out in the repealed TSC Act. Section 13 of the repealed Act required the Minister to establish a committee to be known as the Teacher's Service Remuneration Committee (TSRC) for the purposes of consideration the remuneration payable to teachers in the teacher's service. The KNUT is represented in the TSRC by five (5) members appointed by the Minister pursuant to section 13 (2) (c) of the repealed TSC Act.
16. Further, section 14 of the repealed TSC Act provided:-
- 14. (1) The Committee shall, whenever they think fit or are required by the Minister to do so, review the remuneration of teachers in the teachers service as that remuneration exists (whether in pursuance of this Act or of any previous enactment or otherwise) at the time of the review.*
  - (2) Where, in consequence of such a review, the Committee agrees on any recommendations with respect to the remuneration of teachers in the teacher's service, they shall transmit those recommendations to the Minister.*
  - (3) Upon the receipt of any recommendations agreed by the Committee the Minister shall, after preparing a draft order to give effect to those recommendations, and after consulting the Committee with respect to that draft and considering any representations made by the Committee with respect thereto, make and publish in the Gazette an order directing that the remuneration of teachers in the teachers service shall be determined in accordance with the provisions thereof.*
  - (4) Any order made under this section shall take effect on the date specified in the order, may be made to have retrospective effect, and may revoke or amend any previous order.*
  - (5) The remuneration due and payable by the Commission to teachers employed by the Commission shall be in accordance with any order having effect under this section.*
17. From the foregoing, it is clear that section 14 of the repealed TSC Act is worded in mandatory terms to imply that **the Minister cannot revoke any gazette Remuneration Order without representation from the TSRC.** This section when read together with section 29 of the Interpretation and the General Provisions Act (Cap. 2), Laws of Kenya clearly shows that the Minister cannot by Legal Notice No. 16 of 2003; revoke the remuneration agreed between the TSC and KNUT without having received recommendations to that effect from TSRC, under section 14 of the repealed TSC Act.

18. Section 29 of Cap. 2 provides that:

*“29. Where an Act confers power to make subsidiary legislation, expressions used in the subsidiary legislation shall, except where a contrary intention appears, have the same respective meanings as in the Act conferring the power, and a reference in the subsidiary legislation to “the Act” shall mean the Act conferring the power to make the subsidiary legislation.”*

19. Accordingly, for Legal Notice No. 16 of 2003 to have legal effect intended by the legislation, the Minister and by extension the TSC must establish that:-

1. The teacher’s terms and conditions of service and any the variations thereto were negotiated by the TSRC. Records of the TSRC including the minutes should form part of the TSRC recommendations to the Minister before gazettelement of the remuneration order;
2. The draft order to give effect to the amended recommendation must also show that the Minister consulted the Committee with respect to that draft and considered any representation.

20. Accordingly, the Committee is of the firm view that the law does not give the Minister for Education, any power to unilaterally alter the terms and condition without the concurrence of the TSRC and such action will be a nullity.

21. The committee is of a further view that, all agreements entered into by the TSC under the repealed TSC Act, were transited and saved by section 50 of the TSC Act No. 20 of 2012 which came into effect on 31<sup>st</sup> August, 2012. This is in line with section 6 in the Sixth Schedule to the Constitution. The CBA entered into between the TSC and the KNUT in 1997, would continue as rights and obligations of the National government and therefore valid unless established that it was revoked legally.

## CONCLUSION

22. The Committee finds that;

- (i) On the 12<sup>th</sup> February, 2003, the then Minister for Education, Science and Technology the late Hon. George Saitoti, did indeed formulate the Teachers Service Commission (Remuneration of Teachers)(Amendment) Order, 2003 as Legal Notice No. 16 of 2003 which were gazette in the Kenya Gazette Supplement No. 17 of 21<sup>st</sup> February, 2003;
- (ii) The provisions of Legal Notice No. 16 of 2003 (which was an amended Order) amended various provisions of Legal Notice No. 534 of 1997 which touched on teachers allowances and benefits;
- (iii) The mandatory provisions of Section 14 of the repealed TSC Act provide that the Minister for Education *cannot revoke any gazette Remuneration Order without representation from TSRC*;
- (iv) Legal Notice No. 16 of 2003 is therefore ultra vires to section 14 of the repealed TSC Act and therefore a nullity ab initio ;
- (v) Section 50 of the TSC Act No. 50 of 2012 which came into effect on 31<sup>st</sup> August, 2012 saved all agreements entered into by TSC under the repealed TSC Act and this is in line with section 6 in the Sixth Schedule to the Constitution.
- (vi) The Committee further finds that although Standing Order No. 197 (4) gives the Committee power to recommend to the house for annulment of any subsidiary legislations, Section 34(1) of the Interpretation and General Provisions Act (Cap. 2) states that such resolution must be passed by the Assembly within twenty days on which it next sits after the rule or regulation is laid before the House. This provision greatly impends upon the powers of the Committee to recommend for annulment of Legal Notice No. 16 of 2003 when the time prescribed by the statute has lapsed.





ANNEX I:

MINUTES OF THE COMMITTEE

MINUTES OF THE SIXTY EIGHTH SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD IN THE SMALL DINING HALL, MAIN PARLIAMENT BUILDING  
ON WEDNESDAY 19<sup>TH</sup> DECEMBER 2012 AT 10.00.A.M.

PRESENT

1. Hon. Amina Abdalla, M.P
  2. Hon. Gitobu Imanyara, MP
  3. Hon. (Dr.) Julius Kones, M.P
  4. Hon. Kiema Kilonzo, M.P.
  5. Hon. B.C. Muturi Mwangi, MP
- Chairing

ABSENT WITH APOLOGIES

1. Hon. Olago Aluoch, M.P.
2. Hon. Fahim Twaha, MP
3. Hon. Baiya Njoroge, M.P

IN ATTENDANCE

Mr. Jacob Ngwele

NATIONAL ASSEMBLY

- Third Clerk Assistant

MIN.NO.70/2012      PRELIMINARIES

The Chairperson called the meeting to order at 10.30 AM and opened with a word of prayer by the Committee Clerk.

MIN. NO. 071/2012      MATTER OF PUBLIC PETITION BY KNUT

The Committee noted that notwithstanding four invitations, the Minister for Education has failed to appear before the Committee and respond to the KNUT Petition, and the Committee had no option but to table its report without taking the Ministers evidence.

MIN. NO. 072/2012      COMMITTEE DELIBERATIONS

The Committee deliberated on its report and concluded that:

- (i) The on the 12<sup>th</sup> February, 2003, the then Minister for Education, Science and Technology the late Hon. George Saitoti, did indeed formulate the Teachers Service Commission (Remuneration of Teachers)(Amendment) Order, 2003 as Legal Notice No. 16 of 2003 which were gazette in the Kenya Gazette Supplement No. 17 of 21<sup>st</sup> February, 2003;

- (ii) The provisions of Legal Notice No. 16 of 2003 (which was an amended Order) amended various provisions of Legal Notice No. 534 of 1997 which touched on teachers allowances and benefits;
- (iii) The mandatory provisions of Section 14 of the repealed TSC Act provide that the Minister for Education *cannot revoke any gazette Remuneration Order without representation from TSRC*;
- (iv) Legal Notice No. 16 of 2003 is therefore *ultra vires* to section 14 of the repealed TSC Act and therefore a nullity *ab initio*;
- (v) Section 50 of the TSC Act No. 50 of 2012 which came into effect on 31<sup>st</sup> August, 2012 saved all agreements entered into by TSC under the repealed TSC Act and this is in line with section 6 in the Sixth Schedule to the Constitution.
- (vi) The Committee further finds that although Standing Order No. 197 (4) gives the Committee power to recommend to the house for annulment of any subsidiary legislations, Section 34(1) of the Interpretation and General Provisions Act (Cap. 2) states that such resolution must be passed by the Assembly within twenty days on which it next sits after the rule or regulation is laid before. This provisions greatly impends the power of the Committee to recommend for annulment the time prescribed by the statute having lapsed.

The Committee recommended that the House resolves:-

- a. **The Committee hereby recommends that, the House urges the Minister for Education to de-gazette the Teachers Service Commission (Remuneration of Teachers)(Amendment) Order, 2003 gazetted in the Kenya Gazette Supplement No. 17 of 21st February, 2003 as Legal Notice No. 16 of 2003;**

Having considered all the evidence and additional information, the Committee adopted the report unanimously and also resolved to Table the report to the House, with the above-mentioned recommendation, soonest.

MIN. NO. 073/2012

ADJOURNMENT

And there being no other business, the Chair adjourned the Sitting at 11.45 am. The next meeting will be on notice.

Signed: .....  
(CHAIRPERSON)

MINUTES OF THE SIXTY SEVENTH SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD IN THE RESTAURANT, 7<sup>TH</sup> FLOOR, CONTIENTAL HOUSE ON  
TUESDAY 4<sup>TH</sup> DECEMBER 2012 AT 10.00.A.M.

PRESENT

1. Hon. Amina Abdalla, M.P
  2. Hon. Baiya Njoroge, M.P
  3. Hon.B.C.Muturi Mwangi, MP
- Chairing

ABSENT WITH APOLOGIES

1. Hon. (Dr.)Julius Kones, M.P
2. Hon. Kiema Kilonzo, M.P.
3. Hon. Olago Aluoch, M.P.
4. Hon.Fahim Twaha, MP
5. Hon.Gitobu Imanyara, MP

IN ATTENDANCE

Mr. Jacob Ngwele

NATIONAL ASSEMBLY

- Third Clerk Assistant

MIN.NO.67/2012      PRELIMINARIES

The Chairperson called the meeting to order at 10.30 AM and opened with a word of prayer by the Committee Clerk.

MIN. NO. 068/2012      MATTER OF PUBLIC PETITION BY KNUT

The Committee noted the letter dated 30<sup>th</sup> November, 2012 by the Clerk of the National Assembly inviting the Hon. Minister for Education to the Committee meeting of 4<sup>th</sup> December, 2012 in order for the Hon. Minister to give his evidence with respect to the Public Petition by KNUT.

Members noted that there was a letter dated 3<sup>rd</sup> December, 2012 by Hon. Minister for Education requesting for postponement of the meeting in view of the fact that he was attending a function by his political party.

The Committee deliberated on the Minister's letter and observed that this was the third time the Minister was requesting for postponement of the meeting and that the Committee will nevertheless grant him the last postponement and if he does not appear

the next time, the Committee will proceed and file its report without the Ministers evidence.

The Committee thereafter resolved to reschedule the meeting with the Hon. Minister to Thursday 6<sup>th</sup> December, 2012.

MIN. NO. 069/2012

ADJOURNMENT

And there being no other business, the Chair adjourned the Sitting at 10.45 am. The next meeting will be held on December 6<sup>th</sup>, 2012 at 10.00 am.

Signed:

.....

(CHAIRPERSON)

Date:

2<sup>nd</sup> - Jan - 2013  
.....

MINUTES OF THE SIXTY SIXTH COMMITTEE ON DELEGATED LEGISLATION HELD IN  
THE COMMITTEE ROOM , 2<sup>ND</sup> FLOOR, CONTINETAL BUILDING ON THURSDAY  
20<sup>TH</sup> SEPTEMBER 2012 AT 10.00 A.M.

PRESENT

1. Hon. Amina Abdalla, M.P. -Chairing
2. Hon.B.C.Muturi Mwangi, MP
3. Hon. Olago Aluoch, M.P.
4. Hon. Ababu Namwamba, M.P.

ABSENT WITH APOLOGIES

1. Hon. (Dr.)Julius Kones, M.P
2. Hon. Kiema Kilonzo, M.P.
3. Hon.Fahim Twaha, MP
4. Hon.Gitobu Imanyara, MP
5. Hon. Baiya Njoroge, M.P

IN ATTENDANCE

1. Mr. Jacob Ngwele

NATIONAL ASSEMBLY

- Third Clerk Assistant

MIN.NO.63/2012      PRELIMINARIES

The Chairperson called the meeting to order at 11.00 a.m. and welcomed the representatives of KNUT and the Permanent Secretary (PS) Ministry of Education. The Chair explained the basis of the meeting and the proposed procedure for the enquiry.

MIN. NO. 064/2011      EVIDENCE BY THE MINISTER FOR EDUCATION

The PS tendered to the Committee the apology of the Minister for Education and stated that he was attending a special cabinet meeting which had been called that morning. He informed the Committee that the Minister has requested for the postponement of the Meeting. The Chair informed the PS that the meeting will proceed but the Minister will be accorded another opportunity to appear before the Committee.

MIN. NO. 065/2011

EVIDENCE BY KNUT

The Chairman of KNUT, Mr. Wilson Sossion, appeared before the Committee accompanied by the following KNUT officials:

- (i) Albanus P Mutisya - KNUT Treasurer
- (ii) Xavier Nyamu - KNUT Deputy Secretary General
- (iii) Mudzo Nzili - KNUT Assistant Secretary General
- (iv) Wycliffe Omucheyi - KNUT 2<sup>nd</sup> VNC
- (v) Richard Kibagendi - KNUT ANT-
- (vi) Dorothy Muthoni - KNUT 1<sup>st</sup> NWR
- (vii) Jacinta Ndegwa - KNUT Official
- (viii) S. M Kagumo - KNUT official

Appearing before the Committee on September 20, 2012, the Chairperson of KNUT accompanied by other key official of the Union informed the Committee as follows:-

- (p) That, section 13 of the TSC Act, (Cap. 212), Laws of Kenya (repealed by the TSC Act No. 20 of 2012) (hereafter referred to as the repealed Act) established the Teacher's Service Remuneration Committee (TSRC) which is a committee established for the purpose of considering the remuneration payable to teachers in the Teachers Service and is chaired by an independent and neutral chair;
- (q) That, under section 14 of the repealed Act, once the Committee has deliberated, reviewed and agreed on the remuneration payable to teacher's, its recommendations are transmitted to the Minister for gazette as an Order and that once gazette, it is irreversible ;
- (r) That, on 2<sup>nd</sup> July 1997, there was a TSRC committee chaired by the late Hon. Taita Towett, which upon agreeing on a review of the teacher's remunerations, submitted its signed minutes to the Minister as per the repealed Act;



- (s) That, this was the only TSRC meeting and KNUT is not aware of any other subsequent TRSC meeting;
- (t) That, the then Minister for education, ignored the minutes of the TSRC meeting of 1997 and gazetted general salary raise under Legal Notice No. 180 of 1997 which was objected to by KNUT forcing them to go on strike in September, 1997 which was only called off upon the intervention of the then President who ordered for revocation of Legal Notice No. 180 of 1997 by Legal Notice No. 534 of 1997;
- (u) That, on 13<sup>th</sup> October, 1997, there was a return to work formula in which the government undertook to improve the teacher's remuneration over a period of five years. The agreement contained a **schedule "A"** indicating how the teacher's salary increment would escalate in percentage over the five year period. **Schedule "B"** indicated how the allowance (house, medical; responsibility; special; hardship and commuter allowances) would be improved over the period to end in the year 2001.
- (v) That, the government failed to live up to its promise and on 3<sup>rd</sup> December 2002, it was agreed that the teachers' salaries as reflected in the Teachers Remuneration Order, 1997 would be paid over a period of ten years ending in 2013. The government proceeded to honor the payments of salaries as per **schedule "A"**; while leaving the allowances in **schedule "B"** in suspended animation.
- (w) That, in May, 2003, pursuant to a series of meetings, the government agreed to shorten the period of payment as agreed in 2002 from ten (10) years to six (6) years and that in the subsequent year the two parties would meet to see whether the period can be reduced to five (5) years depending on the growth of the national economy.

- (x) That, on 1<sup>st</sup> March, 2007, the KNUT and the government agreed to reduce the period agreed earlier from six (6) to five (5) years. This marked the fulfillment of salaries as per **schedule "A"** of the Teachers' Remuneration Order, 1997. However, KNUT kept reminding the government that there was a **schedule "B"** of the 1997 agreement that was yet to be fulfilled.
- (y) That, during the on-going teacher's strike, it has come to the attention of KNUT about the existence of the **Teachers Service Commission (Remuneration of Teachers)(Amendment) Order, 2003** gazetted on 21<sup>st</sup> February, 2003 as **Legal Notice No. 16 of 2003** which purported to amend Legal Notice No. 534 of 1997.
- (z) That, KNUT submits that:-
- vii. It is not aware of Legal Notice No. 16 of 2003 and that it is a stranger to the same;
  - viii. any variation to Legal Notice No. 534 of 1997 must be done through a circular and KNUT has never seen a circular to that effect;
  - ix. Legal Notice No. 16 of 2003 did not originate from TSRC as provided for under the law and the same should not have varied the benefits previously accorded to teachers downwards;
  - x. There was no other TSRC after the 1997 one was disbanded and there was an attempt to establish a TSRC in 2009 but the same collapsed.
  - xi. Legal Notice No. 16 of 2003 varies the allowances which are at the core of teacher's benefits;
  - xii. It destroys Legal Notice No. 534 of 1997.
- (aa) Further, the union opposes the legitimacy of this Legal Notice No. 16 of 2003 for the following reasons:
- The procedural structure of negotiating of teacher's terms and condition of service as at 1997 is provided for in TSC Act Cap. 212

(now repealed) at Section 13 onwards. A perusal of this section will reveal that Legal Notice No. 16 of 2003 did not pass through any procedure as stipulated by the TSC Act;

- Teacher's terms and condition of service and any variation thereto are negotiated by the TSRC. The minutes of the Committee form part of the formal proceedings. The committee makes recommendation to the Minister for Education, who gazettes the terms of service in accordance with the recommendations of the Committee;
- TSRC was not convened to discuss the proposed amendments; all the amendments contained in the Legal Notice No. 16 of 2003 were not negotiated by TSRC;
- The union has checked its record of Gazette Notices and it is evident that the Notice was never published. The Notice just appeared when the strike notice expired.

(bb) That, Legal Notice No. 534 of 1997 has been saved by the new TSC Act No. 20 of 2012 at section 50 and the same remains binding to TSC as it forms part of the agreement and decisions of the commission entered into under the repealed TSC Act.

(cc) That, all the Legal Notices with respect to teacher's remuneration gazetted after Legal Notice No. 534 of 1997 do not meet the standards of the TSC Act;

(dd) That, in conclusion, KNUT therefore pray that the law should be followed as it were irrespective of errors of omission and commission from TSC and KNUT and therefore Legal Notice No. 534 of 1997 should be recognized and the other Legal Notices including Legal Notice No. 16 of 2003 should be nullified.

(ee) On the claim that KNUT is demanding for a 300% salary increment, the Chairperson informed the Committee that the 300% increase was not tied to Legal Notice No. 534 of 1997 but rather it was a new demand based on new economic realities and that these were new issues to be dealt with under the proper framework.

(ff) Asked why KNUT was blatantly disobeying court orders, the chairperson informed the Committee that there has never been a strike in Kenya which had not been declared illegal and furthermore, KNUT has never been served with any court orders.

MIN. NO. 066/2012

ADJOURNMENT

And there being no other business, the Chair adjourned the Sitting at 12.45 pm. The next meeting will be by notice.

Signed:  .....

(CHAIRPERSON)

Date:  .....

MINUTES OF THE SIXTY FIFTH SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD IN THE MAIN COMMITTEE ROOM 7, MAIN PARLIAMENT  
BUILDINGS ON MONDAY 8<sup>TH</sup> MARCH 2010 AT 2.55.P.M.

PRESENT

1. Hon. Amina Abdalla, M.P. -Chairing
2. Hon. Baiya Njoroge, M.P.
3. Hon. B.C. Muturi Mwangi, MP

ABSENT WITH APOLOGIES

1. Hon. (Dr.) Julius Kones, M.P.
2. Hon. Kiema Kilonzo, M.P.
3. Hon. Olago Aluoch, M.P.
4. Hon. Fahim Twaha, MP
5. Hon. Gitobu Imanyara, MP

IN ATTENDANCE

1. Ms. Rachael Kairu
2. Mr. Jacob Ngwele
3. Mr. Sherrifsam Mwendwa

NATIONAL ASSEMBLY

- Second Clerk Assistant
- Third Clerk Assistant
- Legal Counsel

MIN.NO.60/2012      PRELIMINARIES

The Chairperson called the meeting to order at 2.45 PM and opened with a word of prayer by the Committee Clerk.

MIN. NO. 061/2011      MATTER OF PUBLIC PETITION BY KNUT

Members deliberated at length the matter of the Public Petition by Kenya National Union of Teachers (KNUT) and:

- (i) noted the contents of the *direction by the Chair* of September 13, 2013, that the Committee agreed to examine the matter;
- (ii) noted the contents of the letter by the Minister for Education requesting to appear before the Committee to shed some more light on the matter at issue;
- (iii) resolved to review Legal Notice No. 534 of 1997 and Legal Notice No. 16 of 2003 and ascertain whether they are inconsistent with the parent statute;

(iv) broadly analysed the legal opinion submitted by the Office of the Legal Counsel and;

(v) asserted the need request the Minister for Education, Teachers Service Commission and KNUT to appear before them, as scheduled, on 20<sup>th</sup> September, 2012 ;

The Committee also outlined the following as lead issues to be pursued during the inquiry-

- (i) There is need to have a report to the House responding to the Petition;
- (ii) The report should recommend whether or not to annul the impugned Legal Notices ;

(iii) The Minister must avail to the Committee:

- a. Proof of gazettelement of Legal Notice No. 16 of 2003
- b. Proof of the meeting that took place leading to the gazettelement of Legal Notice No. 16 of 2003
- c. Minutes of the said Meeting

(iv) The financial implications of annulling Legal Notice No. 16 of 2003

MIN. NO. 062/2012

ADJOURNMENT

And there being no other business, the Chair adjourned the Sitting at 3.45 pm. The next meeting will be held on September 20<sup>th</sup> 2012 at 10.30 am.

Signed:

  
.....  
(CHAIRPERSON)

Date:

19<sup>th</sup> Sep 2012  
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