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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

REPORT ON-

PETITION NO. 4 OF 2022 REGARDING FUNDS SPENT BY THE NATIONAL
GOVERNMENT CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF THE
CONSTITUTION BY MR. STEPHEN MUTORO

MARCH, 2024

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 12 MAR 2024	DAY: TUESDAY
TABLED BY:	VICE-CHAIRPERSON PUBLIC PETITIONS & COMMITTEE HON. JAMES SITIENEI
CLERK AT THE TABLE:	B. INTOFU

DIRECTORATE OF LEGISLATIVE AND PROCEDURAL SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

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LIST OF ABBREVIATIONS AND ACRONYMS

CS	-	Cabinet Secretary
GOK	-	Government of Kenya
JHL	-	Jamhuri Holdings Limited
KRA	-	Kenya Revenue Authority
MDAs	-	Ministries, Departments & Agencies
NMS	-	The Nairobi Metropolitan Services
NSC	-	National Security Council
NSTS	-	National Security Telecommunication Service
TKL	-	Telkom Kenya Limited

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and in accordance with the provisions of Standing Order 227, it is my distinct privilege to present to this House the Committee's Report on its consideration of Public Petition regarding Contrary to the Provisions of Article 223 of the Constitution by Mr. Stephen Mutoro. The petition, conveyed to the House in accordance with Standing Order 225(2)(b) by the Speaker of the National Assembly on 15th September 2022.

The Petitioner prayed that the National Assembly, through the Public Petitions Committee, orders the Auditor-General to conduct a special forensic audit on all public expenditures during the transition period from July to September 2022. Specifically, the Petitioner sought an examination of expenditures that were not approved by the National Assembly. The Petitioner further called for the formation of a Commission of Inquiry to investigate government officials responsible for the contested expenditures. Additionally, the petitioner urged the consideration of amendments to the Finance Act of 2022 and other relevant laws, with a focus on recalling delegated legislative power on taxation granted to the Kenya Revenue Authority among other prayers.

Upon considering the petition, the Committee observed that withdrawals were made by the MDAs between July and September 2022, coinciding with the conclusion of the Jubilee Administration's term. The Committee noted a lack of safeguards preventing the outgoing administration from incurring expenditures in case of an emergency. The House subsequently approved all expenditures, except for Kshs. 4.5 million allocated to the maize flour subsidy program and Kshs. 6,091,140,702 earmarked for the acquisition of Telkom Kenya through the Supplementary Appropriation Act of 2023. Lastly, the Committee highlighted that, despite the availability of the Contingency Fund to address emergencies, none of the MDAs sought funds from it due to the stringent conditions outlined in Section 21 of the Public Finance Management Act of 2012. Instead, they opted to request funding under Article 223 (1) (a) of the Constitution, bypassing Article 223 (1) (b).

In response to the petitioner's prayers, the Committee recommends that the Auditor-General conduct a forensic audit on all public expenditures by the National Government between July and September 2022 to ascertain any alleged misappropriation. Further, the Committee recommends amendment to Section 62 and any other consequential provisions of the Public Finance Management Act (2012) to establish an independent Public Debt Management Office outside the National Treasury among other recommendations.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

DATE.....12th March 2024......

PART ONE

1. PREFACE

1.1. ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Public Petitions Committee is established pursuant to the provisions of Standing Order 208A and is mandated to -

- a) consider all public petitions tabled in the House;
- b) make such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommend whether the findings arising from consideration of a petition should be debated by the House; and
- d) advise the House and reporting on all public petitions committed to it.

1.2. COMMITTEE MEMBERSHIP

The Public Petitions Committee was constituted in October 2022 and comprises of the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency

United Democratic Party

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Walter Owino, M.P.
Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere North Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency

Maendeleo Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3. COMMITTEE SECRETARIAT

The Public Petitions Committee is facilitated by the following secretariat:

Head of Secretariat
Mr. Ahmed Kadhi
Senior Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Shadrach Omondi
Legal Counsel II

Mr. Edison Odhiambo
Fiscal Analyst

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Andrew Shangirai
Principal Sergeant at Arms

Mr. Yezel Jillo
Sergeant at Arms

Ms. Lilian Mburugu
Media Relations Officer

Ms. Rahab Chepkilim
Audio Officer

PART TWO

2. PETITION NO. 4 OF 2022 REGARDING FUNDS SPENT BY THE NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

2.1. INTRODUCTION

1. Public Petition No. 4 of 2022 by Mr. Stephen Mutoro, Secretary General of the Consumer Federation of Kenya (COFEK) was conveyed to the House by the Speaker on 15th November, 2022.
2. The Petitioner stated that, towards the end of the term of the Jubilee Administration, Kshs. 55 billion was spent without the approval of the National Assembly, contrary to the provisions of Article 223 of the Constitution.
3. The Petitioner further averred that the said expenditure was incurred by the Government at a time when the country was grappling with huge debt, high inflation, and high cost of living.
4. The Petitioner further stated that there was lack of transparency and accountability in the run-up to the transition from one administration to another which to him was a matter of great concern that if it goes unchecked, similar incidences would recur in future.
5. To the best of the Petitioners' knowledge, the matter in respect of which the Petition is made is not pending before any Court of Law or Constitutional body.

2.2. PETITIONER'S PRAYERS

6. The Petitioner prayed that the National Assembly through the Public Petitions Committee-
 - (a) orders the Auditor-General to conduct a special forensic audit within two weeks on all public expenditures from July to September 2022 specifically expenditures that were never voted for by Parliament.
 - (b) A Commission of Inquiry be formed to enable the public know how Kshs. 55 billion was irregularly allocated and spent. The Commission of Inquiry to put the following officers to their strict proof -
 - i.) Outgoing/Former Cabinet Secretary;
 - ii.) Controller of Budget;
 - iii.) Accounting Officers of all beneficiary allottees; and
 - iv.) Any other relevant officer and interested members of the public.
 - (c) amends the relevant laws to bar outgoing administrations from spending any such public funds not voted for by the National Assembly and introduce heavy penalties including life imprisonment for those found culpable.
 - (d) amends the Finance Act, 2022 and other relevant laws with focus on recalling on delegated legislative power on taxation granted to the Kenya Revenue Authority or any other agency.
 - (e) establishes an Independent Public Debt Management Authority soonest possible so that the said agency tracks and monitors any new debt and repayment to fully comply with the applicable laws.
 - (f) Tables the Report on the said inquiry before the House for debate and scrutiny.

PART THREE

3. STAKEHOLDERS SUBMISSIONS ON THE PETITION

3.1. SUBMISSIONS BY THE PETITIONER

On Thursday, 9th March, 2023, the Secretary General of the Consumer Federation of Kenya (COFEK), Mr. Stephen Mutoro, appeared before the Committee and submitted as follows, that: -

7. During the transition period of the previous government to the new government, funds were lost and credible information within the public domain indicated that the Jubilee administration in its last days spent a sum of Kshs. 55 billion without the approval of the National Assembly and the period under question was between July-September 2022.
8. Funds lost could be much more than those lost during Goldenberg, Anglo leasing and chicken gate scandals that ever happened in the history of the country and points to weak mechanisms of transparency and accountability especially during the transition periods by Governments.
9. Funds were spent by various Ministries, Departments and Agencies amidst the elevated debt vulnerability by the country's economic challenges and the high cost of living among other prevalent problems.
10. "Transition periods" have continued to be avenues for looting government resources by exiting Governments and constitute to blatant corruption.
11. Independent Commissions are not autonomous with specific reference to the Office of the Controller of Budget whose mandate as outlined in Article 228(5) of the Constitution, is among others, "to approve or not approve any withdrawal from public funds unless satisfied that the withdrawal is authorized by law".
12. Funds would not have been lost if the Controller of Budget complied with the provisions of Article 228(5) of the Constitution.
13. Submissions by the Controller of Budget regarding approval of colossal sums of money to various Ministries, in what she attested to as "arm-twisting", by the Executive, was a clear indication of lack of autonomy.
14. Independent Institutions have continued to suffer from political interference and are neither independent nor autonomous in some situations where fiscal decisions have to be made.
15. The Attorney General failed to intervene in addressing the problem as required by the law in line with Article 156(1) of the Constitution which requires him/her to promote, protect, uphold the rule of law and defend the public interest.
16. The existence of Independent/Constitutional Commissions is a waste of public funds as they are majorly ceremonial and do not live up to their mandates as envisaged by the Constitution.
17. There is need to establish a Commission of Inquiry to undertake investigations due to the complexity of the matter and the many Government Ministries, Agencies and Departments that are involved.

18. Parliament recalls certain delegated legislative powers to certain government agencies citing abuse for instance KRA imposing additional levies on citizens to shield citizens from abuse by state agencies

19. The Petitioners prayed that the National Assembly: -

- a) prioritizes tracking and recovery of the said funds and those found culpable be brought to book;
- b) establishes a Commission of Inquiry to investigate and make public, the findings on how the Kshs. 55 billion was irregularly allocated and spent;
- c) orders the Auditor-General to conduct a Special Forensic Audit for the period in question specifically the period between July to September, 2022 to establish fraud, corruption and other financial improprieties as provided for by Section 37 of the Public Audit, 2015;
- d) Amends relevant laws specifically Article 223 of the Constitution to bar outgoing administrations from spending public funds;
- e) Amends the Finance Act, 2022 and other relevant laws with focus on recalling on delegated legislative powers granted to various agencies e.g., KRA;
- f) Summons all those implicated persons including the Former Cabinet Secretary of the National Treasury and the former NMS Director, General Mbadi among others for interrogation; and
- g) Recommends removal from Office of the current Controller of Budget.

3.2. SUBMISSIONS BY THE CONTROLLER OF BUDGET (COB)

On Tuesday, 7th March, 2023, the Controller of Budget, CPA Dr. Margaret Nyakang'o, appeared before the Committee and submitted as follows: -

20. The requisition process under Article 223 of the Constitution had the following five stages-

- (a) The spending MDAs initiate the requisition process by writing to the Cabinet Secretary (CS), Ministry of National Treasury and Economic Planning to request supplementary budget;
- (b) The Cabinet Secretary of the National Treasury then approves and sends a response letter to the MDA with a copy to the COB and the Auditor General for information, but without the original request from the MDA;
- (c) The Director General (DG) of Accounting Services at the National Treasury sends a requisition to the COB;
- (d) The Controller of Budget acknowledges the requisition and replies outlining to the Principal Secretary the requirements to adhere to the provisions of Article 223, specifically for parliamentary approval and regularisation;
- (e) The National Treasury raises a request to COB for withdrawal/funding using the approval in note (a) and note (c); and

- (f) Finally, the COB considers the requisition in line with the law and, if it complies with the law and regulations, approves the withdrawal of funds to the National Treasury on behalf of the requesting MDA.

21. With regard to funding under Article 223 of the Constitution between July-September 2022 related to the Petition -

- (a) The COB approved State Department for Infrastructure's requisition of: -
 - (i) Kshs.2.8 billion to cater for additional budget for select flagship projects-Improvement of Lamu-Ijara-Garissa Road and funding done on 5th August, 2022;
 - (ii) Kshs. 4.8 billion to cater for additional budget for select flagship projects-dualling of Nairobi Eastern Bypass and funding done on 5th August, 2022; and
 - (iii) Kshs.1,850,000,000 to cater for additional budget for select flagship projects-Construction of Makupa Causeway and funding made on 5th August, 2022.
- (b) The Ministry of Defence's requisition of Kshs. 2.2 billion to cater for the GOK funding component of Level 4 Forces Research and Referral Hospital and funding done on 04-Aug-2022;
- (c) The National Treasury's requisition of Kshs. 6,091,140,702 to cater for the Exit of Helios Investment in Telkom Kenya LTD and funding done on 5th August, 2022;
- (d) The State Department for Crop Development and Agricultural Research's requisition of Kshs.4 billion to cater for the implementation of the maize subsidy programme and funding done on 4th August, 2022;
- (e) The Ministry of Petroleum and Mining's requisition of Kshs. 16,597,436,070.98 to cater for compensation of oil importers under Petroleum pump price stabilization and funding done on 16th September, 2022;
- (f) The State Department Early Learning and Basic Education's Kshs. 4,121,665,433.00 to cater for Secondary Education quality and improvement Projects under IDA and funding done on 14th September, 2022; and
- (g) Presidency's requisition of Kshs.411,909,902.70 out of Kshs.2,961,436,261.85 and the outstanding balance of Kshs.2,549,526,359.15 which had not yet been approved due to the non-provision of documents.
- (h) The Controller of Budget however, raised the following concerns that -
 - (i) The feedback on the progress on approval of the National Assembly on Article 223 supplementary funding had not been shared with the COB for tracking and eventual reporting by the National Treasury;
 - (ii) The ten per cent (10%) ceiling should be by corresponding vote rather than the entire approved budget;
 - (iii) The National Assembly considers reviewing the law to protect Article 223 from abuse; and
 - (iv) The mandate of the Office of the Controller of Budget of overseeing and implementing the budget be done independently by the Controller of Budget.

3.3. SUBMISSIONS BY THE CABINET SECRETARY, MINISTRY OF ROADS AND TRANSPORT

On Thursday, 20th April, 2023, the Principal Secretary for the Ministry of Roads and Transport, Eng. Joseph Mbugua, appeared before the Committee on behalf of the Cabinet Secretary for Roads and Transport and submitted as follows: -

22. Approval of the Additional Budget under Article 223 of the Constitution provides that the National Government may spend money that has not been appropriated by Parliament if *inter-alia*,

(i) *The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; and*

(ii) *When the National Assembly has approved spending which had been granted under Article 223 of the Constitution, an appropriation bill shall be introduced for the appropriation of the money spent.*

23. The State Department of Roads made a request for additional funding to the National Treasury and received approvals to spend in advance of Appropriation under Article 223 of the Constitution funding amounting to Kshs. 9.45 billion within the financial year 2022/2023 for ongoing road projects as tabulated below: -

No	Vote	Budget Code	Project Name	Implementing Agency	Amount (Kshs.)
1	1091	159101	Upgrading of Lamu-Ijara-Garissa Road (A10) to All Weather Standard	KeNHA	2,800,000,000
2		124801	Dualling of Nairobi Eastern Bypass	KURA	4,800,000,000
3		154601	Construction of Makupa Causeway	KeNHA	1,850,000,000
		TOTAL			9,450,000,000

Table 1: Approved funding for three (3) ongoing road projects

24. The said request for additional funding was made to the Cabinet Secretary for the National Treasury and Planning in respect of three roads highlighted in Table (1) above and it was based on the following grounds: -

- (a) The Projects had been recommended by the National Security Council for implementation and therefore required optimum funding; and
 (b) The projects had material pending bills which were hindering prompt implementation.

25. The Cabinet Secretary for National Treasury approved additional budget provisions amounting to Kshs.9,450,000,000 under Article 223 of the Constitution with financing on 3rd August, 2023 as detailed below: -

S/No	Mode	Amount Approved (Kshs.)
1.	Financing from the Annuity Fund	8,450,000,000
2.	Financing from other sources at the Treasury	1,000,000,000
Total		9,450,000,000

Table 2: Approved additional budget from the Annuity Fund

26. In line with the amended Annuity Fund Regulations, funds set aside for use by projects outside the Annuity Fund can be used upon approval by the Cabinet Secretary for the National Treasury upon advice by the Annuity Oversight Committee.
27. Section 3(c) of the Public Finance Management (Roads Annuity Fund) (Amendment) Regulations, 2019 as read together with section 8 of the Roads Annuity Fund Regulations, 2015 provides that,
- “Moneys may be paid out of the fund where such payments relate to the use or investment of surplus funds in the manner directed by the Cabinet Secretary. The Oversight Committee is supposed to recommend the surplus.”*
28. Further, section 4 of the amendment to the Annuity Fund Regulations, provide that
- “In the event that the Committee is yet to be constituted, or is unable to obtain quorum for whatever reason to allow them to carry out the functions outlined in paragraph (1), the Cabinet Secretary may undertake the functions of the Committee until such a time that the Committee shall be properly constituted.”*
29. The Cabinet Secretary for Roads following the above provisions, made a request for additional funding for settlement of critical road projects and the Cabinet Secretary of the National Treasury and Planning, approved additional budget with financing from the Annuity Fund and declared surplus into the Consolidated fund of Kshs.8,450,000,000 (Kshs.8.45 billion) to finance the additional budget. The expenditure was approved in line with Article 223 of the Constitution.
30. The Cabinet Secretary for the National Treasury and Planning therefore has the ultimate approval on the usage of Annuity Funds. Upon receipt of the approval to spend in advance of the appropriation, the State Department remitted Kshs.8,450,000,000 from the Annuity Fund bank account to the exchequer for financing the approved budget under Article 223 of the Constitution. The State Department thereafter made a financing exchequer request to the National Treasury of the entire Kshs. 9,450,000,000 on 4th August 2023.
31. The Exchequer towards funding the Kshs.9.45 billion was received on the 5th of August 2022 by the State Department and transferred to the Implementing Agencies (KURA and KeNHA) and other certified works.
32. Justification for additional budget and approval for the three road projects under Article 223 of the Constitution were as follows—
- (a) The approved budgets under the Printed Estimates for FY:2022/2023 were very insufficient to finance the already certified works;
 - (b) These were ongoing contracts which had been awarded much earlier and were therefore not new and normal spending had been appropriated by Parliament on a project-by-project basis though under quite insufficient allocations; and
 - (c) The said roads were crucial links with a bearing on security and hence needed enhanced urgent funding.

33. Salient Project Implementation factors on the three Projects and timings of action to demonstrate the propriety of the granting of additional provision and funding of the Kshs.9.450 billion were tabulated as follows: -

No	Project	Contract Sum Kshs. Billions	Start Date	Completion Time	Amount Certified but not Paid as of 31 st July 2022 Kshs. Billions	Outstanding Works and Pending Bills as of 28 th February 2023 Kshs. Billions
A	B	C	D	E	F	G
1	Lamu-Ijara-Garissa	18b	27 th March 2021	27 th May 2023	3.7b	8.4b
2	Eastern Bypass	12b	14 th Jan 2022	14 th Jan 2023	5.8b	1.6b
3	Makupa Bridge	4.6b	10 th Oct 2020	15 th Oct 2022	1.2b	847m
Total		34.6b			10.7b	10.8b

Table 3: Project Implementation factors occasioning granting of additional funding for 3 road projects

34. In line with Article 223 clause (4), when the National Assembly has approved spending which had been granted under Article 223 of the Constitution, an Appropriation Bill shall be introduced for the appropriation of the money spent. The approved expenditure had since been regularized by the National Assembly under the auspices of the 1st Supplementary Budget for the FY2022/2023 and the approved expenditures were within the 1st Supplementary Budget Appropriation Act, 2023.
35. The Committee undertakes a site visit to ascertain the information submitted before the Committee.

3.4. SUBMISSIONS BY THE CABINET SECRETARY, MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

On Thursday, 20th April, 2023, the Cabinet Secretary for Agriculture and Livestock Development, the Hon. Mithika Linturi appeared before the Committee and submitted as follows -

36. The Maize subsidy programme in the last 2 years had experienced a steady decline in maize production from 42 million bags in 2020 to 36 million bags in 2021 due to poor performance of rains.
37. The annual maize requirement was 52 million bags which included other uses such as manufacture of livestock feeds, stock retained as seed and for manufacture of other products. The average quantity of maize for human consumption in the country was 3.06 million bags (90 kgs) per month totalling to about 36 million bags per annum.
38. The maize deficit was about 16 million bags in 2021 and the production prospects for 2022 was also below average due to poor rainfall performance and the country relied on maize imports of about 200,000 bags per month from the East African region to bridge the deficit which in the year 2022 was low due to poor production of maize across the region.

39. The available maize stock as at May, 2022 was about 5.3 million (90 kgs) based on Maize Balance Sheet projected to July 2022, implying that the country would have a 2-months deficit of maize equivalent to about 6 million until the next harvest in July - August, 2022.
40. Maize imports decreased to 217,676 bags in April compared to 343,203 bags (90kgs) in March due to constrained regional supply.
41. Consequently, maize prices were escalating ranging between Kshs.4600-5000 in May, 2022 compared to Kshs.3000-3500 between January - April, 2022. The Government therefore intervened by waiving duty for 6 million bags of white non-GMO maize to be imported from outside the East African and COMESA regions through Gazette Notice dated 9th May 2022 to bridge the gap.
42. Maize process however continued to rise due to disruptions in the global supply chain, and high fuel prices with attendant logistical costs. The imported maize landing price was Kshs. 5,700 to Kshs. 6,500 per 90 kg bag. The price of the sifted maize flour (normal maize brands) remained high retailing at an average of Kshs. 190-215 per 2kg packet.
43. The Government decided to further cushion consumers through the allocation of resources to finance a maize-flour subsidy program to address the high consumer maize flour prices across the country.
44. The Cabinet Secretary for the National Treasury and Planning held meetings with millers on the 15th and 20th of July 2022 to discuss the financing to subsidize white maize flour occasioning the announcement of the Fifth Stimulus Programme covering the supply and distribution of maize meal across the entire country by the Retired President on the same day that sifted maize flour would retail across the entire territory of the Republic of Kenya at a price of Kshs. 100, down from Kshs. 205 for a 2 kg packet.
45. The Ministry of Agriculture then requested for Funds for the maize flour subsidy programme vide letter Ref. MOA/LCD/9/12/1 dated 18th July 2022 amounting to Kshs. 9.12 billion and the National Treasury granted approval to the state Department to spend additional Kshs. 4 billion vide Letter Ref.: RES1169/22/01 A (7) dated 21st July 2022 under Article 223 of the Constitution in implementation of the Maize Flour Subsidy Programme pending regularisation in the FY 2022/2023 Supplementary Estimates.
46. The Head of Public Service vide a Letter Ref. CAB/NSC/14/2. VOL.1/(24), dated 25th July 2022, communicated to the National Security Council on the approval of the following—
 - (i) Noted the contents of the Memorandum;
 - (ii) Sifted maize Flour Subsidy Programme for immediate implementation; and
 - (iii) Directed that the Cabinet Secretary for National Treasury and Planning to provides Kshs.2 billion per week and Kshs. 532 million to clear the outstanding bills pending to Millers for the Financial Year 2017/2018.
47. The National Treasury approved the State Department to spend additional Kshs. 4 billion under Article 223 of the Constitution in implementation of the Maize Flour subsidy programme was not regularised in the FY2022/2023 Supplementary Estimates No. I.

3.5. SUBMISSIONS BY THE CABINET SECRETARY, MINISTRY OF DEFENCE

On Tuesday, 14th March, 2023, the Principal Secretary for the Ministry of Defence appeared before the Committee and submitted as follows: -

48. With regards the source of the Kshs.2.2 billion, the Executive Order No. 4 of 2020 dated July, 06, 2020 established the National Security Telecommunication Service (NSTS) to develop, operate and maintain multi-agency network for the security agencies to address the gap of lack of a pure network.
49. The Communication Authority of Kenya (CAK) was directed to assign and lease the frequencies which previously belonged the national security agencies to commercial operators. The proceeds towards the lease were to be used to establish and operate the 'new' NSTS.
50. The National Treasury granted approval for the NSTS to receive the payments for the frequency spectrum and retain the funds in NSTS accounts.
51. The NSTS realized Kshs.3.1 billion from the commercialization for Financial Year 2021/2022, but after due consideration, only part of the amount was required for the project. Therefore, Kshs.2.2 billion was surrendered to the National Treasury.
52. Pursuant to Article 223(1), the Ministry requisitioned for additional funds necessitated by the need to fund ongoing construction of Forces Research and Referral Hospital in Kabete.
53. Initially, the project was to be funded by an Export Credit Arrangement (ECA) through an agreement between the Chinese Government and the Kenyan Government on a 85% and 15% contribution respectively. However, due to policy shift, the Chinese Government withdrew from funding the project occasioning stalling of the same as they were the biggest funders.
54. The withdrawal of the Chinese Government funding occasioned the Ministry to source alternative funding to settle payment for the certificates that had been raised by the contractor for the works done. The request for additional funding under Article 223 was approved and subsequently ratified by Supplementary Estimates I for Financial Year 2022/2023.
55. The said funds were used for the settlement of certificates for works done at the Forces Research and Referral Hospital amounting to the Ministry's 15 percent contractual obligation.

3.6. SUBMISSIONS BY THE CABINET SECRETARY, ENERGY AND PETROLEUM

On Wednesday, 15th March, 2023, the Cabinet Secretary, Ministry of Energy and Petroleum appeared before the Committee and submitted as follows -

56. The Government was importing petroleum through 85 licensed Oil Marketing Companies (OMCs) through an open tender system captured in the petroleum regulations and Public Procurement and Disposal Act, 2015.
57. The recovery during post-COVID, Ukraine-Russian War and tightening of monetary policy in the US increased competition for petroleum and subsequently leading to higher prices. Therefore, to sustain the small economies like Kenya, the Government made an intervention to subsidize petroleum to manage inflation through a Gazette Notice.
58. The Ministry made a request to the National Treasury and Economic Planning through a letter Ref: MOPM/P/CONF/3/34 VOL.IV(62) dated 2nd August, 2022 for the allocation of an

additional Kshs.16,597,436,070.98 to cover a deficit required to settle outstanding compensation to importers of refined petroleum products which was critical in order to avoid disruption in supply of petroleum products.

59. The Ministry of National Treasury and Economic Planning through a letter dated Ref. 1194/22/02/A (10) dated 25th August, 2022, communicated its consideration and approval of additional funding of Kshs.16,597,436,070.98 to the Ministry of Energy and Petroleum under Article 223 (Supplementary Appropriation) of the Constitution.
60. The payments were in respect to the petroleum pump price stabilization programme introduced as an intervention vide Legal Notice No. 124 of 10th July, 2020, Petroleum Development Levy Order, 2020.
61. The funds were used to pay eleven (11) Oil Marketing Companies (OMCs) in September and October 2022.

3.7. SUBMISSIONS BY THE FORMER CABINET SECRETARY AND PRINCIPAL SECRETARY, NATIONAL TREASURY AND ECONOMIC PLANNING

The former Cabinet Secretary for the National Treasury and Economic Planning, Hon. (Amb.) Ukur Yatani, EGH and the Former Principal Secretary for the National Treasury and Economic Planning, Mr. Julius Muia, PhD, FCPA, vide letters dated 14th July, 2023 and 7th July, 2023 respectively, sent written submissions and stated as follows: -

62. *On the meaning of the phrase “a need has arisen” as used in Article 223 of the Constitution and how is this need applied in connection to Section 40(3) (a) of the PFM (National Government) Regulations, 2015 the former CS and PS responded as follows -*

Article 223 -

- (1) *subject to clauses (2) to (4), the National Government may spend money that has not been appropriated if -*
 - (a) *The amount appropriated for any purpose under the Appropriations Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act; or*
 - (b) *The money has been withdrawn from the Contingencies Fund.*
- (2) *The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).*
- (3) *If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.*
- (4) *When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.*
- (5) *In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.*

The PFM Regulation 40(3) further provides that -

The purpose for which approval is sought for a supplementary budget shall be: -

- (a) Unforeseen and circumstances where no budget provision was made; or*
- (b) Unavoidable, in circumstances where there is an existing budgetary provision which however is inadequate.*

In light of the above, the Constitution envisages a situation where a need is unforeseen and unavoidable, particularly where Parliament has not appropriated any funds or the need is unavoidable where Parliament has appropriated insufficient funds. For instance, if budgetary provisions are estimates and the outcome of public procurement is unavoidable, then Article 223 of the Constitution can be applied given a need has arisen. Also, "a need may arise" in this circumstance was unforeseen and unavoidable during the financial year thus necessitating expenditure of the Government. For instance, when the COVID-19 pandemic struck in 2020, "a need arose" where no budgetary provision had been made and the Government had to intervene under Article 223 of the Constitution. Under either of the two circumstances described above, Parliamentary approval must be sought within two months after the expenditure has been incurred or where approval is not granted within the two months and Parliament adjourns, seek approval within 14 days when it next sits or where it was on recess, within 14 days after it next sits.

In conclusion, it is clear the two relevant laws are linked and the Constitution supersedes the Regulation.

63. *On the need to clarify whether expenditures which were already known at the time of finalizing the estimates but could not be accommodated can be brought back during budget implementation through a supplementary, the former CS and PS responded as follows -*

The National Treasury was guided by the Laws governing Public Finance specifically the Constitution, Public Finance Management Act, 2012 and attendant Regulations. His opinion was that if a need arises, expenditures which were already known at the time of finalizing the estimates but could not be accommodated can be brought back during budget implementation through a Supplementary Budget particularly if there was fiscal space or if the fiscal space allowed. This was expressly permitted by Article 223 of the Constitution which deals with Supplementary Appropriation.

64. *On the reasons why the expenditures in question could not wait for the Annual Appropriation and why the National Treasury administratively approved but the disbursement and subsequent payment took two months, the former CS and PS submitted as follows -*

- (i) Some of the expenditures which were granted were unforeseen and unavoidable such as drought-related interventions. In such circumstances, it was not possible to delay such expenditure to the next financial year for it to be appropriated;
- (ii) In dealing with expenditure requests, that were originated by Ministries to be allowed under Article 223, the National Treasury was guided by the provisions of Article 223(1), (2) and (3) of the Constitution. The subsequent payment of the expenditure granted under Article 223 was managed by the requesting Ministries subject to the availability of exchequer; finally,

- (iii) All the spending by the National Government between July 2022 and September 2022 was submitted to the National Assembly for approval vide a letter Ref: ES 1/02 'H' (7) dated 12th September 2022 and acknowledged by a Letter Ref: NA/DLP/TBO/CORRES/2022 dated 28th September 2022.

65. *On the circumstances under which the National Treasury authorized the Ministry of Defence to spend KSh.900 million which accrued from frequencies given by the Communication Authority of Kenya, the former CS and PS responded as follows—*

That, he had informed the current Cabinet Secretary to provide the above information/documentation to the Committee because he left Office in October, 2022 and may not be in a position to provide the same.

3.8. SUBMISSION BY THE CABINET SECRETARY, INTERIOR AND NATIONAL ADMINISTRATION

The Cabinet Secretary for Interior and National Administration, the Hon. Kithure Kindiki. EGH, vide a letter dated 25th June, 2023, forwarded written submissions and stated as follows, that—

- 66. The mandate of the Ministry of Interior and National Administration entailed the creation of an enabling environment by ensuring peace and security to the people and property, maintaining a credible national integrated information management system, promoting national cohesion, facilitation of administration of justice and provision of correctional services for Kenya's economic development.
- 67. Article 223 of the Constitution stipulates that the National Government may spend money that has not been appropriated if; the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act or the approval of Parliament for any spending under this Article shall be sought within two (2) months after the first withdrawal of the money.
- 68. Arising from the above and in appreciation of the escalated activities towards the August 2022 General Election, the State Department for Interior and Citizen Services sought an additional budget provision of Kshs.300 million under Article 223 of the Constitution to strengthen the security operations of multi-agency security teams to address the then-prevailing security issues across the country and the upcoming General Elections.
- 69. Subsequently, the National Treasury, approved additional funding of Kshs.125 million vide a Letter Ref: TNT/CONF/118/18/01/N (123) dated 3rd August, 2022, to implement the planned security-related activities in respect to the August General Elections.
- 70. The said funds were utilized for the intended purposes and the same was regularized under Supplementary Estimates No. 1 for the financial year 2022/2023 that was approved by the National Assembly in February, 2023.

3.9. SUBMISSIONS BY THE FORMER CABINET SECRETARY, MINISTRY OF AGRICULTURE, FISHERIES AND LIVESTOCK DEVELOPMENT

The Former Cabinet Secretary in charge of Agriculture, the Hon. Peter Munya, EGH, vide a letter dated 30th August, 2023, forwarded written submissions and stated as follows, that;

71. At a meeting held on 25th July, 2022, the National Security Council (NSC) considered the Memorandum NSC (22)30 and approved the Sifted Maize Flour Subsidy Program and the NSC further directed the Cabinet Secretary to the National Treasury and Economic Planning to provide Kshs.2 million per week for its implementation.
72. Regarding funds for implementation of the Maize Flour Subsidy program, approval was granted by the Cabinet Secretary to the National Treasury under Article 223 of the Constitution and Section 21(2), (3) and (4) of the Public Finance Management Act, 2012.
73. Regarding the execution of the Maize Flour Subsidy Program, the Principal Secretary, of the State Department for Crop Development and Agricultural Research was the team leader of the Inter-Ministerial Taskforce that implemented the entire Sifted Maize Flour Subsidy Program.

3.10. SUBMISSIONS BY THE IMMEDIATE FORMER PRINCIPAL SECRETARY, STATE DEPARTMENT OF AGRICULTURE

On Tuesday, 26th September, 2023, the Immediate Former Principal Secretary Secretary for Agriculture, Mr. Francis Owino, appeared before the Committee and submitted as follows, that;

74. He was appointed as the Principal Secretary in 2018 and served as a Principal Secretary in the State Departments for Public Service and Youth, Industrialization and Fisheries and the Blue Economy.
75. While serving as the Principal Secretary in the State Departments for Public Service and Youth, Industrialization and Fisheries and the Blue Economy, he was further appointed as Acting Principal Secretary of the State Department for Crop Development and Agricultural Research in the Ministry of Agriculture, Fisheries and Livestock Development.
76. In the course of discharging his duties, he received a letter dated 25th July, 2022 from the Head of Public Service addressed to him, his other colleague, the Principal Secretary for Livestock, Cooperatives, the National Treasury and Planning and copied to the Cabinet Secretaries for National Treasury, Agriculture, Fisheries and Cooperatives and the Attorney General.
77. The letter communicated a meeting held on 25th July, 2022, where the Cabinet Secretaries of Agriculture, Livestock and Fisheries and Cooperatives, the National Treasury and Planning and the Attorney General presented a Joint Cabinet Memorandum apprising the Government on the food and nutrition security situation of the country and the need for a maize flour subsidy.
78. The Government consequently approved the Sifted Maize Flour Subsidy for immediate implementation.
79. The then Cabinet Secretary, the National Treasury, was directed to provide Kshs.2 billion per week for four (4) weeks, Kshs. 257 million for monitoring and overseeing the programme at all levels and a further Kshs. 532 million to clear outstanding bills pending for millers for the FY 2017/2018.

80. Upon receipt, he signed contracts with 129 millers who had the requirements including certificate of incorporation, pin certificate, tax compliance certificate, AFA certificate, VAT certificate, valid trade license, bank details, KEBS certificate, millers contact person and physical location of the millers.
81. A command center for receiving and processing payments was set. The Departmental Committee on Agriculture and Livestock conducted an inquiry on the same and tabled a report on 7th July, 2023 and one of the recommendations was that funds that were spent under Article 223 of the Constitution, be regularized.
82. The Ministry of Agriculture should come up with a policy on how to engage in future subsidy programs.

3.11. SUBMISSIONS BY THE IMMEDIATE FORMER PRINCIPAL SECRETARY, STATE DEPARTMENT OF BROADCASTING AND TELECOMMUNICATION

On Thursday, 10th August, 2023, the Immediate Former Principal Secretary for the State Department of Broadcasting and Telecommunication in the Ministry of ICT, Innovation and Youth Affairs, Ms. Esther Koimett, appeared before the Committee and submitted as follows, that;

83. Under the Executive Order on the Organisation of Government in operation at the time of the transaction, Telkom Kenya Ltd. (TKL) was placed under the State Department for Broadcasting and Telecommunication as the State Department in charge of telecommunications policy under the Ministry of ICT.
84. She did not deal with the transaction which is the subject of the inquiry and was not aware of it until it came to the public domain through media reports.
85. She did not have information on the matter even if she was the Principal Secretary then citing that the Government holds 40 percent shareholding in Telkom. The transaction was a shareholder transaction, meaning that the funds for transaction of this nature were provided directly by the National Treasury.
86. To the best of her knowledge, the State Department was not involved in the transaction related to the purchase of shares of a co-investor in TKL. That was a shareholder matter that fell under the purview of the National Treasury as the Ministry with the legal powers for such a transaction, under the Cabinet Secretary to the National Treasury Incorporation Act (Cap 101) of the Laws of Kenya.

3.12. SUBMISSIONS BY THE CABINET SECRETARY, NATIONAL TREASURY & PLANNING

The Cabinet Secretary for National Treasury and Planning, Mr. Njuguna Ndung'u, vide a letter Ref: TNT/CONF 51/07 'E' (70) dated 26th April, 2023, forwarded written submissions and stated as follows -

87. Article 223 (1) of the Constitution provides that the National Government may spend money that has not been appropriated if;
 - (a) *That amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or*
 - (b) *Money has been withdrawn from the Contingencies Fund.*

88. Further, Article 223(2) and (3) of the Constitution provides that the approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of money and if Parliament is not sitting during the time contemplated in Clause (2) or sitting but adjourns before the approval has been sought, the approval shall be within two weeks after it next sits.
89. All spending by the National Government between July to September, 2022 was submitted to the National Assembly for approval vide letter Ref: ES 1/02 'H' (7) dated 12th September, 2023. Further, the National Treasury, acknowledged receipt of the National Approvals vide letter Ref: NA/DLP/TBO/CORRES/2022 dated 28th September, 2023.

3.13. SUBMISSIONS BY THE CHIEF EXECUTIVE OFFICER, TELKOM KENYA LIMITED

On Monday, 30th October, 2023, the Chief Executive Officer of Telkom Kenya Limited, Mr. Mugo Kibati, appeared before the Committee and submitted as follows: -

90. The Board of TKL never received an express intention from JHL to exit TKL however, the Board became aware of the intention through: -
 - (a) A request by JHL in August, 2021 for the management of TKL to support a due diligence exercise that would be conducted by potential investors which culminated in a presentation by the management on 29th November 2021 to one of the potential investors; and
 - (b) In a letter dated 24th January, 2022, JHL wrote to Telkom Kenya indicating their intention to terminate the Management Services Agreement.
91. JHL informed GOK of its decision to exit Telkom Kenya Limited in July 2021 by exercising its put option. The exit was prompted by the failure to attain shareholder alignment on the company's strategic direction, GOK's disapproval (as a shareholder) of a merger transaction with Airtel Kenya occasioning material loss of value to Telkom Kenya Limited and its shareholders and arbitrary expropriation of the company's prime assets.
92. There was no legal requirement for JHL to inform the Board of TKL on JHL's intention to exit from TKL before communicating the same to the National Treasury.
93. That, the National Treasury, vide a letter dated 19th August, 2022, informed the Chairman of the Board of Telkom Kenya Limited that Jamhuri Holdings Limited (JHL)/Helios had informed the Government of Kenya (GoK) of their decision to exit Telkom by exercising their put option as provided for in the shareholder agreements.
94. The National Treasury requested the Chairman to convene a Board meeting to pass the necessary resolutions to facilitate completion of the transaction.
95. On Tuesday, 29th August, the Chairperson of the Board (Telkom) wrote back to the National Treasury informing him that: -
 - (i) the Board as it was constituted at the time, lacked a quorum and therefore could not meet to deliberate on the matter;
 - (ii) The agreed form of the Attorney General's legal opinion had not been submitted for the Board's consideration yet it was a fundamental condition to process the request;
 - (iii) the Directors required all the necessary information to process the request;
 - (iv) if completed, the proposition would introduce significant immediate challenges to the parastatal under the various laws, statutes and guidelines;
 - (v) the company had an obligation to notify its employees, customers and other stakeholders of the transaction; and

- (vi) the Board Members required guidance on how to officially communicate the transaction, particularly about the employment contracts of employees as well as other ongoing operational contracts with critical stakeholders and partners given that the directors were not involved in the transaction.
96. As the CEO of Telkom Kenya Limited and to the best of his knowledge, he was not privy to the meetings of the Board about the said transaction, and the transfer of shares was equally undertaken by the Board and not the CEO. It is the discretion of the shareholders to involve/not involve the Board in such meetings but ordinarily, they are shareholder to shareholder meetings.
97. The Board and Management of TKL were not privy to the discussions between shareholders of the company regarding the value of the shares. However, vide a letter dated 19th August 2022, the following was noted—
- (i) GOK agreed to purchase 60 per cent of the ordinary issued share capital from JHL at a nominal amount of USD 1.;
 - (ii) JHL agreed to transfer by Deed of Novation all rights and obligations relating to all outstanding loans advanced by JHL to TKL amounting to USD.51,186,057;
 - (iii) JHL agreed to transfer by deed of novation all rights and obligations relating to shareholding loans that JHL took over from OrEA amounting to USD.239,938,692; and
 - (iv) GOK made payments for considerations of the purchase of shares and outstanding loans and accrued interest for loans advanced to TKL by JHL.
98. The transaction between JHL and GOK was completed on 12th August, 2022 following receipt of USD 51,186,057 by JHL from GOK and delivery of the fully signed transfer documents including fully signed share transfers from JHL to GOK.
99. TKL neither received nor disbursed any funds relating to the exit of JHL and therefore, the Board was not aware of any detail of payments, accounts particulars and amounts paid.
100. After the new administration came into place, Telkom, engaged the new CS Treasury who inferred that they wanted to secure a new investor to replace Jamhuri and needed Telkom's support. So, it was the National Treasury that had been driving the process of acquiring a new investor to take Jamhuri shares.

3.14. SUBMISSIONS BY THE IMMEDIATE FORMER CABINET SECRETARY, MINISTRY OF ICT

The immediate Former Cabinet Secretary, Ministry of ICT, Mr. Joe Mucheru, EGH, vide a Letter dated 31st August, 2023, submitted as follows, that: -

101. The Government of Kenya through the National Treasury was a shareholder at Telkom Limited and the issue of funds spent towards Telkom Kenya Limited or why the said expenditure could not await the annual appropriation process would be adequately addressed by the Cabinet Secretary of the then National Treasury.
102. To the best of his knowledge, he did not deal with the transaction which is the subject of the inquiry and was not aware of it until it came to the public domain through media reports.
103. He did not have information on the matter even if he was the Cabinet Secretary then citing that the said transaction was purely a shareholder-to-shareholder engagement i.e. Telkom and the National Treasury.

3.15. SITE VISIT

104. The Committee undertook an inspection visit to the Forces Memorial and Research Hospital in Kabete on Friday, 24th March, 2023 as earlier proposed by the Principal Secretary, Ministry of Defence, when he appeared before the Committee. During the visit, the Committee was briefed as follows, that—

(i) The Hospital located at the Kenya Defence Forces Army Barracks in Kabete, a Level Six referral hospital, would have a bed capacity of 700 and would offer specialized health services to the military, security personnel and the general public.

(ii) With regard to the funds in question, the Ministry requested for additional funding to aid in the completion of the said hospital for the FY 2023/2024.

105. After the visit to the said facility, the Committee noted that -

(i) The project was a noble idea and upon completion the facility which had a 700-bed capacity would provide premium healthcare and serve all security sectors among them the Kenya Defence Force (KDF), National Police Service (NPS), Kenya Wildlife Service (KWS), National Intelligence Service (NIS), Kenya Coast Guard Service (KCGS), the National Youth Service (NYS) and their families in line with the Big Four National Agenda of enhancing Universal Healthcare.

(ii) The hospital was still at 25 per cent completion and required more funds to enable its completion though the National Treasury had allocated Kshs.900 Million to the NSTS project and an additional Kshs. 2.2 Billion for the period under review.



Figure 1. Members of the Public Petitions Committee being taken through a Presentation on the proposed architectural design of the Kenya Defence Forces Army Barracks, Kabete.



Figure 2. Members of the Public Petitions Committee being taken through the proposed architectural design of the Kenya Defence Forces Army Barracks, Kabete

PART FOUR

4. COMMITTEE OBSERVATIONS

Upon hearing from the petitioner and other witnesses, the Committee observed that: -

106. Withdrawals were made by the MDAs mainly between July-September, 2022 towards the end of the term of the Jubilee Administration as claimed by the Petitioner as follows—

(a) The State Department for Infrastructure's requisition of -

- i.) Kshs.2.8 billion to cater for additional budget for select flagship projects-Improvement of Lamu-Ijara-Garissa Road vide a letter **Ref: Article 223: FY2022-2023/06** dated **4th August, 2022** and funding was done on **5th August 2022**;
- ii.) Kshs.4.8 billion to cater for additional budget for select flagship projects-dualling of Nairobi Eastern Bypass vide a letter **Ref: Article 223: FY2022-2023/06** dated **4th August, 2022** and funding was done on **5th August 2022**; and
- iii.)Kshs.1,850,000,000 to cater for additional budget for select flagship projects-Construction of Makupa Causeway vide a letter **Ref: Article 223: FY2022-2023/06** dated **4th August, 2022** and funding was made on **5th August 2022**.

(b) The Ministry of Defence's requisition of Kshs. 2.2 billion to cater for the GOK funding component of Level 4 Forces Research and Referral Hospital and funding was done on **4th August 2022**;

(c) The COB approved National Treasury's requisition of Kshs.6,091,140,702 to cater for the Exit of Helios Investment in Telkom Kenya LTD vide a letter **Ref: Article 223: FY2022-2023/03** dated **28th July, 2022** and funding was done on **5th August 2022**;

(d) The State Department for Crop Development and Agricultural Research's requisition of Kshs. 4 billion to cater for the implementation of the maize subsidy programme vide a letter **Ref: Article 223: FY2022-2023/01** dated **25th July, 2022** and funding was done on **4th August 2022**;

(e) The requisition by the Ministry of Petroleum and Mining of Kshs.16,597,436,070.98 to cater for compensation of oil importers under Petroleum pump price stabilization and funding was done on **16th September 2022**;

(f) The requisition by the Ministry of Interior and Citizen Services of Kshs.125,000,000 to cater for the Multi-Agency Security Teams for the 2022 General Elections vide a letter **Ref: Article 223: FY2022-2023/05** dated **3rd August, 2022** and funding was done on **5th August, 2022**;

(g) The requisition by the State Department for Early Learning and Basic Education of Kshs.4,121,665,433.00 to cater for Secondary Education quality and improvement Projects under IDA vide a letter **Ref: Article 223: FY2022-2023/24** dated **12th September, 2022** and funding was done on **14-Sep-2022**; and;

(h) The requisition by the Presidency of Kshs.411,909,902.70 out of Kshs.2,961,436,261.85 and the outstanding balance of Kshs.2,549,526,359.15 had not been approved due to non-provision of the relevant documents.

107. The House subsequently approved all the expenditures with the exception of Kshs.4.5 million towards the maize flour subsidy programme and Kshs.6,091,140,702 towards the acquisition of Telkom Kenya through Supplementary Appropriation Act, 2023.
108. Notwithstanding the availability of Contingency Fund to respond to emergencies, none of the MDAs made request from the Fund due to the stringent conditions under Section 21 of the Public Finance Management Act, 2012. They therefore preferred to make funding requests under Article 223(1)(a) of the Constitution and not Article 223(1)(b) of the Constitution.
109. There were no safeguards to bar an outgoing administration from incurring expenditure in case of an emergency. The Constitution gives the National Treasury leeway to spend as long as the amount spent is in line with the provisions of Article 223. Notwithstanding this provision, the Public Finance Management Act, 2012 and its attendant Regulations needed further amendment to bar misuse of Article 223 spending.
110. The Public Debt Management Office is currently domiciled in the National Treasury. This arrangement compromises the independence of the Office since the Head of the Office reports to the Cabinet Secretary. Therefore, the office lacks financial autonomy to discharge its mandates.
111. The Cabinet Secretary for the National Treasury and Planning did not provide the Controller of Budget with the minutes ratifying the prioritization of the three roads by the Ministry of Transport that occasioned approval and disbursement of Kshs.9,450,000,000.

PART FIVE

5. COMMITTEE RECOMMENDATIONS

Pursuant to the provisions of Standing Order 227 and in response to the prayer sought, the Committee recommends that -

1. Prayer 1: *Orders the Auditor General to conduct a special forensic audit within two weeks on all public expenditures from July to September, 2022 and specifically the expenditures that were never voted for by Parliament but were still allocated and spent by Ministries and other Government Agencies;*

The Committee notes that Article 223(1) of the Constitution provides for certain parameters upon which the National Government may spend money that has not been appropriated. The parameters are as follows -

(a) The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount had been appropriated by that Act; or

(b) Money has been withdrawn from the Contingencies Fund.

The Committee further notes that certain expenditures did not find favour within the provisions of Article 223 of the Constitution.

Therefore, the Committee recommends that the Auditor-General conducts a forensic audit with a view to establishing the alleged fraud, corruption and other financial improprieties in compliance with Section 37 of the Public Audit Act, 2015 in respect of-

- i.) the approval by the COB of the National Treasury's requisition of Kshs. 6,091,140,702 to cater for the Exit of Helios Investment in Telkom Kenya LTD and funding done on 5th August 2022; and
- ii.) the State Department for Crop Development and Agricultural Research's requisition of Kshs.4 billion to cater for the implementation of the Maize Subsidy Programme and funding done on 4th August 2022.

2. Prayer 2: *Establishes a Commission of Inquiry, with public hearings, to have the public know why and further appreciate how the said 55 billion was irregularly allocated and spent;*

(a) The Committee conducted hearings on this Petition in an open and transparent manner.

(b) This suffices as a proper inquiry into the matter by the Committee.

Therefore, the Committee rejects this prayer.

3. Prayer 3: *That the said Commission of Inquiry put the following officers to their strict proof;*
- i.) Outgoing National Treasury Cabinet Secretary, Amb. Ukur Yattani;*
 - ii.) Controller of Budget;*
 - iii.) Accounting officers of all beneficiary allottees; and*
 - iv.) Any other relevant officers as well as interested members of the public and professional organizations to give their input.*

The Committee notes that—

- i.) Article 226(5) of the Constitution provides that the holder of a public office, including a political office who directs or approves the use of public funds contrary to law or instructions, is liable for any loss, whether the person remains the holder of the office or not;

Therefore, the Committee recommends that the Auditor-General audits the expenditures and the roles of the officers involved in the execution of their duties in relation to the appropriation of the funds and if found culpable, the appropriate action be taken against them.

4. Prayer 4: *Amends the relevant laws to bar outgoing administrations from spending any such public funds not voted by the National Assembly and by dint of the same, introduce heavy penalties including life imprisonment for those found culpable on such economic crimes that amount to treason and economic terrorism;*

The Committee notes that -

- i.) The current framework is already sufficient. The PFM had anticipated fiscal indiscipline during the electioneering period and provided for pre and post-election economic and fiscal report; and
- ii.) The Petitioner did not provide sufficient reasons for a shift warranting the amendments neither did the Petitioner nor the stakeholders provide with specificity and exactitude the gaps in the law to warrant any amendments.

Therefore, the Committee rejects this prayer and recommends that the provisions of the PFM are sufficient and should be complied with strictly according to the law.

5. Prayer 5: *Moves to amend the Finance Act, 2022 and other relevant laws with focus on recalling on delegated legislative power on taxation granted to the Kenya Revenue Authority and or and any other agency.*

The Committee notes that -

- i.) The Petitioner did not justify any problem with the Finance Act, 2022.
- ii.) The Constitution and the Statutory Instruments Act, 2013 allows Parliament to delegate the making of regulations and other instruments but requires their tabling and consideration by Parliament through the Committee on Delegated Legislation.
- iii.) The Petition did not provide cogent reason to warrant the recalling of the delegated power.

Therefore, the Committee rejects this prayer.

6. Prayer 6: *Makes any other recommendations that it deems fit.*

The Committee recommends that the National Assembly considers the following -

- i.) Appropriating funds in the Financial Year 2024/2025 to allow for completion of stalled projects under the Ministry of Defence (The Forces Referral and Research Hospital in Kabete) and the Ministry of Roads and Transport (the three roads) identified to have high impact in implementation as they touch on security, enhance mobility, accessibility and are key in spurring economic development;**
- ii.) Amending Section 62 and any other consequential provisions of the Public Finance Management Act (2012) to create an independent Public Debt Management Office outside the National Treasury; and**
- iii.) The Report be considered for debate in the House.**

ANNEXURES

- Annex 1:** The Adoption List
- Annex 2:** Public Petition No. 04 of 2022 regarding funds spent by the National Government contrary to the provisions of the Constitution.
- Annex 3:** Minutes of the 6th Sitting held on Tuesday, 13th December, 2022
- Annex 4:** Minutes of the 4th Sitting held on Tuesday, 7th March, 2023
- Annex 5:** Minutes of the 5th Sitting held on Thursday, 9th March, 2023
- Annex 6:** Minutes of the 6th Sitting held on Tuesday, 14th March, 2023
- Annex 7:** Minutes of the 7th Sitting held on Wednesday, 15th March, 2023
- Annex 8:** Minutes of the 8th Sitting held on Wednesday, 15th March, 2023
- Annex 9:** Minutes of the 14th Sitting held on Thursday, 20th April, 2023
- Annex 10:** Minutes of the 24th Sitting held on Friday, 24th April, 2023
- Annex 11:** Minutes of the 62nd Sitting held on Thursday, 26th September, 2023
- Annex 12:** Minutes of the 72nd Sitting held on Monday, 30th October, 2023
- Annex 13:** Minutes of the 7th Sitting held on Thursday, 7th March, 2024
- Annex 14:** Letter dated 30th August, 2023 forwarding Written Submissions from the Former Cabinet Secretary, Agriculture, Hon. Peter Munya, EGH
- Annex 15:** Letter dated 14th July, 2023 forwarding Written Submissions from the Former Cabinet Secretary, National Treasury and Economic Planning, Hon. Ukur Yattani, EGH
- Annex 16:** Letter dated 7th July, 2023 forwarding Written Submissions from the Former Principal Secretary, National Treasury and Economic Planning, Mr. Julius Muia, PhD
- Annex 17:** Letter dated 25th June, 2023 forwarding Written Submissions from the Cabinet Secretary, Interior and National Administration, Hon. Kithure Kindiki EGH
- Annex 18:** Letter Ref: TMT/CONF 51/07 'E' (70) dated 26th April, 2023 forwarding Written Submissions from the Cabinet Secretary, National Treasury, Mr. Njuguna Ndung'u.
- Annex 19:** Letter dated 30th August, 2023 forwarding Written Submissions from the Former Cabinet Secretary, ICT, Mr. Joe Mucheru, EGH.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (FIRST SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 004 of 2022)

REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT
CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE
CONSTITUTION

Honorable Members, pursuant to Standing Order 225(2)(b) which requires the Speaker to report to the House any Petition, other than those presented by a Member, I wish to report to the House that I have received a Petition from Mr. Stephen Mutoro being the Secretary General of Consumer Federation of Kenya (COFEK), a non-profit and non-political society registered under the Societies Act, Cap.108 which is committed to promoting consumer protection.

Honorable Members, the Petitioner avers that towards the end of the term of the Jubilee Administration, Kshs. 55 Billion was spent without the approval of the National Assembly, contrary to provisions of Article 223 of the Constitution. The Petitioner is concerned that expenditure of such colossal sums was incurred by the Government at a time when the country was grappling with a huge public debt, high inflation and a high cost of living.

Honorable Members, the Petitioner states that the lack of transparency and accountability in the run-up to the transition from one administration to another was a matter of great concern. Further, the Petitioner is concerned that if unchecked, similar incidences will recur in future leading to further burden to the tax payer.

Honorable Members, efforts by the Petitioner to have the matter addressed by the Ministry of National Treasury and Planning have not been fruitful. The Petitioner therefore humbly prays that the National Assembly orders that the Auditor General conducts a forensic audit on all public expenditure by the national government between July and September 2022; amends the relevant laws to bar outgoing administrations from spending any such public funds irregularly and make any other recommendations that it deems fit.

Honorable Members, having established that the matter raised in the Petition is well within the authority of this House, I direct that the Petition be committed to the Public Petitions Committee for consideration in accordance with the provisions of Standing Order 208A. The committee is required to consider the matter and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.

Wetang'ula

THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

09.11. 2022

Consumers Federation of Kenya

DLS
Please advise
01/10/22

Rehema Place, Block F-45,
Ngong Rd/Ring Rd. Kilimani,
P.O. Box 28053-00200
Nairobi.



Cell: +254-715555550, 0733180008;
Email: admin@cofek.co.ke
: hotline@cofek.africa
Twitter: @Cofek_africa
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September 21, 2022

Ms Serah Kioko
Ag. Clerk to the National Assembly
Parliament Buildings
NAIROBI

Dear *Madam,*

RE: PETITION ON FUNDS SPENT BY NATIONAL GOVERNMENT WITHOUT APPROVAL OF THE NATIONAL ASSEMBLY

I, the undersigned, and pursuant to provisions of Article 37 and 119 of the Constitution and acting for and on behalf of the Consumers Federation of Kenya (Cofek), a non-profit, non-political and non-denominational registered Society promoting consumer protection and connected purposes— hereby draw the attention of the House to the following:

Credible information, already in the public domain, point to shocking revelation of Sh55 billion spent in the last days of the Jubilee Administration without approval of the National Assembly. Huge amounts of money were allocated to various Ministries and agencies at a time when the country may have defaulted on the ever-rising public debt, worst inflation as evidenced by extremely high food and fuel prices over and above the poorly managed opaque fuel subsidy.

Worse, this happened after the most consumer-unfriendly Finance Act, 2022 which escalated the levels of intrusive taxation and even introducing taxes over tax such as the infamous 'Inflation Adjustment Tax' on Excise Duty on fast-moving consumer goods and even on electronic transactions.

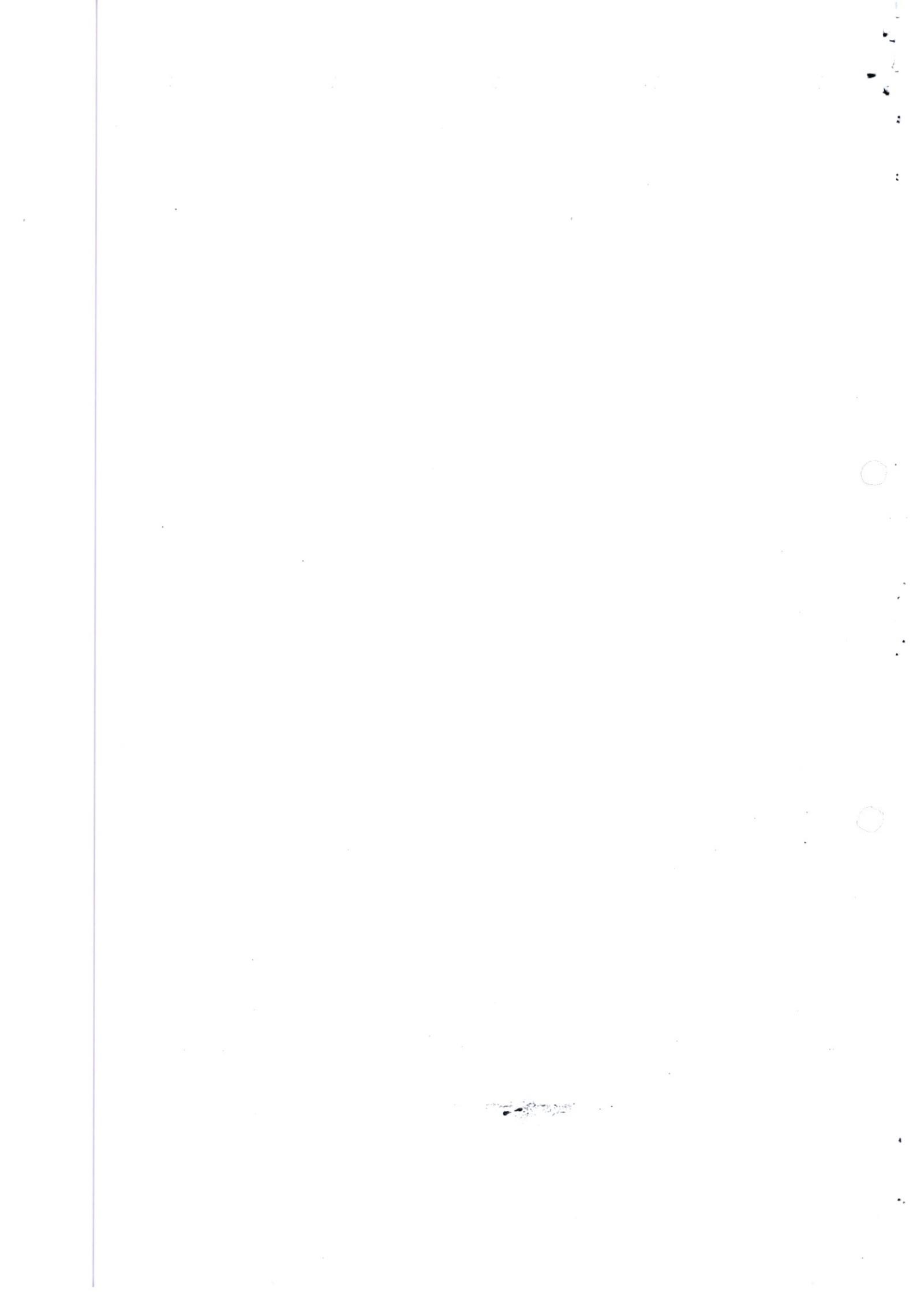
The inappropriate and illegal (mis)use of the said Sh55 billion is a pointer to weak mechanisms of transparency and accountability in the run-up to transition from one Government to the other. It amounts to blatant corruption. The Kenyan taxpayer cannot be put in a situation where s/he must finance an expensive election and an opaque transition where colossal sums of money are lost. Again, this cannot be a precedent that must be set. Tracking and recovery of the said funds, ought to be made a priority and those who broke the law brought to swift justice. Besides, mechanisms to avert similar incidents from occurring in future must be put in place. This would be the least that is needed to inspire confidence among Kenyans to pay tax.

THAT we confirm that efforts have been made to have the matter addressed by the relevant body, and it failed to give satisfactory response. The outgoing National Treasury Cabinet Secretary, currently on temporary incumbency, Mr Ukur Yattani neither returned our calls nor

PETITION ON FUNDS SPENT BY NATIONAL GOVERNMENT WITHOUT APPROVAL OF THE NATIONAL ASSEMBLY

Page 1 of 2

Mr Dennis Abusai - DDS
Message, assign and



answered our tweets. We know other Government agencies namely the Controller of Budget, Auditor General, Ethics and Anti-Corruption Commission, Director of Public Prosecutions, among others have respective responsibilities but the National Treasury carries with it the heavier burden.

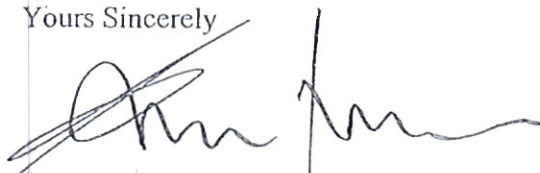
THAT we confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body

HEREFORE your humble petitioner(s) Pray that Parliament and specifically the National Assembly —

- (a) Orders the Auditor General to conduct a special forensic audit, within two weeks, on all public expenditures July to September, 2022 and specifically the expenditure that was never voted for by Parliament but was still allocated and spent by Ministries and other Government Agencies
- (b) Establishes a Commission of Inquiry, with public hearings, to have the public know why and further appreciate how the said Sh55 billion was irregularly allocated and spent
- (c) That the said Commission of Inquiry put the following officers to their strict proof,
 - (i) Outgoing National Treasury Secretary Amb. Ukur Yattani
 - (ii) Controller of Budget
 - (iii) Accounting officers of all beneficiary allottees
 - (iv) Any other relevant officers as well as interested members of the public and professional organizations to give their input
- (d) Amends the relevant laws to bar outgoing administrations from spending any such public funds not voted by the National Assembly and by dint of the same introduce heavy penalties including life in prison for those found culpable on such economic crimes that amount to treason and economic terrorism.
- (e) Moves to amend the Finance Act, 2022 and other relevant laws with focus on recalling on delegated legislative power on taxation granted to the Kenya Revenue Authority and or any other agency
- (f) Establishes an independent Public Debt Management Authority soonest possible in order that the said agency tracks and monitors any new debt and or repayment with a view to fully complying with the applicable law(s).
- (g) That the report of the said inquiry be made public immediately it is tabled in Parliament for further scrutiny by members of the public

And your **PETITIONER** will ever Pray.

Yours Sincerely



Stephen Mutoro (ID No. 13715111)

SECRETARY GENERAL





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2023
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
ON THE CONSIDERATION OF PUBLIC PETITION NO. 04 OF 2023 REGARDING FUNDS SPENT
BY THE NATIONAL GOVERNMENT CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF THE
CONSTITUTION

DATE.....7th March, 2024

We the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the Consideration of Public Petition No. 04 of 2022 regarding **Funds Spent by the National Government Contrary to the provisions of Article 223 of the Constitution** to confirm our approval and confirm its accuracy, validity and authenticity: -

S/NO.	NAME	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P. Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P. Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	
4.	Hon. Edith Vethi Nyenze, M.P.	
5.	Hon. Ernest Ogesi Kivai, M.P.	
6.	Hon. John Walter Owino, M.P.	
7.	Hon. Joshua Chepyegon Kandie, M.P.	
8.	Hon. Maisori Marwa Kitayama, M.P.	
9.	Hon. Bernard Muriuki Nebart, M.P.	
10.	Hon. Bidu Mohamed Tubi, M.P.	
11.	Hon. Caleb Mutiso Mule, M.P.	
12.	Hon. John Bwire Okano, M.P.	
13.	Hon. Peter Mbogho Shake, M.P.	
14.	Hon. Sloya Clement Logova, M.P.	
15.	Hon. Suzanne Ndunge Kiamba, M.P.	



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE SIXTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, DECEMBER 13, 2022, IN THE CONFERENCE ROOM, HILTON
GARDEN INN HOTEL, SIXTH FLOOR AT 9:00 AM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Joshua Chepyegon Kandie, M.P.
4. Hon. Ernest Ogesi Kivai, M.P.
5. Hon. Maisori Marwa Kitayama, M.P.
6. Hon. Edith Vethi Nyenze, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. Bernard Muriuki Nebart, M.P.
9. Hon. Peter Mbogho Shake, M.P.
10. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. John Bwire Okano, M.P.

PETITIONERS ON PETITION REGARDING AMENDMENT TO THE UNIVERSITIES
ACT, 2012

1. Mr. Peter Kaberia - Petitioner/Executive Director of PAWA Africa
2. Mr. Job Githinji - Petitioner/Vice Chairperson JKUAT Alumni Association

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - Clerk Assistant II
3. Ms. Willis Obiero - Clerk Assistant III
4. Mr. Ronald Walala - Senior Legal Counsel
5. Mr. Edison Odhiambo - Fiscal Analyst
6. Ms. Patricia Gichane - Legal Counsel II
7. Mr. Shadrack Omondi - Legal Counsel II

- | | | |
|------------------------|---|----------------------|
| 8. Mr. Martin Sigei | - | Research Officer III |
| 9. Ms. Eunice Jalang'o | - | Office Assistant |
| 10. Mr. Yeziel Jilo | - | Serjeant-At-Arms |

MIN./PPETC/2022/30: PRELIMINARIES

The Chairperson called the meeting to order at 9.30 a.m. and prayers were said by Hon. Janet Jepkemboi Sitienei, M.P. The Members of the Committee introduced themselves after which the Lead Clerk introduced the secretariat.

MIN./PPETC/2022/31: CONSIDERATION OF A PUBLIC PETITION REGARDING FUNDS SPENT BY THE NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF THE CONSTITUTION

1) Brief from the Legal Counsel

The Legal Counsel presented a brief on the Petition (*See attached brief*) as follows:

(a) Background of the Petition

That the Petitioner drew the attention of the House to the matter that some Kshs. 55 billion was spent in the last days of the Jubilee Administration without the approval of the National Assembly. That huge amounts of money were allocated to various Ministries and Agencies at a time when the country may have defaulted on the ever-rising public debt, worst inflation as evidenced by the extremely high food and fuel prices over and above the poorly managed opaque fuel subsidy. That the inappropriate and illegal expenditure of the said Kshs. 55 billion points to a weak mechanism of transparency and accountability in the run-up to transition from one Government to the other.

(b) Applicable legal provisions

The Legal Counsel highlighted Articles 223 and 95 of the Constitution as the key legal provisions applicable to the Petition. Further, the Public Finance Management Act No. 8 of 2012 provides financial objectives in a Budget Policy Statement of the national government.

(c) Analysis

The Legal Counsel presented that the main issue in the Petition is whether the prayers sought therein can be granted by the Committee. Therefore, a determination of the provisions of the law allows that all the prayers fall within the oversight mandate of the National Assembly.

The Committee should, therefore, interrogate the accuracy of the information relating to the appropriation of the Kshs. 55 billion with a view to establish whether due process was followed. Additionally, the Committee should interrogate the Cabinet Secretary for National Treasury, Auditor General, Controller of Budget, and any other accounting officers adversely mentioned.

2) Brief from the Parliamentary Budget Office

The Parliamentary Budget Officer submitted (*see attached PBO brief*) before the committee as follows:

(a) Legal underpinning of the Petition

That Articles 37 and 119 of the Constitution and Petition to Parliament (Procedure) Act 2012 provided the legal basis for the Petition.

(b) Summary of details of the Petition

That the Petitioner avers that credible information within the public domain indicates that the Jubilee Administration in its last days spent a sum of Kshs. 55 billion without the approval of the National Assembly. The amount was spent by various government Ministries, Departments and Agencies (MDAs) amidst elevated debt vulnerabilities by the country and other economic challenges such as high inflation evidenced by high food and fuel prices. The alleged “inappropriate and illegal (mis)use” of such a number of resources is a pointer to weak mechanisms of transparency and accountability during the transition period of the former Government to the current and constitutes blatant corruption.

(c) Prayers sought by the Petitioner

The Petitioner seeks the intervention of the National Assembly to ensure that:

- The Auditor General be ordered to conduct a special forensic audit within two weeks on all public expenditures from July to September 2022 and specifically expenditures that was never voted for by Parliament.
- A Commission of Inquiry, with public hearings be formed to enable the public to know how Kshs. 55 billion was irregularly allocated and spent.
- Parliament to amend the relevant laws to bar outgoing administrations from spending any such public funds not voted for by the National Assembly and introduce heavy penalties including life imprisonment for those found culpable.
- Amend the Finance Act, 2022 and other relevant laws with focus on recalling on delegated legislative power on taxation granted to the Kenya Revenue Authority or any other agency.
- Establish an Independent Public Debt Management Authority soonest possible in order that the said agency tracks and monitors any new debt and repayment with a view to fully complying with the applicable laws.
- The report of the said inquiry be made public immediately it is tabled in Parliament for further scrutiny by members of the public.

(d) Analysis of the major issues in the Petition/Prayers

The PBO Officer isolated the major issues in the Petition as follows:

- i.) Alleged Irregular Allocation/Expenditure of Kshs. 55 billion under Article 223 which according to the National Assembly were spent by various ministries, departments and agencies.
- ii.) Establishment of a Commission of Inquiry, with public hearings to enable the public to know how the Kshs. 55 billion was irregularly allocated and spent. Though not irregular, it can be handled after the House has made its decision on the legality of the Article 223 spending.
- iii.) Establishment of an Independent Public Debt Management Authority.
- iv.) The Auditor General to conduct a Special Forensic Audit on Article 223 spending.
- v.) Amendment of relevant laws to bar outgoing Administration from spending such public funds.
- vi.) Amendment of the Finance Act, 2022 and other relevant laws with focus on recalling delegated legislative power on taxation granted to the Kenya Revenue Authority or any other agency.
- vii.) The Petition relates to a process which has already started. That the National Treasury spent the money under Article 223 and wrote to the National Assembly seeking for approval since it was not sitting at that time the expenditures were done.
- viii.) The National Assembly received the letters from the National Treasury seeking for approvals on 12th September, 2022 and 6th October, 2022. The First letter sought for approval of the Kshs. 55 billion in question, but in the second letter they reversed the amount they require for approval to Kshs. 59 billion. Out of the Kshs. 59 billion, the National Treasury had spent about Kshs. 44 billion as enumerated (*see PBO brief attached*).
- ix.) Standing Order 244A provides that the issue of examination of such expenditure rests with the Budget and Appropriations Committee. In this regard the following policy options were given to the Committee-

- Allow the Budget and Appropriations Committee to consider the request made by the National Treasury and wait for their report;
- In case the Public Petitions Committee constrained in terms of time and that the process takes more than 90 days, the Committee is at liberty to do a Procedural Motion to the House to extend the time they have to consider the matter;
- Write to the Speaker to allow the Committee to exclusively handle the matter in which case the Budget and Appropriation Committee will not be in a position to examine the issues raised. This is to avoid a scenario where two committees of the National Assembly are doing the same thing that would result in different outcomes.

3) Committee observations and concerns

(a) The involvement of the Budget and Appropriations Committee in the matters raised in the Petition

The Committee resolved to expressly pursue issues brought before it since it is mandated to consider all petitions brought before the House. The Committee specifically noted the possibility of the two committees having reports that disagree if the matters were to be handled by BAC and PPC.

With regards to the procedural issue of the matter being handled by the two committees and yielding different results; the Committee was informed that the BAC will only handle the question of approval and not any other issues raised in the Petition. The BAC can only recommend to the House to either approve or reject the expenditures, and the PPC can use the BAC report to enhance its report to establish whether the said expenditures were legal or otherwise. The work of the PPC therefore revolves around other issues like for example setting up of a Commission of Inquiry to investigate whether the expenditures were legal or not.

Further, if BAC recommends approval, some aspects of the Petition will be overtaken by events, for instance, that the spending was not approved. However, there are still issues that will be revisited by the PPC that touch on Article 201 of the Constitution with regards to the principles of public finance like prudence, accountability to establish whether the said expenditures indeed qualified to be emergencies or otherwise.

(b) The quantum amount allowed to be spent without parliamentary approval under Article 223

With regards to the amount the law allows to be spent without parliamentary approval, the Committee was informed that the law caps it at 10 percent of the total budget. Any other amounts which are higher than that, has to be approved by Parliament prior to spending. The quantum amount in question is Kshs. 59 billion as per the latest communication from the National Treasury, and the budget for the financial year was about Kshs.3.3 trillion hence its about 5 per cent.

(c) Whether the expenditures met the threshold of a supplementary budget

Regarding the question on threshold, the Committee was informed that the Committee has to make a decision on it. The Public Finance Management Act, 2012 and its attendant regulations define an emergency and what constitutes a supplementary.

- An expenditure that was known at the time of finalizing the budget estimates and could not be accommodated within the fiscal framework, cannot constitute a supplementary under Article 223.
- A supplementary must be for allocation to activities/programmes which cannot wait for the next financial year due to the effects it may have on the citizenry, for example, COVID-19 expenditures.

In addition, the Constitution provides that you can only apply Article 223 when there is insufficiency in allocation.

(d) Possibility of having a joint sitting of PPC and BAC

With regards to a joint sitting by the two committees, the Committee was informed of the need to allow the BAC to conclude their report and make recommendations to the House. The House may approve or reject. Also, the title of the Petition talks of expenditure without approval which was still within the process according to the provisions of the law. Therefore, the PPC should allow the BAC to proceed with the approval question but deal with the details of prudence and

other prayers. The option of a joint sitting was not tenable procedurally since the two committees have distinct mandates.

The Committee was further informed that since the Petition has various prayers and is questioning an isolated period of the changeover of the regimes, the Committee could deal with the rest of the prayers for instance, it may propose amendments to the law to structure expenditure during transition in a particular manner.

4) Committee resolutions

The Committee resolved to proceed as THAT: -

- (a) the Petitioner be invited and to appear in person to shed light on the Petition and the prayers;
- (b) pursue the Petition by focusing on the issues raised that are within the mandate of the Committee but leaving approval aspects to the BAC and the House; and
- (c) invite relevant stakeholders to provide information that would enable the Committee to consider the Petition.

**MIN./PPETC/2022/32: CONSIDERATION OF PUBLIC PETITION REGARDING
AMENDMENT TO THE UNIVERSITIES ACT, 2012**

1) Brief from Legal Counsel

The Legal Counsel presented a brief on the Petition (*See attached Brief on the Petition*) as follows:

(a) The sections proposed for amendments

The Petition prayed for the following amendments:

- i. section 36(1) and section 42(1) of the Universities Act, 2012 to enable Alumni and stakeholder contribution in resuscitation, rejuvenation and support of Public Universities in Kenya.
- ii. section 39(1) and section 39(6) of the Act to enable prudence and competitiveness in recruitment of Chancellors of Universities, Vice Chancellors, Deputy Vice Chancellors, Principals and Deputy Principals of constituent colleges. However, the legal counsel noted that section 39(6) was not in existence.
- iii. the Act to enable integration of admission to all Public Universities, KMTC, TVET, KTTC and Polytechnics to be undertaken by the Kenya Universities and Colleges Central Placement Service (KUCCPS).
- iv. inclusion of two University Alumni representatives in all the Education Boards that relate to University and Higher Education, namely, the Universities Fund Board, the Kenya Universities and Colleges Central Placement Service (KUCCPS), the Commission for University Education (CUE).
- v. the Act to allow the University Alumni Chairperson to become the Patron of the University student's Organization and be deputized by the Secretary.

(b) Applicable legal provisions

Articles 94 and 119 of the Constitution are the Articles guiding the National Assembly on its mandate especially in handling such amendments. The Universities Act No. 42 of 2012 is the principal Act that the Petitioner sought amendments. The legal counsel outlined the current provisions of the various sections the Petitioner is seeking to be amended.

(c) Analysis of the legal provisions

The legal counsel noted that the Petition was rightfully before the Committee and the issues sought in the Petition were well within the authority of the National Assembly to execute. The Petitioner proposes that the establishment of Alumni Association should be mandatory amongst other proposals. However, the proposal on integration of admission to all Public Universities, KMTC, TVET, KTTC and Polytechnics to be undertaken by KUCCPS, would not suffice under the Act.

(d) Conclusions

The Legal counsel stated that the committee should interrogate the management of public universities to better understand the current affairs regarding the proposals made by the Petitioner. The Committee should get reasons from the Petitioner on how the inclusion of Alumni Association in the management of universities would improve the situation and also shed light on the Petition. The Committee should get the views of various stakeholders including the Ministry of Education and Public University Alumni Associations on the proposals stated in the Petition.

2) Submissions by the Petitioner(s)

The Petitioner made his submissions before the Committee as follows: -

(a) Background of the Petition

That public universities are carrying heavy burdens related to debt, lack of resources, poor management among others. The Petitioner proposed that amendment of various sections of the Universities Act could be a solution to these problems. He averred that in the year 2012, the Universities Act was amended to among other things remove the stakeholders of the Universities council, remove the autonomy from the council with regards to appointment of Vice Chancellors and Deputy Vice Chancellors back to the public service among others.

The Petitioner stated that currently the recruitment in public universities is heavily compromised with tribalism and other related vices, yet they are supposed to be global institutions. The proposals by the Petitioner sought to cure the pertinent challenges in the university organs. The Petitioner proposed a reconstitution of the membership of the university council which is the decision-making organ of the universities.

(b) Lack of stakeholder inclusion

The Petitioner stated that currently, the universities do not have a proper legal framework for stakeholder engagement within the public universities management. That even alumni associations and stakeholders with knowledge, resources, capacity, and exposure, have no structure of contributing to the universities because the alumni associations are no longer part of the universities. The Petitioner raised concerns that public universities are ignoring their best products which can come back to assist the universities in areas such as mentorship to the students.

(c) Proposed amendments

The Petitioner proposed to the Committee to amend section 36(1) and section 42(1) to enable alumni associations and other stakeholders to contribute to resuscitation, rejuvenation, and support of public universities in Kenya.

- The Alumni Association (Section 42(1))

“A university may establish an Alumni Association, which may consist of graduates of the university and such other persons as may be declared to be members under the Charter”

The Petitioner proposed the amendment to section 42(1) to replace the word “may” with the word “shall” to ensure that alumni association is mandatorily established.

- The structure of Council of a public university (Section 36(1))

The Petitioner proposed a new structure of the composition of the university council. That considering the constitutional provisions of two-thirds gender rule, stakeholder inclusion and diversity:

- i. the President to be allowed to appoint the Chairperson and three members to the university council;
- ii. the relevant Principal Secretaries in the Ministry of Education and the Ministry of Treasury and Economic Planning to have representation in the university councils;
- iii. two members of alumni associations serve in the council;
- iv. two members nominated by the alumni associations to represent parents, public and special interest groups;
- v. two members of staff of the universities nominated by the alumni associations;
- vi. a representative of the industry to synchronize the curriculum and the industry; and
- vii. the Vice Chancellor becomes the secretary to the council.

The Petitioner proposed that this new structure of the council will improve efficiency and decision-making processes at public universities. He further averred that inclusivity will address the challenges of finances, management, and leadership. The Petitioner reckoned that this proposal is initiating the intervention that will kickstart the rejuvenation of universities.

- Recruitment of the university Chancellor and Vice Chancellors (Section 39)

The Petitioner proposed that the alumni association be at the center of the recruitment of the university Chancellor in conjunction with the university Senate as it were before. The process involved the alumni nominating five (5) respected members in the academic or leadership and present them before the university Senate for vetting. The Senate then brings back the list to the alumni association which holds an assembly and conducts a vote then presents the top three candidates to the President for appointment.

The Petitioner also proposed that the recruitment of Vice Chancellors adopts the original approach before the amendment of the Act in 2012. The Council be empowered to be the recruiting entity for VCs and submits the names to the President for appointment. The council will advertise the position, interested candidates apply, interviews are done by the council, and the top three (3) candidates submitted to the President for appointment.

The Petitioner further proposed that the appointment of the VCs should not bypass the Cabinet Secretary for Education in order to avoid the current problem of lower-level appointment which is likely to be manipulated by tribal or local interests. This will enable the VC to hold a higher responsibility, becomes more accountable rather than when he/she is appointed by the CS of Public Service Commission.

The Petitioner proposed that the university council also conducts the recruitment of Deputy Vice Chancellors because the council can identify the needs of the institutions and recruit accordingly.

- Other proposals

The Petitioner proposed a timeline of sixty (60) days for the universities to review their charters to accommodate the amendments should the Committee agree with the prayers and the National Assembly amends the Universities Act, 2012.

The Petitioner further proposed that the Chancellor upon appointment, should automatically assume the position of the patron of the alumni associations, but they do not need to be alumni themselves, and the chairperson of the alumni association to be the patron of student association to provide mentorship and guidance to the students.

3) Committee Concerns

(a) Curriculum development and industry involvement

Regarding the involvement of alumni association and industry representative involvement in curriculum synchronization, the committee was concerned that the role should be left for the specific departments in the universities to deal with rather than at the council level since universities are not industry specific. The Petitioner stated that some of the alumni associations have experience from the industry hence they can be given an opportunity to develop the curriculum. The Petitioner stated that the current state of affairs is not working due to the chain of bureaucracies in place and this can better be solved by involving alumni associations through industry representation.

(b) Best practices from other places

The Committee sought to understand some of the best practices applied in other jurisdictions and private universities and how they manage the issues raised in the Petition. The Committee sought to understand and identify casing points where the proposals made by the Petitioner have been practiced successfully and how they have helped to address such challenges facing universities. The Petitioner stated that some of the proposals are already being applied in some private universities and they are working since the alumni associations have a platform for contributing to the universities, for example, mentorships which is not the case in public universities.

(c) Concerns about the Alumni Associations

The Committee felt that the proposals were geared towards giving too much power, trust, and involvement of the Alumni into university affairs without a framework of checks and balances. The Petitioner stated that with regards to appointment of representatives into the university council, the alumni association was not going to necessarily bring in one of them rather, they were to identify the suitable persons citing that they are best connected to the industry. Also, the alumni involvement will relieve other organs of the university of extra duties. The Petitioner, however, sought the intervention of the Committee to see how best the proposal can be achieved without it looking like the alumni associations are becoming too powerful.

The Committee further raised a concern over the composition of the alumni association since universities have thousands of alumni associations and the activities of the association especially the way it will conduct the roles proposed in the Petition. The Petitioner stated that currently there are no patrons of alumni associations hence there is lack of proper coordination.

The Committee raised concerns over the proposed amendment to include university alumni association representation in the higher education institution boards as some of the boards have a fixed number of members but there are so many universities with alumni. Therefore, the committee sought to understand the mechanism of realizing this proposal. The Petitioner indulged the Committee to fine-tune the proposal and establish the framework that can best suit the proposal to realize involvement of these alumni to make the institutions better.

The Committee also sought to understand the need of having a lot of alumni representation in the university council when just two members could be sufficient. The Petitioner stated that the council has a limited number of positions hence the two alumni representation will be enough.

The Committee sought to understand why the current existing alumni associations are not included in the management of universities. The Petitioner stated that the alumni associations involvement in universities was removed through the 2012 amendments to the Universities Act, but the reasons were not clear but what is clear is that there have been challenges in the universities since the 2012 amendments.

The Committee sought to understand what the alumni association is going to improve the situation in the universities considering that the areas of concern, for example, recruitment

requires expertise such as human resource which the alumni may not have. The Petitioner stated that the alumni association brings among other things loyalty and institutional memory. The alumni will have the opportunity to give back to the institutions which molded them, through mentorship, leadership, governance, and even resources.

(d) Appointment of VCs

The Committee raised concerns over overemphasis on the need to have a non-tribal appointment of VCs rather than shifting the focus to meritocracy and competitive appointment. The Petitioner stated that while meritocracy was important, the appointments should remain high-level to reduce the challenges of tribal and biased appointments.

(e) Inclusion of other institutions in the Petition

The Committee persuaded the Petitioner not to drag other institutions like KMTC, TIVETs, KTTCs and polytechnics into the problems facing public universities while pursuing the Petition. The Committee suggested that a central placement for all the institutions is not the way to go but rather the public universities problems are better dealt with separately. Further, the Committee appreciated that these other institutions are governed by different laws yet the proposal before the Committee was the amendment to the Universities Act, 2012. The Petitioner requested the Committee to use its discretion to drop the proposal.

4) Committee resolutions

The Committee resolved to schedule meetings with and receive submissions/memoranda from the various stakeholders affected by the proposals in the Petition. These stakeholders include public and private universities management, different alumni associations, and the Ministry of Education.

MIN./PPETC/2022/33: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1.30 p.m. The date of the next meeting would be on Tuesday, 13th December, 2022 at 2.30 p.m.

Sign:

(CHAIRPERSON)

Date.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE FOURTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, MARCH 7, 2023, IN SMALL DINING, NEW WING, MAIN
PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Ernest Ogesi Kivai, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. Bidu Mohamed Tubi, M.P. | | |
| 9. Hon. Caleb Mutiso Mule, M.P. | | |
| 10. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 11. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 12. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Peter Mbogho Shake, M.P.
3. Hon. John Bwire Okano, M.P.

IN-ATTENDANCE

OFFICE OF THE CONTROLLER OF BUDGET

- | | | |
|---------------------------------|---|-------------------------|
| 1. CPA, (Dr) Margaret Nyakang'o | - | Controller of Budget |
| 2. Mr. Patrick Kamore | - | Chief Fiscal Analyst |
| 3. Ms. Mary Owii | - | Personal Assistant, COB |
| 4. Mr. Charles Gachoki | - | Senior Fiscal Analyst |
| 5. Mr. Harith Sheikh | - | Senior Fiscal Analyst |

SECRETARIAT

- | | | |
|-------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant II |
| 3. Mr. Shadrack Omondi | - | Legal Counsel II |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |

- | | | |
|-----------------------|---|-------------------------|
| 5. Ms. Willis Obiero | - | Clerk Assistant III |
| 6. Ms. Loice Olesia | - | Fiscal Analyst III |
| 7. Mr. Martin Sigei | - | Research Officer III |
| 8. Ms. Lilian Mburugu | - | Media Relations Officer |
| 9. Mr. Yeziel Jilo | - | Serjeant-At-Arms |

MIN./PPETC/2023/18: PRELIMINARIES

The Chairperson called the meeting to order at 10.20 a.m. and prayers were said by Hon. Suzanne Ndunge Kiamba, M.P.

MIN./PPETC/2023/19: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Confirmation of minutes of previous sitting
2. Matters Arising
3. **Meeting with the Cabinet Secretary for National Treasury and Economic Planning on the following Public Petitions: -**
 - i.) *Public Petition regarding Funds spent by National Government contrary to provisions of the Constitution;*
 - ii.) *Public Petition regarding completion of house units for Kibera residents funded by the World Bank; and*
 - iii.) *Public Petition regarding Compensation for Nyanza-Western Kenya Caucus of Internally Displaced Persons.*
4. **Meeting with the Controller of Budget on the Public Petition regarding Funds spent by National Government contrary to provisions of the Constitution;**
5. **Presentation of brief on Public Petition No. 1 of 2023 on Implementation of Edu Afya Medical Scheme;**
6. **Presentation of brief on Petition No. 3 of 2023 regarding the Management of the SGR Services; and**
7. **Consideration of the Public Petitions Committee schedule of activities for the Second Session.**
8. Any Other Business
9. Adjournment

Thereafter, the Proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. Maisori Marwa Kitayama, M.P and seconded by the Hon. Edith Vethi Nyenze, M.P

MIN./PPETC/2023/20: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the Third Sitting of the Committee held on 28th February, 2023 were confirmed as a true record of the deliberations of the meeting having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Walter Owino, M.P.

MIN./PPETC/2023/21: MATTERS ARISING

There were no matters arising.

MIN./PPETC/2023/22: MEETING WITH THE CABINET SECRETARY FOR NATIONAL TREASURY AND ECONOMIC PLANNING ON THE FOLLOWING PUBLIC PETITIONS

The meeting was informed that the Cabinet Secretary for the National Treasury and Economic Planning had written to the Clerk vide TNT/CONF 268/014 'P' (44) dated March 03, 2023, regretting that he would not be appearing before the Committee due to engagement in other official duties. The Ministry had requested that they be given more time up-to four weeks for the Cabinet Secretary to appear before the Committee.

The Committee noted with displeasure the failure by the Cabinet Secretary to honour its invitations and declined the request for additional time for him to appear before it.

Consequently, the Committee resolved that a **FINAL** invitation letter be sent to the Cabinet Secretary for him to appear before it on **Thursday, 16th March, 2023 from 10.00 a.m.**

MIN./PPETC/2023/22: SUBMISSION BY THE CONTROLLER OF BUDGET ON THE PUBLIC PETITION REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF THE CONSTITUTION

The Controller of Budget, CPA, (Dr) Margaret Nyakang'o submitted to the Committee as follows:-

1. Article 223 Requisition Process

That the requisition process under Article 223 of the Constitution involves the following five stages:

- a) Initiation of the requisition process by the spending MDAs in writing to the Cabinet Secretary (CS), for National Treasury and Economic Planning to request supplementary budget.
- b) Approval of the request by the Cabinet Secretary for National Treasury and Economic Planning and a response letter to the MDA with a copy to the COB and the Auditor General for information, but without the original request from the MDA.
- c) Requisition sent to the COB by the Director General (DG) Accounting Services at the National Treasury.
- d) Acknowledgement of the requisition by the COB and replies to the Principal Secretary outlining the requirements to adhere to the provisions of Article 223, specifically for parliamentary approval and regularisation.
- e) The National Treasury raises a request to COB for withdrawal/ funding using the approval.

- f) Consideration of the requisition by the COB. The COB considers the requisition in line with the law and, if it meets the requirements of the law, approves the withdrawal of funds to the National Treasury on behalf of the requesting MDA.
2. *Funding under Article 223 of the Constitution between July-September 2022 related to the Petition*

The COB took the Committee through the analysis of all projects and requisitions made by the National Treasury under Article 223 for the period July -September 2022 as follows:

- a) That, the COB approved State Department for Infrastructure's requisition of:
 - Kshs2.8 billion to cater for additional budget for select flagship projects-Improvement of Lamu-Ijara-Garissa Road and funding done on 05-Aug-2022;
 - Kshs4.8 billion to cater for additional budget for select flagship projects-dualling of Nairobi Eastern Bypass and funding done on 05-Aug-22; and
 - Kshs1,850,000,000 to cater for additional budget for select flagship projects-Construction of Makupa Causeway and funding made on 05-Aug-2022.
- b) That, the COB approved Ministry of Defence's requisition of Kshs 2.2 billion to cater for the GOK funding component of Level 4 Forces Research and Referral Hospital and funding done on 04-Aug-2022;
- c) That, the COB approved National Treasury's requisition of Kshs6,091,140,702 to cater for the Exit of Helios Investment in Telkom Kenya LTD and funding done on 05-Aug-2022;
- d) That, the COB approved State Department for Crop Development and Agricultural Research's requisition of Kshs4 billion to cater for the implementation of the maize subsidy programme and funding done on 04-Aug-2022;
- e) That, the COB approved Ministry of Petroleum and Mining's requisition of Kshs16,597,436,070.98 to cater for compensation of oil importers under Petroleum pump price stabilization and funding done on 16-Sep-2022;
- f) That, the COB approved State Department Early Learning and Basic Education's Kshs4,121,665,433.00 to cater for Secondary Education quality and improvement Projects under IDA and funding done on 14-Sep-2022; and
- g) That, the COB approved the Presidency's requisition of Kshs411,909,902.70 out of Kshs2,961,436,261.85 and the outstanding balance of Kshs2,549,526,359.15 has not yet been approved due to non-provision of documents.

3. *General Concerns*

The COB raised concerns with regards to the following issues arising from the Petition;

- a) That, feedback on the progress on approval of the National Assembly on Article 223 supplementary funding should be shared with the COB for tracking and eventual reporting;

- b) That, the ten (10) per cent ceiling should be by corresponding vote rather than entire approved budget;
- c) That, the National Assembly should review and tighten the law to protect Article 223 from abuse; and
- d) That, even though the Controller of Budget is an independent office established under Article 228 of the Constitution, there has been instances of interference and pressure from the Executive arm of Government through the National Treasury. Consequently, she recommended that the COB should be left to oversee budget implementation independently.

Committee Concerns

The Committee raised the following concerns with regards to the presentation by COB

a) Approval of Ministry of Defence's requisition

The Committee sought to understand whether the Ministry of Defence requisitioned for Kshs2.2 billion followed the provisions of Article 223. The COB stated that the current provisions of the law in the Public Finance Management Act and Article 223 of the Constitution speaks to supplementary being for unforeseen need. That the first approval is done by the National Treasury which decides the urgency. Therefore, after the National Treasury provided justification, her role ended at approval but not establishing how the funds were spent.

b) Approvals during the transition period

The Committee queried why the COB had to authorise the requisitions few days to the general elections. The COB indicated that the office was independent and operated throughout the year regardless of the general election activities. She indicated that approvals never stop provided questions are asked and the right answers provided by the National Treasury.

c) Approval of National Treasury's requisition for Exit of Helios Investment in Telkom Kenya LTD

The Committee queried the circumstance under which the **National Treasury's** requisition of Kshs6,091,140,702 was approved to cater for the Exit of Helios Investment in Telkom Kenya LTD and whether it met the requirements of Article 223. The COB stated that she sought for the minutes ratifying the prioritization of the activity to no avail and only contracts documents were provided between the Office of Public Investments at the National Treasury and Jamhuri Holdings which was acting on behalf of Helios Investment.

d) Approval of State Department for Infrastructure's requisitions

The Committee queried why the State Department for Infrastructure made requisitions for ongoing constructions. The COB stated that the law requires that for supplementary to be requisitioned for such projects, there needs to be minutes by a committee agreeing to prioritise the said projects.


However, these were not provided although the three projects were specified. Further, the COB stated that the funds requisitioned for ongoing constructions originated from the Annuity Fund which caters for select infrastructure projects.

Committee Resolutions

After the deliberations, the Committee allowed the COB to prepare and submit other supporting documents to provide more information on the areas of concern including correspondences between the COB and National Treasury.

MIN./PPETC/2023/23: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:10 p.m. The next meeting would be held on Thursday, 9th March, 2023.

Sign: 

(CHAIRPERSON)

Date.....09-03-2023.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE FIFTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON THURSDAY, MARCH 9, 2023, IN THE COMMITTEE ROOM ON 4TH
FLOOR, CONTINENTAL HOUSE AT 10:00 AM

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson (*Chairing*)
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Peter Mbogho Shake, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Maisori Marwa Kitayama, M.P.
6. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Ernest Ogesi Kivai, M.P.
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
8. Hon. Suzanne Ndunge Kiamba, M.P.
9. Hon. John Bwire Okano, M.P.

IN-ATTENDANCE

PETITIONER

Mr. Stephen Mutoro - Secretary General, Consumers Federation of Kenya (COFEK)

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - Clerk Assistant II
3. Mr. Shadrack Omondi - Legal Counsel II
4. Ms. Patricia Gichane - Legal Counsel II
5. Mr. Martin Sigei - Research Officer III
6. Ms. Lilian Mburugu - Media Relations Officer
7. Mr. Yeziel Jilo - Serjeant-At-Arms

MIN./PPETC/2023/24: PRELIMINARIES

The Vice-Chairperson called the meeting to order at 10.50 a.m. and prayers were said by Hon. Joshua Chepyegon Kandie, M.P.

MIN./PPETC/2023/25: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sitting
4. Matters Arising
5. **Meeting with Petitioner, Mr. Stephen Mutoro on Public Petition regarding *Funds Spent by National Government Contrary to Provisions of the Constitution.***
6. **Presentation of brief on Public Petition No. 1 of 2023 on Implementation of Edu Afya Medical Scheme**
7. **Presentation of brief on Petition No. 3 of 2023 regarding the Management of the SGR Services**
8. **Consideration of the Public Petitions Committee schedule of activities for the Second Session.**
9. Any Other Business

Thereafter, the Proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. Sloya Clement Logova, M.P. and seconded by the Hon. Joshua Chepyegon Kandie, M.P.

MIN./PPETC/2023/26: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the Fourth Sitting of the Committee held on Tuesday, 7th March, 2023 were confirmed as a true record of the deliberations of the meeting having been proposed by Hon. Joshua Chepyegon Kandie, M.P. and seconded by Hon. Sloya Clement Logova, M.P.

MIN./PPETC/2023/27: MATTERS ARISING

- i.) Arising from MIN./PPETC/2023/22 regarding the Meeting of the Committee with the Controller of Budget *on the Public petition regarding funds spent by National Government Contrary to provisions of the Constitution*, the Committee inquired whether the supporting documents had been availed by the Controller of Budget as agreed in the previous meeting. The meeting was informed that the same would be submitted before close of business on, Thursday, 9th March, 2023.
- ii.) Arising from MIN/PPETC/2023/22 regarding meeting of the Committee with the Cabinet Secretary for National Treasury and Economic Planning, the Committee was informed that

the final invitation (reminder) had already been sent to the Cabinet Secretary for him to appear before it on Thursday, 16th March, 2023 from 10:00am.

MIN./PPETC/2023/28: SUBMISSIONS BY THE PETITIONER, MR. STEPHEN MUTO RO ON THE PUBLIC PETITION REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF THE CONSTITUTION

The Petitioner, Mr. Stephen Mutoro in his introductory remarks, gave a context of the following *thematic* areas upon which his submissions were premised: -

1. *Lost Funds*

- a) The Petitioner averred that credible information within the public domain indicated that the Jubilee administration in its last days spent a sum of Kshs. 55 billion without the approval of the National Assembly i.e., between July-September 2022.
- b) That, the said funds were spent by various Ministries, Departments and Agencies amidst the elevated debt vulnerability by the country's economic challenges and the high cost of living among other prevalent problems.
- c) That, the funds lost could be much more than those lost during Goldenberg and Anglo leasing and chicken gate scandals.
- d) That, the inappropriate and illegal misuse of such huge amount of resources is a pointer to weak mechanisms of transparency and accountability especially during the transition period by Governments.
- e) That, "transition periods" have continued to be avenues for looting government resources by exiting Governments and constitutes to blatant corruption.

2. *Place of Independent Commissions*

The Petitioner questioned the place and autonomy of Independent Commissions enshrined as in Chapter 15 of the Constitution. He averred that: -

- a) Independent Commissions have suffered from political interference since the promulgation of the 2010 Constitution and therefore are neither independent nor autonomous in some situations where fiscal decisions have to be made.
- b) That, the said funds would not have been lost if the Controller of Budget complied with Article 228(5) of the Constitution which states that "*the Controller shall not approve any withdrawal from public funds unless satisfied that the withdrawal is authorized by law*".
- c) That the submissions by the Controller of Budget regarding approval of colossal sums of money to various Ministries, in what she attested to as "*arm-twisting*", by the Executive, is a clear indication of lack of autonomy.
- d) That the Attorney General failed to intervene in addressing the problem as required by the law, i.e. in line with Article 156(1) of the Constitution that required him/her to promote, protect, uphold the rule of law and defend public interest.

- e) That, the very existence of Independent/Constitutional Commissions is a waste of public funds as they are majorly ceremonial and do not live up to their mandates as envisaged by the Constitution.

3. *Establishment of a Commission of Inquiry to investigate the matter*

- a) The Petitioner averred that there is need to establish a Commission of Inquiry to undertake investigations due to the complexity of the matter and the many Government Ministries, Agencies and Departments that are involved.
- b) That, the said Commission would have enough time to undertake extensive investigations.
- c) That, one of the Terms of Reference for the said Commission would be to offer protection to witnesses willing to give valuable information that would be useful in consideration of the petition.
- d) That the Commission would be a solution to address/deter future recurrence of the same.

4. *Question on Delegated Legislation by Parliament*

The Petitioner made the following submissions: -

- a) That, Parliament has delegated legislative powers to certain government agencies and that these agencies have abused those powers for instance KRA imposing additional levies on citizens.
- b) That, these powers be recalled to shield citizens from abuse by state agencies.

5. *Way Forward/Recommendations*

The Petitioner made the following recommendations: -

- a) That, tracking and recovery of the said funds ought to be made a priority by the Committee and those who breached the laws should be brought to book.
- b) Establishment of a Commission of Inquiry to investigate and make public the findings on how the Kshs. 55 billion was irregularly allocated and spent;
- c) Auditor-General to conduct Special Forensic Audit for the period in question i.e., July-September, 2022 to establish fraud, corruption, and other financial improprieties as provided for by Section 37 of the Public Audit, 2015; and
- d) Amendment of relevant laws specifically Article 223 of the Constitution to bar outgoing administration from spending public funds;
- e) Amend the Finance act, 2022 and other relevant laws with focus on recalling on delegated legislative powers granted to various agencies e.g., KRA;
- f) That the Committee summons all those implicated to appear before it to facilitate production of conclusive findings and recommendations. Added to the list was the former NMS Director, General Mbadi, Cabinet Secretary and Principal Secretary for the National Treasury and Economic Planning, among others; and
- g) Removal from Office of the current Controller of Budget.

Committee Concerns

The Committee raised the following concerns with regards to the presentation by the Petitioner: -

a) *Recall of Delegated Powers by Parliament*

The Committee sought to understand why the Petitioner wanted Parliament to recall delegated powers from certain Government Agencies specifically the Kenya Revenue Authority yet Article 94(6) of the Constitution allows Parliament to delegate its law-making power.

The Petitioner responded that many Government agencies that had been conferred these special powers had abused them for instance by introducing new levies that hurt the common citizenry.

b) *Witness Protection*

The Committee sought to understand why the Petitioner wanted witnesses to be protected and whether he had received any threats for bringing the matter into the limelight.

The Petitioner confirmed that he had indeed received several threats but that was not going to deter him from unravelling the cartels and corruption surrounding misuse of public funds. He further stated that, his work experience as a Director of the Consumers Federation of Worker had made him resilient. However, citizens with vital information should be protected.

c) *Collusion by COB and the CS National Treasury to embezzle public funds*

The Committee sought to understand why in his opinion, the Controller of Budget and the Cabinet Secretary of the National Treasury and Economic Planning had conspired to steal the said amount of money estimated at 55 billion in what he referred to as the "*Ukur-Nyakang'o Scam*".

The Petitioner informed the Committee that the two bear the greatest responsibility as they were solely charged with approving and authorizing public funds. In his opinion, if the Controller of Budget had declined to authorize withdrawal of the said funds, then the problem would not have arisen. Further, the COB had a window to consult relevant agencies before authorizing, instead she bowed down to pressures from the Executive. Lastly, the role of the COB alongside authorizing, is to report any irregularities if in her opinion, the law was not followed. Her failure to report implicates her as part of the cartel. Article 228 of the constitution provides that "*the Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.*"

d) *Accountability of public funds during transition periods*

The Committee asked the Petitioner how accountability in managing public funds can be realized during government transitions.

The Petitioner responded that: -

- i.) Chapter Six of the Constitution should be enforced as the same has been watered down for instance transparency during key recruitments;
- ii.) Reducing the length of Service for Persons serving in Independent/Constitutional Commissions;

- iii.) Limiting powers of the President in nominating persons to public offices;
- iv.) De-politizing public service; and
- v.) Enactment of a law that will hold everyone accountable for their actions.

e) Audit of the stolen funds

The Committee sought the opinion of the Petitioner on whether it was prudent for the Auditor-General to audit the said funds after the National Assembly had approved the same.

The Petitioner informed the Committee that Section 37 of the Public Audit act, 2015 gives Parliament authority to request the Auditor-General to conduct forensic audits to establish fraud, corruption and other financial improprieties.

Committee Resolutions

After the deliberations, the Committee resolved as follows: -

- a) That, the Cabinet Secretary of the National Treasury and Economic Planning to appear before it on Thursday, 16th March, 2023; and
- b) That, other relevant stakeholders cited in the Petition to appear before it on Tuesday, 14th March, 2023. They include, State House Affairs, State Department for Interior, Ministry of Defence, State Department for Infrastructure, State Department for Crop Development, Ministry of Petroleum, Secondary Education and Nairobi Metropolitan Services (NMS).

MIN./PPETC/2023/29: PRESENTATION OF BRIEF ON PUBLIC PETITION NO. 1 OF 2023 ON IMPLEMENTATION OF EDU AFYA MEDICAL SCHEME

The Agenda was deferred.

MIN./PPETC/2023/30: PRESENTATION OF BRIEF ON PETITION NO. 3 OF 2023 REGARDING THE MANAGEMENT OF THE SGR SERVICES

The Agenda was deferred.

MIN./PPETC/2023/31: CONSIDERATION OF THE PUBLIC PETITIONS COMMITTEE SCHEDULE OF ACTIVITIES FOR THE SECOND SESSION.

Agenda Agenda deferred.

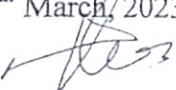
MIN./PPETC/2023/32: ANY OTHER BUSINESS

a) Request to hold meetings when the House is Sitting

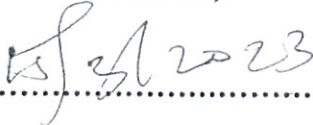
The meeting was informed that, a request had been done by the Chair of the Committee to the Speaker to allow the Committee hold its sittings when the House is Sitting next week. This would enable the Committee to conclude on the petitions before it scheduled for Tuesday, 14th March, 2023, Wednesday, 15th March, 2023 and Thursday, 16th March, 2023 respectively.

MIN./PPETC/2023/33: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 12:08 p.m. The next meeting would be held on Tuesday, 14th March, 2023.

Sign: 

(CHAIRPERSON)

Date: 



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

**MINUTES OF THE SIXTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, MARCH 14, 2023, IN THE COMMITTEE ROOM ON 5TH
FLOOR, CONTINENTAL HOUSE AT 12:30 PM**

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Caleb Mutiso Mule, M.P. | | |
| 7. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Peter Mbogho Shake, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.
8. Hon. John Bwire Okano, M.P.

IN-ATTENDANCE

THE MINISTRY OF DEFENCE

- | | | |
|----------------------------|---|---|
| 1. Hon. Patrick Mariru | - | Principal Secretary |
| 2. Lt. Gen. Francis Ogolla | - | Vice Chief of Defence Forces |
| 3. Mr. Joseph Mutuma | - | Head of Finance |
| 4. Brig. Yvone Kerubu | - | Chief of Legal Services, Defence Headquarters |
| 5. Brig. Nyatigo Marwanga | - | DG, National Security Telecommunication Service |
| 6. Mr. Wilson Ng'ang'a | - | Principal Economist |

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Edison Odhiambo | - | Fiscal Analyst, PBO |

- | | | |
|-------------------------|---|-------------------------|
| 5. Mr. Shadrack Omondi | - | Legal Counsel II |
| 6. Ms. Patricia Gichane | - | Legal Counsel II |
| 7. Mr. Martin Sigei | - | Research Officer III |
| 8. Mr. Hillary Mageka | - | Media Relations Officer |
| 9. Ms. Rahab Chepkilim | - | Audio Officer II |
| 10. Mr. Yeziel Jilo | - | Serjeant-At-Arms |

MIN./PPETC/2023/34: PRELIMINARIES

The Chairperson called the meeting to order at 12.30 p.m. and prayers were said by Hon. Edith Vethi Nyenze, M.P.

MIN./PPETC/2023/35: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sitting
4. Matters Arising
5. **Consideration of Public Petition regarding *Funds Spent by National Government Contrary to Provisions of the Constitution.***

- i. ~~Meeting with the Cabinet Secretary for Ministry of Interior and National Administration~~
- ii. ~~Meeting with the Cabinet Secretary for the Ministry of Defence~~

6. **Presentation of brief on Public Petition No. 1 of 2023 on Implementation of Edu Afya Medical Scheme**
7. **Presentation of brief on Petition No. 3 of 2023 regarding the Management of the SGR Services**
8. Any Other Business
9. Adjournment

Thereafter, the Proposed Agenda of the Meeting was unanimously adopted to constitute business of the Meeting.

MIN./PPETC/2023/36: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/37: MATTERS ARISING

The Agenda was deferred.

MIN./PPETC/2023/38: SUBMISSIONS BY THE CABINET SECRETARY FOR MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

The Agenda was deferred.

MIN./PPETC/2023/39:

SUBMISSIONS BY THE CABINET SECRETARY FOR THE
MINISTRY OF DEFENCE REGARDING A PETITION ON
FUNDS SPENT BY NATIONAL GOVERNMENT
CONTRARY TO PROVISIONS OF THE CONSTITUTION

The Chairperson briefed the Principal Secretary on the matter before the Committee that the State Department of Defence was one of the beneficiaries of funds spends by the Executive contrary to Article 223 of the Constitution between July-September 2022. That the State Department benefited from Kshs2.2 billion to fund a Forces Research and Referral Hospital.

The Principal Secretary for the Ministry of Defence made submissions as follows:

The source of the Kshs2.2 billion

The PS provided the background to the origin of the funds in question as follows:

- i. That the Executive Order No. 4 of 2020 dated July, 06, 2020 established the National Security Telecommunication Service (NSTS) to develop, operate and maintain multi-agency network for the security agencies to address the gap of lack of a pure network.
- ii. That, the Communication Authority of Kenya (CAK) was directed to assign and lease the frequencies which previously belonged the national security agencies to commercial operators. The proceeds towards the lease were to be used to establish and operate the 'new' NSTS.
- iii. That the National Treasury granted approval for the NSTS to receive the payments for the frequency spectrum and retain the funds in NSTS accounts.
- iv. That, the NSTS realized Kshs3.1 billion from the commercialization for Financial Year 2021/2022, but after due consideration, only part of the amount was required for the project. Therefore, Kshs2.2 billion was surrendered to the National Treasury.

How the Ministry was allocated the Kshs2.2 billion

The PS explained how the Kshs2.2 billion was allocated to the Ministry of Defence as follows:

- i. That, pursuant to Article 223(1), the Ministry requisitioned for additional funds necessitated by the need to fund ongoing construction of Forces Research and Referral Hospital in Kabete.
- ii. That, the project was initially to be funded by an Export Credit Arrangement (ECA) from Chinese Government, but due to policy shift, the Chinese Government withdrew from funding when contractors are already on ground, work has started, the certificates by the contractor were in place, and agreement for Chinese Government to pay for 85 per cent and GOK, 15 per cent was already made.
- iii. The withdrawal of the Chinese Government funding occasioned the Ministry to source for alternative funding to settle payment for the certificates that had been raised by the

contractor for work done. The request for additional funding under Article 223 was approved and subsequently ratified by Supplementary Estimates I for Financial Year 2022/2023.

Purpose for which the Kshs2.2 billion was spent

The PS, stated that the money was used for settlement of certificates for works done at the Forces Research and Referral Hospital amounting to the Ministry's 15 per cent contractual obligation.

Committee Concerns

Application of Article 223

The Committee inquired what occasioned the emergency leading to the requisition of the Kshs2.2 billion. The PS stated that, there was no need to budget for the hospital because the financier would fund the 85 per cent and GOK on 15 percent which would be budgeted for in the next financial year. However, the exit by the financier occasioned the emergency. The PS requested that National Treasury would be better suited to address the matter.

The Committee also inquired whether the project is an emergency currently. The PS stated that the greatest concern for the Ministry now was the fate of the huge project that had already consumed Kshs2.2 billion and the available options.

Prioritization of the hospitals

The Committee inquired whether the Ministry thought the hospitals were a priority over other needs for the armed forces. The PS indicated that healthcare was a top priority for the Ministry due to increased numbers of officers hence wellness is an important component and morale booster for the soldiers and their families.

Status of the Defence Hospitals

The Committee inquired of the status of all Defence hospitals in the country including the ongoing Forces Research and Referral Hospital at Kabete. Accordingly, the Committee sought, the total number of hospitals, capacity, whether it will be available for the public, etc. The PS stated that the Ministry had five hospitals located in Isiolo, Eldoret, Kahawa, Lanet, Mariakani, and two in Nairobi. That the ongoing hospital in Kabete was at 25 per cent completion.

That the Ministry was deliberating whether members of the public may be allowed to use the 50 per cent spaces not taken up in other Defence hospitals. The PS also recommended that the Committee conducts a site visit of the project to appreciate the project.

The ECA funding model envisioned by the Ministry

The Committee inquired why the Ministry committed to agreements with the contractors before the financier began funding the project. The PS stated that the Export Credit Arrangement (ECA) allowed negotiations with an external actor to fund huge and expensive infrastructure system as they are paid back over time. That, the negotiations were in phases of commercial and funding agreements undertaken by the Ministry and National Treasury respectively.

How the differential amount of Kshs900 million was spent

The Committee inquired on how the balance of Kshs900 million, after surrender of the Kshs2.2 billion to National Treasury out of the Kshs3.1 billion, was spent by the Ministry. The PS stated that based on the advisory of the Treasury on expending the funds, the Ministry has used the amount to develop the NSTS which is an ongoing project.

The Committee directed that the documents authorizing the expenditure be tabled and the Ministry undertook to comply.

Procurement of contractors on the project

The Committee sought to know which contractor(s) was awarded the tender to build the Forces Research and Referral Hospital. The PS stated that there were different contractors on the project and not a just one contractor.

The Committee required to have the contract documents for the project tabled. The PS stated that whilst the commercial and funding agreements were commercial in confidence, the Committee was at liberty to access the documents taking into consideration the nature of the contracts and treat them with that in mind.

Consolidation and expenditure of the proceeds of commercialization without approval of Parliament

The Committee inquired whether the proceeds of the sale of frequency spectrum only went to the Ministry of Defence. The PS stated that although all the security agencies had jointly consolidated their frequencies and agreed to commercialize them, the proceeds were before the Ministry because that was where NSTS was to be hosted but it serves all the other security agencies.

The Committee also inquired why the Kshs900 million was spent at source for the NSTS project without approval of Parliament. The PS stated that the money was spent on advisory of the National Treasury.

Committee Resolutions

The Committee resolved as follows:

The Ministry Defence to provide the following further information with regards to the issues raised:

- i. Commercial agreements by the Ministry
- ii. Details of the contractors for the hospital project in Kabete
- iii. Breakdown of how the Kshs900 million has been spent in the NSTS project
- iv. Copy of the advisory letter from National Treasury to allow expenditure of the Kshs900 million
- v. Breakdown of how the Kshs2.2 billion was spent on the project

MIN./PPETC/2023/40: PRESENTATION OF BRIEF ON PUBLIC PETITION NO. 1 OF 2023 ON IMPLEMENTATION OF EDU AFYA MEDICAL SCHEME

The Agenda was deferred.

MIN./PPETC/2023/41: PRESENTATION OF BRIEF ON PETITION NO. 3 OF 2023 REGARDING THE MANAGEMENT OF THE SGR SERVICES

The Agenda was deferred.

MIN./PPETC/2023/42: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 14:30 p.m.

The next meeting would be held on Wednesday, 15th March, 2023.

Sign: 

(CHAIRPERSON)

Date..... 



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE SEVENTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON WEDNESDAY, MARCH 15, 2023, IN THE COMMITTEE ROOM ON 5TH
FLOOR, CONTINENTAL HOUSE AT 11.05 AM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, M.P.
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
9. Hon. Peter Mbogho Shake, M.P.
10. Hon. Suzanne Ndunge Kiamba, M.P.
11. Hon. John Bwire Okano, M.P.
12. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Mr. Willis Obiero - Clerk Assistant III
3. Mr. Shadrack Omondi - Legal Counsel II
4. Ms. Patricia Gichane - Legal Counsel II
5. Mr. Martin Sigei - Research Officer III
6. Mr. Lilian Mburugu - Media Relations Officer
7. Ms. Rahab Chepkilim - Audio Officer II
8. Mr. Yeziel Jilo - Serjeant-At-Arms

MIN./PPETC/2023/43: PRELIMINARIES

The Chairperson called the meeting to order at 11.05 a.m. and prayers were said by Hon. Janet Jepkemboi Sitienei, M.P.

MIN./PPETC/2023/44: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sitting
4. Matters Arising
5. **Consideration of Public Petition regarding *Funds Spent by National Government Contrary to Provisions of the Constitution.***
 - i. Meeting with the Cabinet Secretary for Ministry of Roads and Transport
 - ii. Meeting with the Cabinet Secretary for Ministry of Agriculture and Livestock Development
6. Presentation of brief on Public Petition No. 1 of 2023 on Implementation of Edu Afya Medical Scheme
7. Presentation of brief on Petition No. 3 of 2023 regarding the Management of the SGR Services
8. Any Other Business
9. Adjournment

Thereafter, the Proposed Agenda was proposed by Hon. John Walter Owino, M.P. and seconded by Hon. John Bwire Okano, M.P. to constitute business of the Meeting.

MIN./PPETC/2023/45: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The minutes of the fifth sitting of the Committee held on 9th March, 2023 were confirmed as true record of the meeting after being proposed by Hon. Bidu Mohamed Tubi, M.P. and seconded by Hon. Sloya Clement Logova, M.P.

The minutes of the sixth sitting of the Committee held on 14th March, 2023 were confirmed as true record of the meeting after being proposed by Hon. Edith Vethi Nyenze, M.P. and seconded by Hon. Sloya Clement Logova, M.P.

MIN./PPETC/2023/45: MATTERS ARISING

Arising from MIN./PPETC/2023/28 of the fifth sitting, it was reported that the Cabinet Secretary, Ministry of Interior and National Administration vide a letter to the Clerk Ref. MOINA/SEC.1/40 dated 14th March, 2023 had requested the Committee for extension of the proposed date of meeting.

Arising from MIN./PPETC/2023/39 of the sixth sitting, Members resolved to undertake a site visit to the Forces Research and Referral Hospital in Kabete as part of the consideration of the Public Petition regarding Funds Spent by the National Government Contrary to the Provisions of the Constitution. The Committee also resolved that the Ministry of Defence to bring the requested documents by Tuesday 21st, March, 2023.

MIN./PPETC/2023/46: MEETING WITH THE CABINET SECRETARY FOR MINISTRY OF ROADS AND TRANSPORT

The Committee was informed that the Ministry had written to the Clerk vide a letter Ref: MOT&I/S/ADM/87/VOL.VII dated 14th March, 2023 requesting the Committee to reschedule the meeting because the Cabinet Secretary was engaged in prior official engagements on the same day.

The Agenda was therefore deferred.

MIN./PPETC/2023/47: MEETING WITH THE CABINET SECRETARY FOR MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

The Committee was informed that the Ministry had written to the Clerk vide a letter Ref: MOALFI/ADM/1/27/3/VOL.1X/58 dated 13th March, 2023 requesting for rescheduling of the meeting to a later date due to engagement of the Cabinet Secretary in other duties.

The Agenda was therefore deferred.

MIN./PPETC/2023/48: PRESENTATION OF BRIEF ON PUBLIC PETITION NO. 1 OF 2023 ON IMPLEMENTATION OF EDU AFYA MEDICAL SCHEME

The Committee was briefed on the Petition as follows:

1. That the Petitioner Ms. Joyce Cheronu sought the intervention of the Committee on the poor implementation of the Edu-Afya medical scheme in public secondary schools by the Ministry of Education.
2. That the Petitioner's prayers included causing the relevant ministries to review the framework for the implementation of the scheme and causes support to establish clinics in public schools.
3. That the scheme was initiated in 2017 through agreements between Ministry of Education and National Hospital Insurance Fund (NHIF)
4. That the scheme has faced various challenges including enrolment of students into NEMIS database, poor communication, and reimbursement of funds.
5. That the parties to the Petition include, the Petitioner, Ministry of Education, Ministry of Health, and NHIF.

The Committee deliberated on the issues raised in the Petition and resolved to invite the Petitioner, NHIF, Ministry of Education, Ministry of Health, and Parents Association to all appear before it on Wednesday, 23rd March, 2023.

MIN./PPETC/2023/48: PRESENTATION OF BRIEF ON PETITION NO. 3 OF 2023 REGARDING THE MANAGEMENT OF THE SGR SERVICES

The Committee was briefed on the Petition as follows:

1. That the Petitioner was seeking intervention of the Committee to interrogate the Ministry of Roads and Transport and the management of Kenya Railways Corporation (KRC) on the status of both passenger and freight SGR services.

2. That the Committee interrogates the National Treasury on how much is paid to the company that manages the SGR services on a monthly basis, the name of the company and its directors, the duration of the contract, how it was procured and what motivated KRC to outsource a foreign company at the expense of the local entities.
3. That the Committee can invite the Ministry of Roads and Transport, Ministry of National Treasury and Economic Planning and Kenya Railways Corporation on various issues raised in the Petition to according answer the prayers of the Petitioner.

The Committee resolved to allow the secretariat to schedule stakeholder engagement with regards to the Petition as it prioritises the 'quick wins' Petitions.


MIN./PPETC/2023/50: ANY OTHER BUSINESS

Status of various petitions

The Committee sought to know the status of Petition No. 11 of 2022 regarding Pollution of River Athi and Petition No. 1 of 2022 regarding Safeguarding Economic & Social Welfare of Communities Living next to Forest. The Committee was briefed that the secretariat team was scheduling various activities for the petitions as earlier agreed whilst prioritizing petitions.

MIN./PPETC/2023/51: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 12:35 p.m. The next meeting would be held on Wednesday, 15th March, 2023 at 3p.m.

Sign: 

(CHAIRPERSON)

Date..... 21/03/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE EIGHTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON WEDNESDAY, MARCH 15, 2023, IN THE COMMITTEE ROOM ON 5TH
FLOOR, CONTINENTAL HOUSE AT 03:00 PM

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Bidu Mohamed Tubi, M.P. | | |
| 7. Hon. Caleb Mutiso Mule, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 10. Hon. John Bwire Okano, M.P. | | |
| 11. Hon. Sloya Clement Logova, M.P. | | |
| 12. Hon. Peter Mbogho Shake, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.

INATTENDANCE

MINISTRY OF ENERGY AND PETROLEUM

- | | | |
|---------------------|---|------------------------------------|
| Hon. Davis Chirchir | - | Cabinet Secretary |
| Mr. Mohamed Liban | - | PS, State Department for Petroleum |
| Mr. M.B Mohamed | - | Secretary for Administration |
| Mr. Charles Kamunya | - | State Counsel |
| Mr. Veronica Kamau | - | Head of Accounts |
| Mr. Kevin Macharia | - | Finance Officer |
| Mr. Kabiro Mbugua | - | PA to the CS |

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Mr. Willis Obiero - Clerk Assistant III

- | | | |
|-------------------------|---|-------------------------|
| 3. Mr. Shadrack Omondi | - | Legal Counsel II |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Mr. Lilian Mburugu | - | Media Relations Officer |
| 7. Ms. Rahab Chepkilim | - | Audio Officer II |
| 8. Mr. Yeziel Jilo | - | Serjeant-At-Arms |

MIN./PPETC/2023/52: PRELIMINARIES

The Chairperson called the meeting to order at 3.00 p.m. and prayers were said by Hon. Sloya Clement Logova, M.P.

MIN./PPETC/2023/53: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sitting
4. Matters Arising
5. **Consideration of Public Petition regarding *Funds Spent by National Government Contrary to Provisions of the Constitution.***
 - i. Meeting with the Cabinet Secretary for Ministry of Energy and Petroleum
 - ii. Meeting with the Cabinet Secretary for Ministry of Education
6. Presentation of brief on Petition No. 4 of 2023 on delayed Adjudication and Settlement of Squatters after the Expiry of Lease of Macalder Mines Ltd. Land
7. Presentation of brief on Petition No. 5 of 2023 regarding Ward Based Solution as a Long-term Remedy to Perennial Water Shortage in Kenya
8. Any Other Business
9. Adjournment

Thereafter, the Proposed Agenda was unanimously adopted to constitute business of the Meeting.

MIN./PPETC/2023/54: CONFIRMATION OF THE PREVIOUS MINUTES

The agenda was deferred.

MIN./PPETC/2023/55: MATTERS ARISING

The agenda was deferred.

MIN./PPETC/2023/56: MEETING WITH THE CABINET SECRETARY FOR MINISTRY OF ENERGY AND PETROLEUM

Submissions by the CS

The Chairperson briefed the Cabinet Secretary on the Petition and thereafter the CS made his submissions as follows:

Background

The Cabinet Secretary presented as follows;

- i. That the government was importing petroleum through 85 licensed Oil Marketing Companies (OMCs) through an open tender system captured in the petroleum regulations and Public Procurement and Disposal Act, 2015.
- ii. That the recovery during post-COVID, Ukraine-Russian War and tightening of monetary policy in the US increased competition for petroleum and subsequently higher prices. Therefore, to sustain the small economies like Kenya, the government made an intervention to subsidise petroleum to manage inflation through a gazette notice.

Public Expenditure of the Ministry from July to September 2022

- iii. That during the Ministry made a request to the National Treasury and Economic Planning through a letter MOPM/P/CONF/3/34 VOL.IV(62) dated 2nd August, 2022 for the allocation of an additional Kshs16,597,436,070.98
- iv. That the amount the deficit required to settle outstanding compensation to importers of refined petroleum products which was critical in order to avoid disruption in supply of petroleum products.
- v. That the Ministry of National Treasury and Economic Planning through a letter dated RES 1194/22/02/A (10) dated 25th August, 2022 communicated its consideration and approval of additional funding of Kshs16,597,436,070.98 to the Ministry of Energy and Petroleum under Article 223 (Supplementary Appropriation) of the Constitution.
- vi. That the payments were in respect to the petroleum pump price stabilization programme introduced as an intervention vide Legal Notice No. 124 of 10th July, 2020, Petroleum Development Levy Order, 2020.
- vii. That the funds were utilized to pay eleven (11) OMCs in September and October 2022.

Committee Concerns

The Committee raised the following concerns:

The build-up amounts paid to OMCs

The Committee inquired on the dates of origination and delivery of the vouchers used to pay the 11 OMCs. The CS indicated that the gazette notice shielded the pump price and Energy and Petroleum Regulatory Authority (EPRA) did a price build up from June, July, September, and October 2022 of the outstanding fund owed to the OMCs. That it still owes Kshs47 billion to the importers out of the Kshs110 billion because Kshs16.5 billion was already paid during the period in question.

Grace period and penalties

The Committee inquired the grace period the government was allowed to compensate the OMCs and whether there were any penalties. The CS stated that the penalties would be huge because all of them are owed money yet some of the small OMCs do not have leverage like the big international OMCs. However, the out of the 85 OMCs only 8 companies compete since they have

leverage. Therefore, there were no penalties due to the systemic logistical process put in place to ensure seamless operation.

Huge compensation for one OMC

The Committee asked why one of the OMCs was compensated a huge amount compared to others. The CS stated that some OMCs were owed huge because other small companies and suppliers were operating under them, who equally needed compensation for pump price.

Emergency in fuel price stabilization

The Committee inquired why the fuel price stabilization was considered as an emergency during July to September, 2022 and not now. The CS indicated that there were supply disruptions caused by the money owed to OMCs through the fuel price stabilization fund, including accrual of demurrage making the products unavailable in the market at a critical electioneering period. Therefore, the OMCs were unable to liquidate their LCs to deliver products out of the Port of Mombasa into the economy yet there was need to stabilize the economy.

Cost of petroleum products

The Committee inquired why petroleum products in Kenya were expensive compared to other countries. The CS indicated that the high cost of petroleum products in Kenya is occasioned by additional costs applied to the product to collect other taxes, for example, railway levy, road levy, *et cetera*.

Prudence in subsidies and plans to pay the Kshs47 billion

The Committee inquired on the prudence mechanisms put in place to ensure OMCs do not misuse the compensation under price stabilization arrangement. The CS indicated that the existing checks and balances provide that the OMC cannot request to take up products that they cannot sell. The system is such that they pay first at the port before releasing the products to the market and they have to sell it hence no room for abuse.

The Committee queried the plans in place to pay the Kshs47 billion owed to OMCs. The CS indicated that the amount will be paid through supplementary budget subject to cash flow availability to enable OMCs to operate commercially.

Plans to stabilize fuel prices

The Committee inquired on the plans to stabilise fuel prices and managing subsidies in the sector. The CS stated that the biggest problem was the tightening of monetary policies in the US and post-COVID recovery which was sucking out the dollar from the market. However, the Ministry intended to remove speculative tendencies currently in the market by putting on hold the payments to the OMCs in dollar and only pay the LCs in Kshs for six months to remove the high demand of the dollar.

Committee Resolutions

After the deliberations, the Committee indicated satisfaction with the responses provided by the CS and highlighted that the main question still remains the application of Article 223 of the

Constitution. It was agreed that the meeting with Cabinet Secretary, Ministry of Treasury and Economic Planning would address the pending question.

MIN./PPETC/2023/57: MEETING WITH THE CABINET SECRETARY FOR
MINISTRY OF EDUCATION

The Agenda was deferred.

MIN./PPETC/2023/58: PRESENTATION OF BRIEF ON PETITION NO. 4 OF 2023
ON DELAYED ADJUDICATION AND SETTLEMENT OF
SQUATTERS AFTER THE EXPIRY OF LEASE OF
MACALDER MINES LTD. LAND

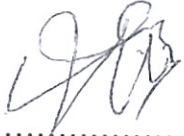
The Agenda was deferred.

MIN./PPETC/2023/59: PRESENTATION OF BRIEF ON PETITION NO. 5 OF 2023
REGARDING WARD BASED SOLUTION AS A LONG-
TERM REMEDY TO PERENNIAL WATER SHORTAGE IN
KENYA

The Agenda was deferred.

MIN./PPETC/2023/60: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 7:00 p.m. The next meeting would be held on Thursday, 16th March, 2023 at 10.00 a.m.

Sign: 

(CHAIRPERSON)

Date: 21/03/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE FOURTEENTH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, APRIL 20, 2023, IN THE COMMITTEE ROOM ON FOURTH FLOOR, CONTINENTAL HOUSE AT 10:00 AM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, M.P.
5. Hon. Caleb Mutiso Mule, M.P.
6. Hon. John Bwire Okano, M.P.
7. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Joshua Chepyegon Kandie, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Peter Mbogho Shake, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.
8. Hon. Bidu Mohamed Tubi, M.P.

WITNESSES-MINISTRY OF ROADS AND TRANSPORT

1. Eng. Joseph Mbugua - Principal Secretary, Ministry Roads and Transport
2. Eng. Silas Kinoti - Director General, Kenya Urban Roads Authority
3. Philip Wachira - Senior Chief Finance Officer- State Department of Roads
4. Eng. Henry Gakuru - Deputy Director, KeNHA
5. Isaac Karurwa - Acting Director, KeNHA

WITNESSES MINISTRY OF MINISTRY OF AGRICULTURE AND LIVESTOCK

1. Hon. Mithika Linturi - Cabinet Secretary, Ministry of Agriculture and Livestock
2. Kello Harsama - Principal Secretary, Crops Development
3. Joseph Kimete - Managing Director, NCPB

4. Tobias Osano - Chief Finance Officer, State Department for
Crop Development

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - Clerk Assistant II
3. Ms. Anne Shibuko - Clerk Assistant II
4. Mr. Shadrack Omondi - Legal Counsel II
5. Ms. Patricia Gichane - Legal Counsel II
6. Mr. Martin Sigei - Research Officer III
7. Ms. Lilian Mburugu - Media Relations Officer

MIN./PPETC/2023/98: PRELIMINARIES

The Chairperson called the meeting to order at 11.30 a.m. and prayers were said by the Hon. Caleb Mutiso, M.P.

MIN./PPETC/2023/99: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sitting
4. Matters Arising
5. **Consideration of Public Petition regarding *Funds Spent by National Government Contrary to Provisions of Article 223 of the Constitution***
 - i. Meeting with the Cabinet Secretary for Roads and Transport
 - ii. Meeting with the Cabinet Secretary for Agriculture & Livestock Development
6. Any other Business
7. Adjournment & Date of Next Meeting

MIN./PPETC/2023/100: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

There were no minutes to be confirmed.

MIN./PPETC/2023/101: MATTERS ARISING

There were no matters arising.

MIN./PPETC/2023/102: MEETING WITH THE PRINCIPAL SECRETARY FOR ROADS AND TRANSPORT

On behalf of the Cabinet Secretary, Ministry of Roads and Transport, the Principal Secretary, Eng. Joseph Mbugua appeared before the Committee and presented as follows:

A: Approval of the Additional Budget

- i. That under article 223 of the Constitution, the National Government may spend money that has not been appropriated by Parliament if inter alia,
 - The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that act.
 - When the National Assembly has approved spending which had been granted under article 223 of the Constitution, an appropriation bill shall be introduced for the appropriation of the money spent.
- ii. That the State Department of Roads made request for additional funding to the National Treasury and received approvals to spend in advance of Appropriation Under Article 223 of the Constitution provisions amounting to **Kshs.9.45 Billion** within the financial year 2022/23. The funding of **Kshs.9.45 Billion** was for ongoing road projects and was approved as tabulated below:

No	Vote	Budget Code	Project Name	Implementing Agency	Amount (Kshs.)
1	1091	159101	Upgrading of Lamu-Ijara-Garissa Road (A10) to All Weather Standard	KeNHA	2,800,000,000
2		124801	Dualling of Nairobi Eastern Bypass	KURA	4,800,000,000
3		154601	Construction of Makupa Causeway	KeNHA	1,850,000,000
Total					9,450,000,000

- iii. That the State Department of Roads, through the Cabinet Secretary made a request for additional funding to the Cabinet Secretary for the National Treasury for the three roads. The request for the funding under Article 223 was based on the following grounds:
 - The Projects had been recommended by the National Security Council for implementation and therefore required optimum funding;

- The projects had material pending bills which were hindering prompt implementation.
- iv. That the Cabinet Secretary for National Treasury approved additional budget provisions amounting to the Kshs.9,450,000,000 under Article 223 of the Constitution with financing from the Annuity Fund and from the National Treasury on 3rd August 2023 as detailed below:

No	Mode	Amount Approved (Kshs.)
1.	Financing from the Annuity Fund	8,450,000,000
2.	Financing from other sources at Treasury	1,000,000,000
	Total	9,450,000,000

- v. That in line with the amended Annuity Fund Regulations, funds set aside for use by projects outside the Annuity Fund can be used upon approval by the Cabinet Secretary for the National Treasury upon advice by the Annuity Oversight Committee.
- vi. That the Public Finance Management (Roads Annuity Fund) (Amendment) Regulations, 2019 Section 3 (c) as read together with Roads Annuity Fund Regulations 2015 section 8 provides that moneys may be paid out of the fund where such payments relate to the use or investment of surplus funds in the manner directed by the Cabinet Secretary. The Oversight Committee is supposed to recommend the surplus. Under section 4 of the amendment to the Annuity Fund Regulations, - "In the event that the Committee is yet to be constituted, or is unable to obtain quorum for whatever reason to allow them to carry out the functions outlined in paragraph (1), the Cabinet Secretary may undertake the functions of the Committee until such a time that the Committee shall be properly constituted.
- vii. That the Cabinet Secretary for Roads made a request for additional funding for settlement of critical road projects. The Cabinet Secretary/Treasury approved additional budget with financing from the Annuity Fund. In line with the above two provisions, the Cabinet Secretary National Treasury declared surplus into the Consolidated fund of Kshs.8,450,000,000 (Kshs.8.45 billion) to finance the additional budget. The expenditure was approved under Article 223 of the Constitution.
- viii. That the Cabinet Secretary for the National Treasury therefore has the ultimate approval on usage Annuity Funds. Upon receipt of the approval to spend in advance of the appropriation, the State Department remitted the Kshs.8,450,000,000 from the Annuity Fund bank account to the exchequer for financing the approved budget under Article 223 of the Constitution. The State Department thereafter made a financing exchequer request to the National Treasury of the entire Kshs. 9,450,000,000 on 4th August 2023.

- ix. That the Exchequer towards funding the Ksh.9.45 billion was received on 5th August 2022 by the State Department and transferred to the Implementing Agencies (KURA & KeNHA). The exchequer was subsequently paid to certified works. The three projects as at today 15th March 2023 still have outstanding ongoing works within contract which has not been paid.

B: Justification for additional budget and approval under article 223 of the Constitution

- x. That the three beneficiary projects had approved budgets under the Printed Estimates 2022/23 which were very insufficient to finance the already certified works;
- xi. That the three road projects were ongoing contracts which had been awarded much earlier and were therefore not new and normal spending had been appropriated by Parliament on a project-by-project basis though under quite insufficient allocations;
- xii. That the three road projects are crucial links with a bearing on security and hence needed enhanced urgent funding.

C: Salient Project Implementation factors on the three Projects

- xiii. The Principal Secretary highlighted the following salient project implementation issues and timings of action to demonstrate the propriety of the granting of additional provision and funding of the Kshs.9.450 billion:

No	Project	Contract Sum Kshs. Billions	Start Date	Completion Time	Amount Certified but not Paid as at 31 st July 2022 Kshs. Billions	Outstanding Works and Pending Bills as at 28 th February 2023 Kshs. Billions
A	B	C	D	E	F	G
1	Lamu- Ijara – Garissa	18b	27 th March 2021	27 th May 2023	3.7b	8.4b
2	Eastern Bypass	12b	14 th Jan 2022	14 th Jan 2023	5.8b	1.6b
3	Makupa Bridge	4.6b	10 th Oct 2020	15 th Oct 2022	1.2b	847m
Total		34.6b			10.7b	10.8b

- xiv. That in line with Article 223 clause (4) when the National Assembly has approved spending which had been granted under Article 223 of the Constitution, an appropriation bill shall be introduced for the appropriation of the money spent. The approved expenditure has since been regularized by the National Assembly under the auspices of the 1st Supplementary Budget 2022/2023 and the approved expenditure are within the 1st Supplementary Budget Appropriation Act 2023.
- xv. The Principal Secretary concluded by inviting the Committee a visit to the three projects for them to appreciate their value and existence.

Committee concerns

The Committee raised the following concerns with regards to the presentation by the Petitioner:

a) Choice of projects

The Committee enquired on what criteria was used to pick the 3 roads yet there were so many other incomplete roads. The Principal Secretary explained that the 3 roads had the highest impact in implementation. For instance, the *Lamu- Ijara – Garissa Road* was key to security, the *Eastern Bypass* had no diversions and there was need to increase mobility, while the *Makupa Bridge* is a key road in economic activities at the Port.

b) Annuity Fund

The Committee sought to know the details of the Annuity Fund. The Principal Secretary explained that the fund was accumulated in the Central Bank using Fuel levies of Kshs. 3 per litre. After analysis, it was resolved that instead of holding pending bills which cumulated interest at 14% p.a, the funds would best be used to clear pending bills.

c) Justification of utilisation of the Funds under Article 223

When asked whether in his opinion it was justifiable to spend these funds just before elections, the Principal Secretary responded that it was as it has saved the Government from accrued interest on pending Bills. In addition, the projects funded by the Ministry are largely complete and in use by the Kenyan citizens.

MIN./PPETC/2023/103: MEETING WITH THE CABINET SECRETARY FOR AGRICULTURE & LIVESTOCK DEVELOPMENT

The Cabinet Secretary, Hon. Mithika Linturi appeared before the Committee and presented as follows:

The Maize subsidy programme

- i. In the past 2 years, the country has experienced a steady decline in maize production from 42 million bags in 2020 to 36 million bags in 2021 due to poor performance of rains.

- ii. The annual maize requirement is 52 million bags which includes other uses such as manufacture of livestock feeds, stock retained as seed and for manufacture of other products
- iii. The average quantity of maize for human consumption in the country is 3.06 Million bags(90kgs) per month which is about 36 million bags per annum.
- iv. The maize deficit was about 16 million bags in 2021 and the production prospects for 2022 was also below average due to poor rainfall performance.
- v. The country normally relies on maize imports of about 200,000 bags per month from the East African region to bridge the deficit.
- vi. However, the supply of maize from the East African region was low in the year 2022 due to poor production of maize across the region of 2021.
- vii. The available maize stock as at May 2022 was about 5.3 Million (90 kgs) based on Maize Balance sheet projected to July 2022, implying that the country would have a 2 months deficit of maize equivalent to about 6 million until the next harvest in July – August 2022. Maize imports decreased to 217,676 bags in April compare to 343,203 bags (90Kgs) in March due to constrained regional supply.
- viii. Consequently, maize prices were escalating ranging between Kshs. 4600- 5000 in May 2022 compared to Kshs. 3000-3500 between January- April 2022. The government intervened by waiving duty for 6 Million bags of white Non GMO maize to be imported from outside the East African and COMESA regions through Gazette Notice dated 9th May 2022 to bridge the gap.
- ix. However, maize process continued to rise due to disruptions in the global supply chain, and high fuel prices with attendant logistical costs. The imported maize landing price was Kshs. 5,700 to Kshs. 6,500 per 90 kg bag. The price of the sifted maize flour (normal maize brands) remained high retailing at an average of Kshs. 190-215 per 2kg packet.
- x. Owing to the growing challenge of high cost maize flour prices, the government made a decision to further cushion consumers through allocation of resources to finance a maize flour subsidy program to address the high consumer maize flour prices across the country.
- xi. The Cabinet Secretary for the National Treasury and Planning held meetings with millers on 15th and 20th July 2022 to discuss the financing to subsidize white maize flour.
- xii. On the same day, 20th July, 2022, the Retired President announced the Fifth Stimulus Programme covering the supply and distribution of maize meal across the entire country. He pronounced that the sifted maize flour shall retail across the entire territory of the Republic of Kenya at a price of Kshs. 100, down from Kshs. 205 for a 2 kg packet.
- xiii. Request and approval for Funds for the Maize Subsidy Programme
- xiv. The Ministry requested for Funds for the maize flour subsidy programme vide letter Ref. MOA/ LCD/9/12/1 dated 18th July 2022 amounting to Kshs 9.12 B.
- xv.

- xvi. The National Treasury granted approval to the state Department to spend additional Kshs. 4 Billion vide Letter Ref.: RES1169/22/01 A (7) dated 21st July 2022 under Article 223 of the Constitution in implementation of the Maize Flour Subsidy Programme pending regularisation in the FY 2022/2023 Supplementary Estimates.
- xvii. Vide Letter Ref. CAB/ NSC/ 14/2. VOL.1/ (24), dated 25th July 2022, the Head of Public Service communicated the National Security Council approval of the following:
- Noted the contents of the Memorandum
 - Approved the sifted maize Flour Subsidy Programme for immediate implementation
 - Directed that the Cabinet Secretary for National Treasury and Planning to provide Kshs. 2Billion per week and Kshs. 532 Million to clear the outstanding FT 2017/2018 pending bills for millers.
- xviii. The National Treasury approval to tge Srate Department to spend additional Kshs. 4 Billion under Article 223 of the Comstitution in implementation of the Maize Flour subsidy programme was not regularised in the FY 2022/2023 Supplementary Estimates No. 1.

Committee concerns

- a) The Committee sought to know whether the Kshs 4 Billion reached the intended beneficiaries. It was confirmed that Kshs. 532 Million had been paid to small scale millers who had proven their case.
- b) On whether any meetings were held between the Ministry and Treasury, the Cabinet Secretary stated that there were no meetings held to discuss the issues as all instructions were issued via correspondence.
- c) On whether there was a procedure to identify millers who would be beneficiaries to the Maize Subsidy Project, the Cabinet Secretary stated that there were no details available from the paper work in the Ministry.

MIN./PPETC/2023/104: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 02:00 p.m. The next meeting would be held on Thursday, 20th April, 2023 at 03.00 p.m.

Sign:

(CHAIRPERSON)

Date..... 02.05.2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 24TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, APRIL 28, 2023, IN ROOM C1, ENGLISH POINT MARINA AT 2.30 P.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Edith Vethi Nyenze, M.P.
4. Hon. Joshua Chepyegon Kandie, M.P.
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Peter Mbogho Shake, M.P.
8. Hon. Suzanne Ndunge Kiamba, M.P.
9. Hon. John Bwire Okano, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Maisori Marwa Kitayama, M.P.
4. Hon. John Walter Owino, M.P.
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - Clerk Assistant I
3. Ms. Anne Shibuko - Clerk Assistant I
4. Mr. Willis Obiero - Clerk Assistant III
5. Mr. Shadrack Omondi - Legal Counsel II
6. Ms. Patricia Gichane - Legal Counsel II

MIN./PPETC/2023/156: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 a.m. and Hon. John Bwire Okano, M.P. said the prayers.

MIN./PPETC/2023/157: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. Consideration of Public Petitions regarding **Funds Spent by National Government Contrary to Provisions of Article 223 of the Constitution**
6. Any other Business
7. Adjournment & Date of Next Meeting

Thereafter, the Proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. John Bwire Okano, M.P. and seconded by the Hon. Peter Mbogho Shake, M.P.

MIN./PPETC/2023/158: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Agenda was deferred to another day.

MIN./PPETC/2023/159: MATTERS ARISING

Agenda was deferred to another day.

MIN./PPETC/2023/160: CONSIDERATION OF REPORT ON PUBLIC PETITION REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

The Committee noted with concerns that the Cabinet Secretary, National Treasury had not appeared before the Committee despite various invitations, yet his submissions were vital for the conclusive consideration of the Petition.

The Committee went through the draft report and observed that:

- i. during the period in question, the office of the Controller of Budget was subject to political interference;
- ii. the Controller of Budget contravened Article 228(5) of the Constitution during the transition period;

- iii. the justification by the Ministries, Departments and Agencies (MDAs) for the expenditures were not sufficient to warrant emergencies thus in contravention of Article 223.

The Committee advised that the former Cabinet Secretary of National Treasury & Planning, Accounting officers of all beneficiary ministries or departments and any other relevant officers be invited to appear before the Committee.

MIN./PPETC/2023/161: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 05:00 p.m. The next meeting would be held on Saturday 29th April 2023 at 10.00 a.m.

Sign: 

(CHAIRPERSON)

Date..... 11/05-2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 62ND SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, SEPTEMBER 26, 2023, IN COMMITTEE ROOM 12 ON GROUND FLOOR, NEW WING, MAIN PARLIAMENT BUILDINGS AT 3:30 PM

PRESENT

1. Hon. Ernest Ogesi Kivai, M.P. - (Chairing)
2. Hon. Joshua Chepyegon Kandie, M.P
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, M.P
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. John Bwire Okano, M.P.
7. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Patrick Makau King'ola, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.
6. Hon. Suzanne Ndunge Kiamba, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. Bidu Mohamed Tubi, M.P.

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - Clerk Assistant I
3. Willis Obiero - Clerk Assistant III
4. Mr. Shadrack Omondi - Legal Counsel II

INATTENDANCE

1. Dr. Francis O. Owino, PhD - Former, Principal Secretary, State Department for Crop Development
2. Mr. Abidha Vicholus - Advocate

MIN./PPETC/2023/403: PRELIMINARIES

The Chairperson called the meeting to order at 3.30 pm. and Hon. Sloya Clement Logova, M.P. said the prayers.

MIN./PPETC/2023/404: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 4 of 2022 regarding Funds Spent by National Government Contrary to Provisions of Article 223 of the Constitution
-Meeting with Dr. Francis Owino
6. Any Other Business
7. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Joshua Chepyegon Kandie, M.P and seconded by Hon. Maisori Marwa Kitayama, M.P.

MIN./PPETC/2023/405: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/406: CONSIDERATION OF PUBLIC PETITION NO. 4 OF 2022 REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

Submission by Dr. Francis Owino, PhD, CBS, Former PS, State Department for Crop Development and Agricultural Research

The Former Ag. PS, State Department for Crop Development made the following submissions—

Background

The Former Ag. PS indicated that the Government had taken a policy position on the maize flour subsidy. Vide a letter from the Head of Public Service dated 25th July, 2022 copied to various PSs, Solicitor General and Attorney General communicated a meeting where the CSs for Ministry Agriculture, Livestock and Fisheries, Ministry of National Treasury and Planning, and the Attorney General jointly presented a Cabinet memo appraising the government on the food and nutrition situation of the country and the need for a maize flour subsidy program. The government consequently approved the sifted maize flour subsidy for immediate implementation.

Why the expenditure could not await the annual appropriation process

That was a Cabinet decision and the PS only had the responsibility to implement it. The implementation was in accordance with the law and in accordance with the regulations and as per the requirement of the communication from the Head of Public Service. The cabinet memo had the rationale, justification and reasons why government spent money outside the annual budgetary process.

Implementation of the maize flour subsidy program

- i. The former PS stated that upon receipt of the instruction, he formed a Multiagency Implementation Committee comprised of technical officers from State Department for Crops Development, National Cereals and Produce Board (NCPB), Ministry of Interior and Coordination of National Government, Kenya Revenue Authority (KRA) and also set up Regional Oversight Committees for close oversight and monitoring.
- ii. The PS signed contract with 129 millers who had the requirements including certificate of incorporation, pin certificate, tax compliance certificate, AFA certificate, VAT certificate, valid trade license, bank details, KEBS certificate, millers contact person and physical location of the mills.
- iii. A command centre for receiving and processing payments was set. The Committee on Agriculture conducted an inquiry on the same and tabled a report on 7th July, 2023 recording that funds that were spent under Article 223 of the Constitution be regularised. That the Ministry of Agriculture should come up with a policy on how to engage in future subsidy programs.

Committees Concerns

Provision of a copy of the cabinet memo

With regards to the need for provision of a copy of the cabinet memo, Dr. Owino indicated that he was before the committee in his capacity as the former PS and such documents were classified and remained in the respective offices such as Head of Public Service. Therefore, the Committee could engage the current office holders for response.

The amounts spent by the State Department out of the Kshs55 billion

With regards to the total amount of the maize subsidy program in question, the former PS indicated that the maize subsidy program as approved by the communication from the Head of Public Service was to be Kshs2 billion per week for four weeks amounting to Kshs8 billion. However, as at the time of leaving office in 2022, the National Treasury had only funded Kshs4 billion. That the details of the expenditures were with the technocrats at the Ministry.

Timing of the expenditure

The Committee inquired whether the timing was appropriate for the expenditure. The former PS, indicated that he followed the communication as it came and implemented the directive as the accounting officer as he always did for any other directives.

Committee on Agriculture recommendations

With regards to a report of the Committee on Agriculture negating expenditure of some of the funds, the former PS indicated that he was not aware of such a report.

The process of implementation of the program

The Committee sought clarification on the process followed in the implementation of the program. The former PS indicated that the program was a massive national exercise. A command centre was set at Kilimo House where every actor was involved. The NCPB in the various areas where millers were would get records of the milled flour and forward to the command centre after clearance by the local security committees comprising KRA, NCPB and County Commissioners who would authenticate that the millers had produced the flour under the program.

The records would be dispatched to the command centre and processed real-time. The millers were organised in associations for purposes of tracking the progress and they appreciated the transparency in the program. That the objective was to ensure that a two-kilogram of maize flour was sold at Kshs100 and the details were available. The production depended on the capacity of the millers.

The role of the accounting officer

The Committee sought clarification regarding the role of the PS as an accounting officer in implementing the communication from the Head of Public Service. The former PS stated that his action was based on the communication from the Head of Public Service. However, the approval underwent through National Treasury and permission from the Controller of Budget (COB) hence it was a collective government responsibility. That the program was lawful as approved although it was not regularised as Parliament was not sitting. The COB would request the National Treasury to regularize expenditure under Article 223.

MIN./PPETC/2023/407: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 5:30 p.m. The next meeting would be held on Wednesday, 27th September 2023 at 11.00 a.m.

Sign: 
(CHAIRPERSON)

Date..... 16/11/2023



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

MINUTES OF THE 72ND SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, OCTOBER 31, 2023, IN MAGADAI HALL ON THE FIRST FLOOR, VICTORIA PLAZA, HOLIDAY INN HOTEL AT 10.00 A.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Caleb Mutiso Mule, M.P. | | |
| 10. Hon. Peter Mbogho Shake, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |
| 12. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

- | | | |
|------------------------|---|---------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Ms. Mercy Mayemde | - | Media Relations Officer |
| 5. Ms. Felistus Muia | - | Protocol Officer |
| 6. Ms. Rahab Chepkilim | - | Audio Officer |
| 7. Ms. Winnie Nyaga | - | Secretariat |
| 8. Ms. Diana Satia | - | Office Assistant |

IN ATTENDANCE

TELKOM KENYA

- | | | |
|-------------------------|---|---|
| 1. Mr. Mugo Kibati | - | CEO |
| 2. Mr. Allan Wainaina | - | Chief Finance Officer |
| 3. Mr. Julius Cheptiony | - | Chief Strategy and Business Development Officer |
| 4. Ms. Stella Wawira | - | Head of Legal Services |
| 5. Ms. Jean Langat | - | Legal Officer |

HAKI AFRICA

1. Mr. Hussein Khalid - Executive Director
2. Mr. Japheth Ogola - Programmes Officer
3. Mr. Yusuf M Abubakar - Director
4. Mr. Odhiambo Ojilo

MUHURI

1. Mr. Francis Auma

SEMA UKWELI

1. Mr. Boniface Mwangi - Executive Director

HUMAN RIGHTS AGENDA

1. Mr. Yusuf Lule - Executive Director
2. Mr. Mwinyihaji Ali - Public Complaint Response Officer

MIN./PPETC/2023/458: PRELIMINARIES

The Chairperson called the meeting to order at 10:30 a.m., the proceedings began with prayers by Hon. Peter Mbogho Shake, M.P.

MIN./PPETC/2023/459: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition regarding Funds Spent by National Government Contrary to the Provisions of Article 223 of the Constitution—**
- *Meeting with CEO, Telkom Kenya*
6. **Consideration of Public Petition Regarding Enactment of Legislation to Criminalize and Prescribe Penalties for the crime of enforced disappearance.**
- *Meeting with various human rights organizations (HAKI Africa, MUHURI, HURIA and Sema Ukweli)*
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Edith Vethi Nyenze, M.P. and seconded by Hon. Bidu Mohamed Tubi, M.P.

MIN./PPETC/2023/460: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

CONSTITUTION OF KENYA
FUNDS SPENT BY NATIONAL GOVERNMENT
CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF
THE CONSTITUTION

The CEO Telkom Kenya, Mr. Mugo Kibati, appeared before the Committee on 30th October, 2023 and submitted as follows: -

- i.) Telkom Kenya received a letter that informed the Board of the decision of the Government of Kenya to take over shares that would arise over Jamhuri shareholding.
- ii.) The Treasury vide a letter dated 19th August, 2022 informed the Board Chair of Telkom that Jamhuri Holdings Limited/Helios had informed the Government of Kenya of their decision to exit Telkom by exercising their put opinion as provided for in the shareholder agreements.
- iii.) The Cabinet Secretary, National Treasury requested the chair to convene a board meeting to pass the necessary resolution to facilitate completion of the said transaction.
- iv.) The Board Telkom responded as follows: -
 - a) The Board as it was constituted at the time due to lack of quorum and therefore could not meet.
 - b) The Company is still held by Jamhuri Holdings that is, the 60% Jamhuri and Government 40%.
 - c) The matter is purely a shareholder matter to mean funds transferred from one shareholder to another.
 - d) The agreed form of the AG's legal opinion has not been submitted for the Board's consideration yet it was a fundamental condition preceeded

Committee's Concerns

i.) On why Telkom is exonerating itself from the whole affair of Article 223 of the Constitution

The CEO responded that matter It was a shareholder matter between the parties that entered into the shareholding agreement. Telkom was not part of the transactions. The Board was to convene the meeting to conclude the transactions.

ii.) The Advisory role of the CEO to the Board

The CEO Asked whether he advised the Board specifically after receiving communication on the exit of Helios. The CEO responded that his role was to represent management on the daily running of the company, however, occasionally, he advises the Board on several matters as and when required.

iii.) Meeting of the Board of Directors on the said transaction

The Committee inquired whether the CEO was privy to the meeting of the Board about the said transaction, and the CEO responded that the transfer of shares was undertaken by the Board and not the CEO. It is the discretion of the shareholders to involve/not involve the Board in such meetings but ordinarily, they are shareholder to shareholder meetings.

iv.) **The Committee inquired why Jamhuri Holdings Limited was still holding on the shares by Jamhuri Holdings Limited yet payment was already made.**

The CEO responded that the transaction went through and shares are yet to be transferred i.e. Jamhuri Holdings 60% and GoK 40%.

v.) **The Committee sought to know the urgency that occasioned transfer of shares and the attendant transactions and if it was procedural?**

The CEO responded that the Board was equally asking itself the same questions. They were not privy to the said transactions as the management especially the issue of nationalizing a private company. The matter came to their attention through the correspondence from the Cabinet Secretary, National Treasury.

vi.) **The Committee asked the CEO whether he was aware that the contract with Jamhuri Holdings Limited had been rescinded by Cabinet and the current status of sharing.**

The CEO responded that, after the new administration came into office, Telkom Kenya Limited engaged the new Cabinet Secretary of the National Treasury who inferred that they wanted to secure a new investor to replace Jamhuri Holdings and would need Telkom's support. The National Treasury has been driving the process of acquiring a new investor to take Jamhuri shares. There is no question about the 40% shares publicly owned. The problem is with the 60% privately owned shares by Jamhuri to the new investor.

vii.) **The Committee sought to know how the money would be recovered** and the CEO responded that the National Treasury was keen to ensure that funds that were transferred to Jamhuri Holdings must be refunded. He further explained that Jamhuri Holdings are still the shareholders of Telkom's 60% shareholding. In January, 2023, nominees to the Telkom Board were re-nominated. Paul Cunnigham was still the CEO of Jamhuri Holdings and Cabinet Secretary, National Treasury for the Government of Kenya. Jamhuri Holdings is owned by a Special-purpose vehicle called Helios based in London and there are many investors in and outside the country.

viii.) **The Committee asked the CEO what he would recommend to prevent such occurrences in future.** The CEO responded that there are so many avenues to address the matter including putting a policy framework in place for nationalisation as there is none at the moment. If there are any reasons for nationalisation, then there should be a policy framework, a proper policy review of why it should take place and the implications.

MIN./PPETC/2023/462: CONSIDERATION OF PUBLIC PETITION REGARDING ENACTMENT OF LEGISLATION TO CRIMINALIZE AND PRESCRIBE PENALTIES FOR THE CRIME OF ENFORCED DISAPPEARANCE

Meeting with various Human Rights Organizations

Submissions by Muslims for Human Rights (MUHURI)

MUHURI appeared before the Committee and submitted as follows -

i.) The organisation had documented many cases of enforced disappearance and sought court orders for habeas corpus. There were about 12 cases of enforced disappearance in the last

The financial statement of the cases were also to be carried out by Anti-Terrorism Unit (ATU).

- ii.) There was need for a legislative framework regarding enforced disappearance to assist the victims even through restoration and redress.

Submissions by Human Rights Agenda (HURIA)

The Executive Director of HURIA, Mr. Yusuf Lule, appeared before the Committee and submitted as follows -

- i.) HURIA supports the Petitioner's prayers and the need for a legislation to criminalise and prescribe penalties for the crime of enforced disappearance was long overdue but timely with political goodwill.
- ii.) The government had acknowledged the twin problem of enforced disappearance and extrajudicial killings and committed to ratifying and domesticating the International Convention for the Protection of all Persons from Enforced Disappearance ending all forms of extra judicial execution by security services. Further, amending the National Coroners Service Act, 2017 to establish the Coroners General Office and a special tribunal for gross human rights violation and enforced disappearances.
- iii.) In view of the commitments and the unending crimes against the Kenyan people, the Petition was a beginning of a national conversation on the issues of enforced disappearance and extra judicial killings.
- iv.) Over 50 cases of enforced disappearance and extra judicial killings were documented by HURIA since 2016 in Kwale County. HURIA made submissions to Kenya National Commission on Human Rights (KNCHR) during a public inquiry on the status of security in the Coast region and also the Senate Standing Committee on Justice and Legal and Human Rights Affairs.
- v.) The occurrence and impact of the crime of enforced disappearance warrants the need for enactment of the said legislation. Further, HURIA had made various observations in its interactions with the cases of enforced disappearance. In a forum conducted on 17th October 2017 to receive and document cases of enforced disappearance and extra judicial executions in Kwale County, families of the victims submitted through questionnaires where about 11 cases of enforced disappearances and 9 killings were reported. After the analysis, HURIA noted as follows -
 - a) On many occasions, incidences of extrajudicial killings began as enforced disappearance hence making the two a twin problem.
 - b) All the victims registered were Muslim men of Digo ethnic origin, 68 per cent of whom were above the ages of 35 years, 84 per cent were married men with at least two children and most of the claimants were women either married to the victims or daughters and sisters left with the bigger responsibility to fend for their families.
 - c) Most of the victims were in informal employment such as *bodaboda* operation, fish mongering, fruit vending, teaching in madrassa and farming.

- d) Most of the killings happen between 7pm and midnight within the area of Ukunda where majority of the victims' bodies were found with bullets.
- e) In the case of disappearances, the claimants alleged that a white *Pro box* car was mainly used and most of the abductions were carried out during the day. Msambweni Sub county was most affected by the incidences.
- f) The claimants revealed that 65 per cent of the cases were reported to the police with no appropriate action taken. Most of the abducted victims were later killed and buried within a day as per the Muslim tradition thus hindering the undertaking of autopsies which could have revealed more evidence of the crime.
- g) Most of the abduction of victims were done during the day by persons who had firearms and handcuffs pointing to the belief that they were law enforcement officers in the country.
- h) The main target of the victims were youths between the ages of 25 and 35 years who were alleged to be recruiters of terrorist organisations while others were returnees who came back from Somalia.

From the observations, HURIA made the following recommendations -

- i.) Implementation of the recommendations forward by the Civil Society Organisations (CSOs) during the Senate Standing Committee on Justice and Legal and Human Rights Affairs that visited parts of the country.
- ii.) The Inspector General of Police be held accountable for the loss of the lives of many Kenyans since 2008 to date.
- iii.) The families of victims found dead or abducted be compensated for the loss of lives and atrocities they have gone through. Despite the Victims Protection Act, the Victims Protection Fund (VPF) has not been operationalised.

Submission by HAKIAFRICA

The Executive Director, Mr. Hussein Khalid appeared before the Committee and submitted as follows -

- i.) It is almost impossible to investigate and deal with the cases of enforced disappearances without encapsulating extrajudicial killings. In most instances, victims of enforced disappearances end up dead hence extremely challenging to only legislate on enforced disappearance without extrajudicial killings which was a major problem nationally.
- ii.) From the various cases documented by various human rights organisations, there was a hallmark of torture. The legislation should refer to the Prevention of Torture Act to cover for victims who have been disappeared and later found alive and those found dead. There was need for a broader definition of enforced disappearance for the two types of victims.
- iii.) In many cases, the perpetrators are security officers who again conduct the investigations. The responsibility to investigate should not be bestowed on police to build faith that such

- ii.) The legislation on enforced disappearance should not only punish the junior officers who engage in enforced disappearance but also the senior officers who give the orders for such engagements. The entire security service needs to be accountable including National Intelligence Service (NIS).
- iii.) One of the justifications by the police to engage in enforced disappearance of suspected criminals was that whenever they take suspects to court, they are not convicted. There was need to relook at the Penal Code to find a way of dealing with suspects of heinous crimes so that the police do not take the law into their hands.

Committee Concerns

Motivation for enforced disappearance by the state agencies

The Committee inquired the motivation for the state to engaging in enforced disappearance by the and how the organisations were mitigating the problem. The witnesses submitted as follows: -

- i.) That the incompetence and laxity on the part of the police officers in conducting investigations had made them to engage in disappearing suspects as they are likely to lose the cases in court. The threshold for proving guilt in some of the cases were very high hence requiring proper intelligence and investigation for a successful prosecution. There was need to equip police and other investigative agencies with necessities for proper investigations and a forensic laboratory to make investigations easier and quicker.
- ii.) Also, laxity within the judicial system had caused suspects to be freed thus state agencies resorting to enforced disappearance. The prosecution and judicial system occasionally fail to sentence suspects brought forth by police even with credible evidence. The judicial system should be strengthened to prevent gaps where a judge or prosecutor is bribed to free suspects free. This will ensure that the credible investigations done by the police are considered by the judicial system timely and swiftly. Further, the citizenry needs to support the process to narrow the gaps by coming forth to testify if need be.
- iii.) With regards to the efforts by the organisations to mitigate radicalisation and support the work of the police, the witnesses indicated that the organisations were doing much regarding enforced disappearance and its root cause. Further, enforced disappearance involved not just terror suspects but also other criminal suspects. The organisations were working with police and other groups to address the issues of radicalisation and criminal activities. Steps had been taken to strengthen the judiciary and other partners to manage the situation.
- iv.) There were counternarrative programs against radicalisations including action plans by the county government, community engagement and agitation for equipping of police officers with proper tools of work to improve their investigations.
- v.) Every person had a right to the judicial process and fair trial hence no justification for enforced disappearance and extrajudicial killings. The police should not be allowed to take the law in their hands. The Committee could propose a legislation to manage the situation such that whenever one is accused of certain heinous crimes they are not entitled to bail

until it is proved beyond reasonable doubt that the accused is guilty of the offence of terrorism. It is required to stop any prosecution unless it is proved guilty.

Proposal by the human rights organisations

The Committee inquired about legislative proposal by the human rights organizations on the matter of enforced disappearance. The witnesses indicated that they were willing to submit proposals and work with the Committee to come up with proposals to enact the legislation.

Notoriety of Coast region for enforced disappearance and extrajudicial killings

The Committee asked why Coast region was notorious for cases of enforced disappearance and extrajudicial killings. The witnesses indicated that due to suspicion of terrorism offenders at the Coast, many cases of enforced disappearance occurred in the region and the Northern Kenya. The regions were alleged to be the major hubs for radicalisation and violent extremism that led to terrorism. However, the organisations had supported programs for youths to disengage them in criminal activities.

The Committee inquired whether the organisations had interacted with cases of disappearances not linked to security officers. The witnesses indicated that from their analysis of the document cases, most of the documented cases of enforced disappearances involved the security officers, and some were even taken to court.

The rights of security officers

The Committee inquired whether the organisations were also defending the rights of police officers the same way as the victims. The witnesses stated that the welfare and conduct of police officers was equally important to be addressed. The definition of enforced disappearance pointed to involvement of state agencies. However, there were various programs focusing on security agencies to build their capacity and training them on human rights approaches. The witnesses further indicated that they were equally addressing cases of police officers who were disappeared by their colleagues including seeking for orders of habeas corpus for a disappeared police officer.

MIN/PPETC/2023/462:

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting will be held on Wednesday, 1st November, 2023 at 11.00 a.m.

Sign:


FN (CHAIRPERSON)

Date: 06/12/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 7TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, MARCH 07, 2024, IN COMMITTEE ROOM 12, NEW WING, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Maisori Marwa Kitayama, MP
4. Hon. Joshua Chepyegon Kandie, M.P
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Caleb Mutiso Mule, M.P.
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. Peter Mbogho Shake, M.P.
7. Hon. John Bwire Okano, M.P.
8. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

1. Mr. Ahmed Kadhi - Senior Clerk Assistant
2. Ms. Miriam Modo - Clerk Assistant I
3. Ms. Anne Shibuko - Clerk Assistant I
4. Ms. Patricia Gichane - Legal Counsel II
5. Mr. Willis Obiero - Clerk Assistant III
6. Mr. Martin Sigei - Research Officer III
7. Ms. Caroline Musyoka - Hansard Officer III
8. Mr. Paul Shana - Serjeant at Arms
9. Mr. Peter Mutethia - Audio Assistant

MIN./PPETC/2024/ 049: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and Hon. Ernest Kagesi, M.P. said the prayers.

MIN./PPETC/2024/050: ADOPTION OF AGENDA
AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of the Draft Report regarding Public Petition No. 04 of 2022 regarding Funds Spent by the National Government Contrary to Provisions of Article 223
6. Consideration of Public Petition No. 41 Of 2023 Regarding Banning of TikTok in Kenya
- *Meeting with Ministry of Interior and National Administration*
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by having been proposed by Hon. Joshua Kandie, M.P and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/051: **CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

- i. Minutes of the 4th Sitting held on Tuesday, 27th February 2024 were confirmed, having been proposed by Hon. Suzanne Kiamba, M.P and seconded by Hon. Joshua Kandie, M.P.
- ii. Minutes of the 5th Sitting held on Thursday, 29th February 2024 were confirmed, having been proposed by Hon Edith Nyenze, M.P and seconded by Hon. Suzanne Kiamba, M.P.
- iii. Minutes of the 6th Sitting held on Tuesday, 5th March 2024 were confirmed, having been proposed by Hon. Maisori Marwa, M.P and seconded by Hon. Ernest Kagesi, M.P.

MIN./PPETC/2024/052: **MATTERS ARISING**

Arising from **MIN./PPETC/2024/047** regarding Meeting of the Public Petitions Committee with the Speaker, the meeting was informed that the Leader of the Majority Party had informed the Members who went to see the Speaker that he would discuss the matter with the leadership of the Committee. Members deliberated on the matter and resolved that it was important for the Committee to meet the Speaker in person.

MIN./PPETC/2024/053: **CONSIDERATION OF THE DRAFT REPORT ON PUBLIC PETITION NO. 04 OF 2022 REGARDING FUNDS SPENT BY THE NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223**

The Committee reviewed the draft Report and made the following recommendations:

Pursuant to the provisions of Standing Order 227 and in response to the prayer sought, the Committee recommends that—

1. *Prayer 1: Orders the Auditor General to conduct a special forensic audit within two weeks on all public expenditures from July to September, 2022 and specifically the expenditures that were never voted for by Parliament but were still allocated and spent by Ministries and other Government Agencies;*

The Committee notes that Article 223(1) of the Constitution provides for certain parameters upon which the National Government may spend money that has not been appropriated. The parameters are as follows -

- (a) *The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount had been appropriated by that Act; or*
- (b) *Money has been withdrawn from the Contingencies Fund.*

The Committee further notes that certain expenditures did not find favour within the provisions of Article 223 of the Constitution.

Therefore, the Committee recommends that the Auditor-General conducts a forensic audit with a view to establishing the alleged fraud, corruption and other financial improprieties in compliance with Section 37 of the Public Audit Act, 2015 in respect of-

- (i) the approval by the COB of the National Treasury's requisition of Kshs. 6,091,140,702 to cater for the Exit of Helios Investment in Telcom Kenya LTD and funding done on 5th August 2022; and
 - (ii) the State Department for Crop Development and Agricultural Research's requisition of Kshs.4 billion to cater for the implementation of the Maize Subsidy Programme and funding done on 4th August 2022.
2. *Prayer 2: Establishes a Commission of Inquiry, with public hearings, to have the public know why and further appreciate how the said 55 billion was irregularly allocated and spent;*

- (a) The Committee conducted hearings on this Petition in an open and transparent manner.
- (b) This suffices as a proper inquiry into the matter by the Committee.

Therefore, the Committee rejects this prayer.

3. *Prayer 3: That the said Commission of Inquiry put the following officers to their strict proof;*
 - (i) *Outgoing National Treasury Cabinet Secretary, Amb. Ukur Yattani;*
 - (ii) *Controller of Budget;*
 - (iii) *Accounting officers of all beneficiary allottees; and*
 - (iv) *Any other relevant officers as well as interested members of the public and professional organizations to give their input.*

The Committee notes that—

- (i) Article 226(5) of the Constitution provides that the holder of a public office, including a political office who directs or approves the use of public funds contrary to law or instructions, is liable for any loss, whether the person remains the holder of the office or not;

Therefore, the Committee recommends that the Auditor-General audits the expenditures and the roles of the officers involved in the execution of their duties in relation to the appropriation of the funds and if found culpable, the appropriate action be taken against them.

4. Prayer 4: *Amends the relevant laws to bar outgoing administrations from spending any such public funds not voted by the National Assembly and by dint of the same, introduce heavy penalties including life imprisonment for those found culpable on such economic crimes that amount to treason and economic terrorism;*

The Committee notes that -

- (i) The current framework is already sufficient. The PFM had anticipated fiscal indiscipline during the electioneering period and provided for pre and post-election economic and fiscal report; and
- (ii) The Petitioner did not provide sufficient reasons for a shift warranting the amendments neither did the Petitioner nor the stakeholders provide with specificity and exactitude the gaps in the law to warrant any amendments.

Therefore, the Committee rejects this prayer and recommends that the provisions of the PFM are sufficient and should be complied with strictly according to the law.

5. Prayer 5: *Moves to amend the Finance Act, 2022 and other relevant laws with focus on recalling on delegated legislative power on taxation granted to the Kenya Revenue Authority and or and any other agency.*

The Committee notes that—

- (i) The Petitioner did not justify any problem with the Finance Act, 2022.
- (ii) The Constitution and the Statutory Instruments Act, 2013 allows Parliament to delegate the making of regulations and other instruments but requires their tabling and consideration by Parliament through the Committee on Delegated Legislation.
- (iii) The Petition did not provide cogent reason to warrant the recalling of the delegated power.

Therefore, the Committee rejects this prayer.

6. Prayer 6: *Makes any other recommendations that it deems fit.*

The Committee recommends that the National Assembly considers the following -

- (i) Appropriating funds in the Financial Year 2024/2025 to allow for completion of stalled projects under the Ministry of Defence (The Forces Referral and Research Hospital in Kabete) and the Ministry of Roads and Transport (the three roads) identified to have high impact in implementation as they touch on security, enhance mobility, accessibility and are key in spurring economic development;

- (ii) Amending Section 62 and any other consequential provisions of the Public Finance Management Act (2012) to create an independent Public Debt Management Office outside the National Treasury; and
- (iii) The Report be considered for debate in the House pursuant to the provisions of Standing Order 227 (2A).

Following closure of debate on the Report, the Committee adopted the Report as proposed by Hon. (Eng.) Nebert Muriuki, M.P and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/054: CONSIDERATION OF THE DRAFT REPORT ON PUBLIC PETITION NO. 04 OF 2022 REGARDING BANNING OF TIKTOK IN KENYA


Meeting with Ministry of Interior and National Administration

The meeting was informed that vide a letter dated 29th February 2024 Ref: MOINA/SEC/1/27/1, the Principal Secretary of the Ministry of Interior and National Administration had informed the Committee that the Cabinet Secretary had another engagement scheduled and was therefore unable to honour the invitation.

The Committee deliberated on the request and resolved to reschedule the meeting to a later date. It was important for all the stakeholders to appear not later than April 2024 so as to consider the matter to conclusion in a timely manner.

MIN./PPETC/2024/055: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting will be held on Tuesday, 12th March 2024 at 12.00 noon.

Sign: 

(CHAIRPERSON)

Date.....12th March 2024

Hon. Peter G. Munya, EGH
P.O Box 59052 – 00100
NAIROBI

30th August, 2023

Mr. Samuel Njoroge

Clerk of the National Assembly;
P.O Box 41842 – 00100;
Email: cna@parliament.go.ke;
Email: samuel.kalama@parliament.go.ke;

NAIROBI

Dear *Mr. Njoroge*

RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE REGARDING A PUBLIC PETITION ON FUNDS SPENT THE NATIONAL GOVERNMENT CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

Reference is made to your letter Ref: No. KNA/DLPS/PPETC/CORR/2023/139 dated 16th August, 2023 on the above subject matter.

I have reviewed Public Petition No. 004 of 2022 on funds spent by the National Government on the Sifted Maize Flour Subsidy and wish to state as follows: -

1. At its meeting held on 25th July, 2022, the National Security Council (NSC) considered the Memorandum NSC(22)30 and approved the Sifted Maize Flour Subsidy Program. The NSC further directed the Cabinet Secretary to the National Treasury to provide Ksh. 2 Billion per week for its implementation.

The above information is contained in a letter from the Attorney General to the Principal Secretary, State Department of Crop Development and Agricultural Research under Ref. No. AG/CONF/21/75 dated 15th August, 2022. (See Attached);

2. On the matter of funds for the Implementation of the Maize Flour Subsidy Program, approval was granted by the Cabinet Secretary to the National Treasury under **Article 223 of the Constitution and Section 21(2), (3) and (4) of the Public Finance Management Act.**

The matter of approval of these funds would be adequately addressed by the Cabinet Secretary to the National Treasury

3. On the matter of Execution of the Maize Flour Subsidy Program, the Principal Secretary, State Department of Crop Development and Agricultural Research was the Team Leader of the Inter Ministerial taskforce that Implemented the entire Sifted Maize Subsidy program.

The Principal Secretary who was the Accounting Officer and Team Leader would adequately address all matters pertaining to Execution of program and payment of funds to the participating Millers under the Subsidy program.

The purpose of this letter therefore, is to acknowledge your invitation at such a short notice and inform you of my inability to share with you any additional information than what I have already shared with you above that would be useful to the Public Petitions Committee.

I therefore wish to inform you that, i will not be available for the proposed meeting scheduled for 31st August, 2023.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to be 'Peter G. Munya', written over a horizontal line.

Hon. Peter G. Munya, EGH

Encl ()

NATIONAL ASSEMBLY
RECEIVED
★ 18 JUL 2023 ★
CLERK'S OFFICE
P O Box 41842, NAIROBI

Amb Ukur Yatani EGH
Nairobi, Kenya.
14th July 2023

Office of the Clerk,
The National Assembly
P.O BOX 41842-00100
NAIROBI, KENYA

D LPS
For urgent attention by Committee on Petitions
7/18/23
Offhead
18/7/23

INVITATION FOR A MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON THE CONSIDERATION OF A PUBLIC PETITION REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION.

I refer to your letter ref: KNA/DLPS/PPETC/CORR/2023/119 dated 19th June 2023 requesting me to provide information necessary to facilitate consideration of a petition on funds spent by the national government contrary to the provisions of the constitution. I wish to state that this letter was brought to my attention 2 days ago as I have been out of the country for over two weeks.

Q 1; The meaning of the phrase "a need has arisen" as used in Article 223 of the Constitution and how is this need applied in connection to section 40(3)(a) of the PFM (National Government) Regulations, 2015.

Response:

Article 223. (1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if—

(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act;

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(b) money has been withdrawn from the Contingencies Fund.

(2) The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).

(3) If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

(4) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.

(5) In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.

PFM Regulation 40 (3) - The purpose for which approval is sought for a supplementary budget shall be —

(a) unforeseen and unavoidable, in circumstances where no budget provision was made; or

(b) unavoidable, in circumstances where there is an existing budgetary provision which however is inadequate

Mr Chairman, the Constitution envisages a situation where a need that is unforeseen and unavoidable, particularly where Parliament had not appropriated any funds or the need is unavoidable where Parliament had appropriated insufficient funds. For instance, budgetary provisions are estimates and the outcome of a public procurement turns out to be higher than the budgeted amount and such procurement is unavoidable, then Article 223 of the Constitution can be applied given "a need has arisen". Also, "a need may arise"

here it was unforeseen and unavoidable during a financial year thus necessitating expenditure of government. For instance, when Covid-19 pandemic struck in 2020, "a need arose" where no budgetary provision had been made and the Government had to intervene under Article 223 of the Constitution. Under either of the two circumstances described above, Parliamentary approval must be sought within two months after expenditure has been incurred or where approval is not granted within the two months and Parliament adjourns, seek approval within 14 days when it sits next or where it was on recess, within 14 days after it next sits.

Its clear that the two relevant laws are linked and the Constitution supersedes the Regulation.

Q 2; Clarify whether expenditures which were already known at the time of finalising the estimates but could not be accommodated can be brought back during budget implementation through a supplementary.

Response

Mr Chairman, the National Treasury is guided by the Laws governing Public Finance. Specifically, the Constitution, Public Finance Management Act 2012 and attendant Regulations. My opinion is that if a need arises, expenditures which were already known at the time of finalising the estimates but could not be accommodated can be brought back during budget implementation through a Supplementary Budget particularly if there is fiscal space or fiscal space allows. This is specifically permitted under Article 223 which deals with Supplementary Appropriation.

Q 3; Reasons why the expenditures in question could not wait for the Annual Appropriation and why the National Treasury administratively granted approval but the disbursement and subsequent payment took two months.

Some of the expenditures which were granted were unforeseen and unavoidable such as drought related intervention. In such circumstances it was of possible to delay such expenditure to the next financial year for appropriation.

ii) In dealing with the expenditure requests that were originated by ministries to be allowed under **Article 223**, the National Treasury was guided by the provisions of Article 223 (1), (2) and (3). The subsequent payment of the expenditure granted under Article 223 is managed by the requesting ministry subject to availability of exchequer.

(iii) All the spending by the National Government between July 2022 and September 2022 was submitted to the National Assembly for approval vide letter ref ES 1/02'H'(7) dated 12th September 2022 and acknowledged by a letter ref NA/DLP/TBO/CORRES/2022 dated 28th September 2022.

Q 4; Circumstances under which the National Treasury authorized the Ministry of Defense to spend KShs 900 million which accrued from frequency given by the Communication Authority of Kenya.

I have asked The National Treasury to provide this information/documentation since they are the custodian of the same as I have no access at the moment on account of having left office of the CS/NT in October, 2022.

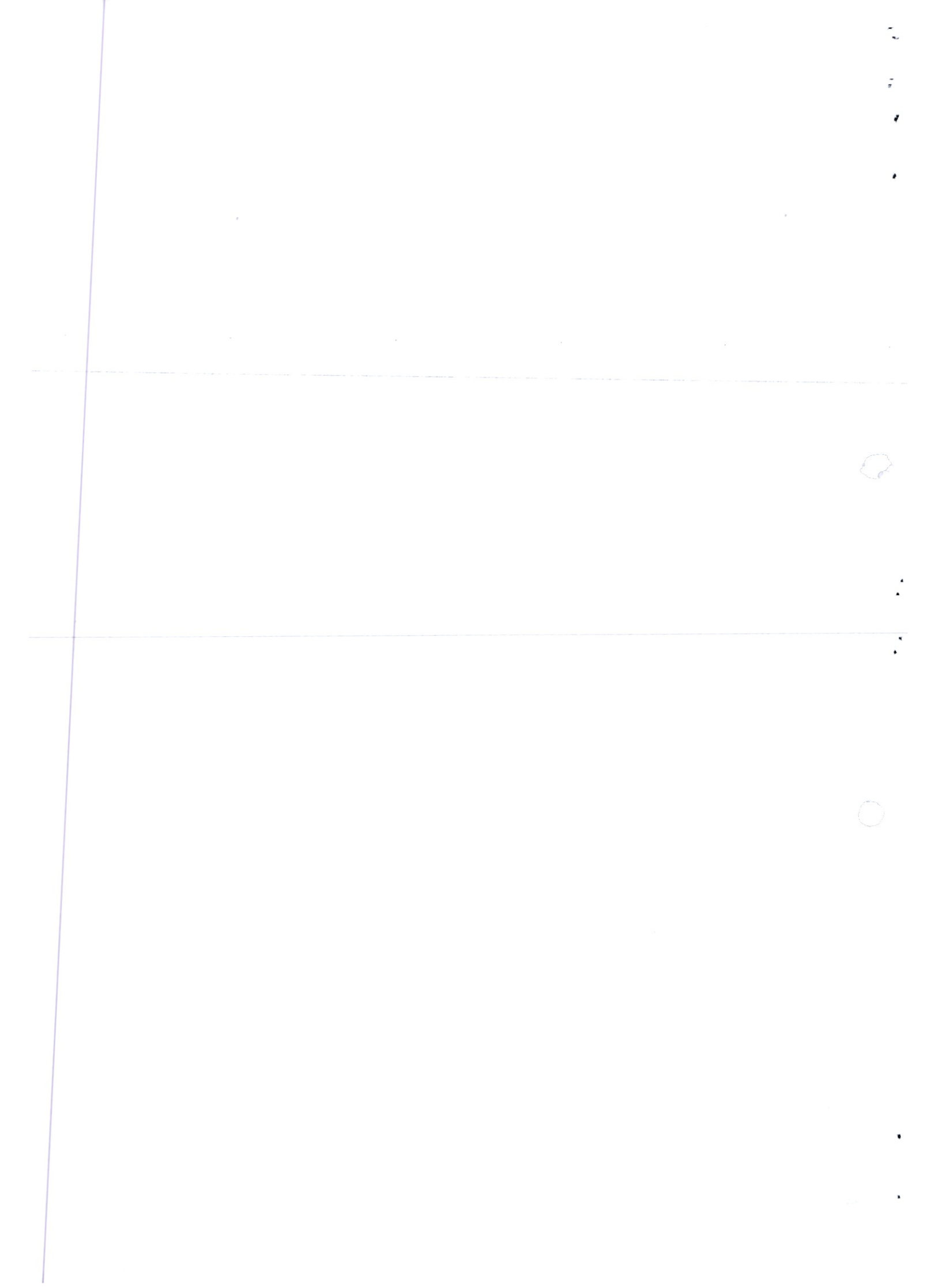
Mr. Chairman,

The Cabinet secretary for the National Treasury as the policy holder on budget matters including expenditures under Article 223 acts within the law and on the advise/requests of relevant executive organs including cabinet, National security council, as well as accounting officers.

I remain available should you need further clarification on this matter.

A handwritten signature in black ink, appearing to be 'Amb Ukur Yafani EGH', written in a cursive style.

Amb Ukur Yafani EGH



① Head-PRJ ✓
RJ Jaramogi
17/7/23

② Mr. Kalama
For PPC,
AK
17/7/23

Julius Muia, PhD, FCPA
Nairobi, Kenya.
7th July 2023

Your Ref KNA/DLPS/PPETC/CORR/2023/119

Office of the Clerk,
The National Assembly
P.O BOX 41842-00100
Main Parliament Buildings
NAIROBI, KENYA

**INVITATION FOR A MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON
THE CONSIDERATION OF A PUBLIC PETITION REGARDING FUNDS SPENT BY
NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF
THE CONSTITUTION.**

This is with reference to a letter ref: KNA/DLPS/PPETC/CORR/2023/119 dated 29th June 2023 requesting the undersigned to make a presentation and provide information necessary to facilitate consideration of a **petition on funds spent by the national government contrary to the provisions of the constitution**. As communicated by the Honorable Committee, I report on the four issues here under.

Issue No 1; *The meaning of the phrase "a need has arisen" as used in Article 223 of the Constitution and how is this need applied in connection to section 40(3)(a) of the PFM (National Government) Regulations, 2015.*

Response:

Article 223. (1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if—

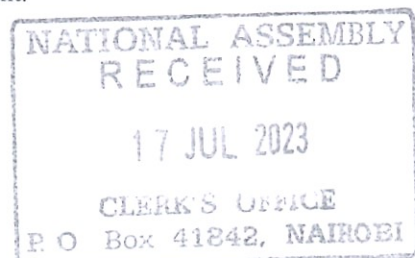
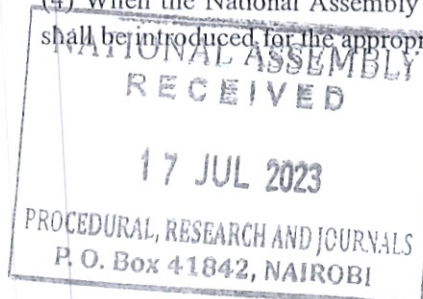
(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or

(b) money has been withdrawn from the Contingencies Fund.

(2) The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).

(3) If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

(4) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.



(5) In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.

PFM Regulation 40 (3) - The purpose for which approval is sought for a supplementary budget shall be —

- (a) unforeseen and unavoidable, in circumstances where no budget provision was made; or
- (b) unavoidable, in circumstances where there is an existing budgetary provision which however is inadequate

Mr Chairman, the Constitution envisages a situation where a need that is unforeseen and unavoidable, particularly where Parliament had not appropriated any funds or the need is unavoidable where Parliament had appropriated insufficient funds. For instance, budgetary provisions are estimates and the outcome of a public procurement turns out to be higher than the budgeted amount and such procurement is unavoidable, then Article 223 of the Constitution can be applied given "a need has arisen". Also, "a need may arise" where it was unforeseen and unavoidable during a financial year thus necessitating expenditure of government. For instance, when Covid-19 pandemic struck in 2020, "a need arose" where no budgetary provision had been made and the Government had to intervene under Article 223 of the Constitution. Under either of the two circumstances described above, Parliament's approval must be sought within two months after expenditure has been incurred or where approval is not granted within the two months and Parliament adjourns, seek approval within 14 days when it sits next or where it was on recess, within 14 days after it next sits.

Mr Chairman, in my opinion, the two relevant laws are linked and the Constitution supersedes the Regulation.

Issue No 2; Clarify whether expenditures which were already known at the time of finalising the estimates but could not be accommodated can be brought back during budget implementation through a supplementary.

Response

Mr Chairman, the National Treasury is guided by the Laws governing Public Finance. Specifically, the Constitution, Public Finance Management Act 2012 and attendant Regulations. **My opinion** is that if a need arises, expenditures which were already known at the time of finalising the estimates but could not be accommodated can be brought back during budget implementation through a Supplementary Budget particularly if there is fiscal space or fiscal space allows. This is specifically permitted under **Article 223** which deals with **Supplementary Appropriation**.

Issue No 3; Reasons why the expenditures in question could not wait for the Annual Appropriation and why the National Treasury administratively granted approval but the disbursement and subsequent payment took two months.

(i) **Mr Chairman**, some of the expenditures which were granted were unforeseen and unavoidable such as drought related intervention. In such circumstances it was not possible to delay such expenditure to the next financial year for appropriation.

(ii) In dealing with the expenditure requests that were originated by ministries to be allowed under **Article 223**, the National Treasury was guided by the provisions of Article 223 (1), (2) and (3). The subsequent payment of the expenditure granted under Article 223 is managed by the requesting ministry subject to availability of exchequer.

(iii) **Mr Chairman**. All the spending by the National Government between July 2022 and September 2022 was submitted to the National Assembly for approval vide letter ref ES 1/02'H'(7) dated 12th September 2022 and acknowledged by a letter ref NA/DLP/TBO/CORRES/2022 dated 28th September 2022.

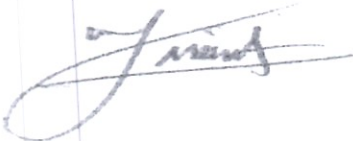
Issue No 4; Circumstances under which the National Treasury authorized the Ministry of Defense to spent KShs 900 million which accrued from frequency given by the Communication Authority of Kenya.

Mr Chairman, unfortunately, The National Treasury has not managed to obtain the documentation relating to this item.

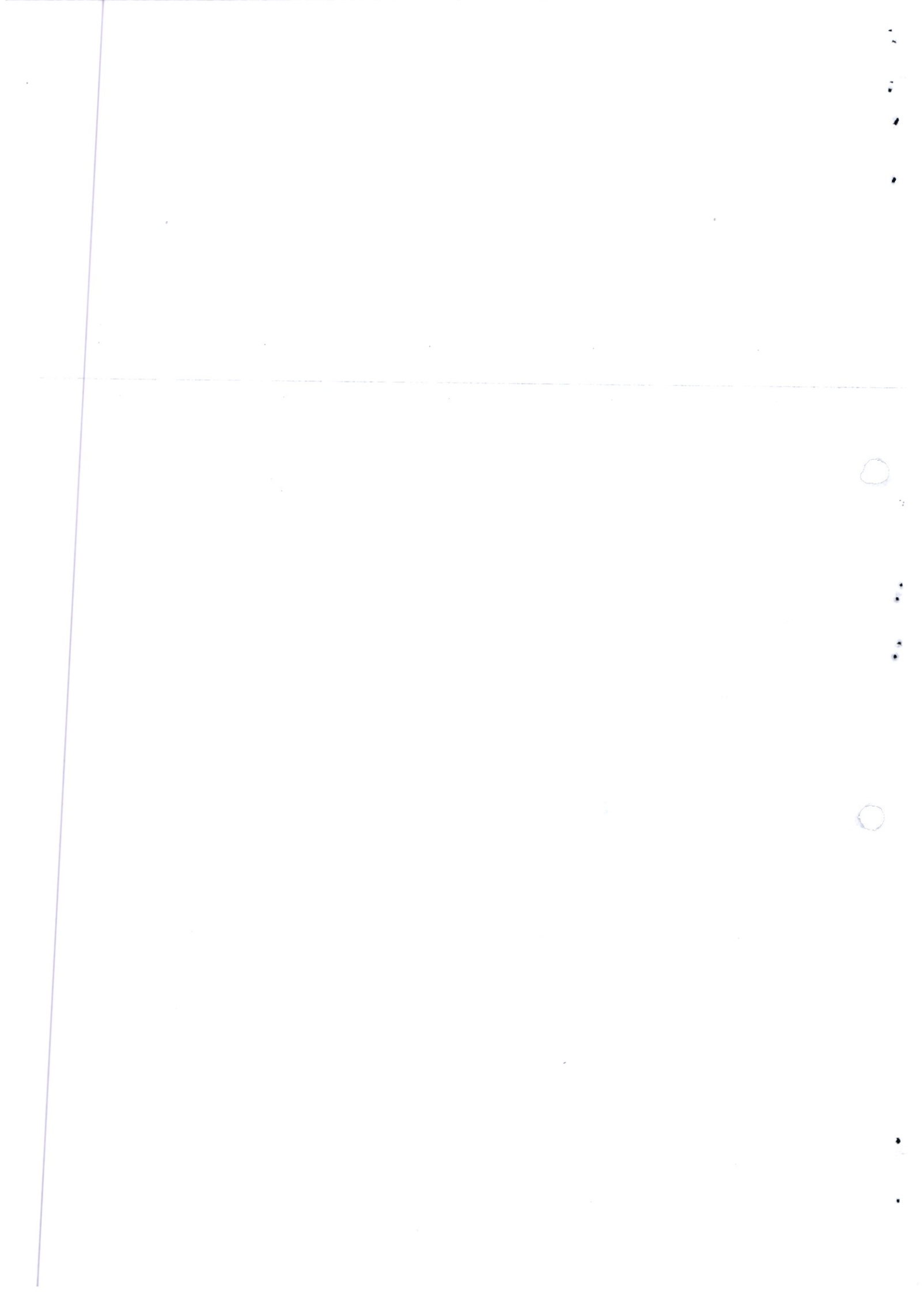
Summary.

Being policy matters, all budget issues including expenditures under Article 223 are specifically and procedurally only approved by the Cabinet Secretary, National Treasury.

Hon Chairman and Members, these are my submissions.



FCPA Julius Muia, PhD.



DLPS
Please deal.
04/07/23

Head PKJ
For the attention of the
Petition Committee.
Kithure Kindiki
4/7/23

MEETING WITH THE PUBLIC PETITIONS COMMITTEE REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

Honorable Chair, the presentation is in response to your invitation letter Ref: KNA/DLPS/PPETC/CORR/2023/18 dated 6th March, 2023 on the Public Petition regarding funds spent by National Government contrary to provisions of the Constitution.

The mandate of the Ministry entails creation of an enabling environment by ensuring peace and security to the people and property, maintain a credible national integrated information management system, promotion of national cohesion, facilitation of administration of justice and provision of correctional services for Kenya's economic development.

Article 223 – stipulates that the National Government may spend money that has not been appropriated if: -

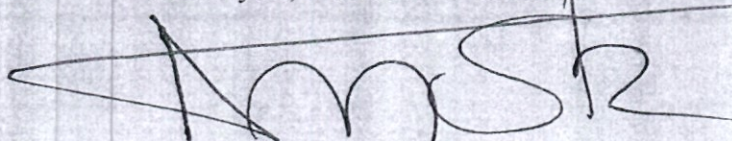
1. The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act.
2. The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money.

Arising from the above and in appreciation of the escalated activities towards the August 2022 General Election, the State Department of Interior and Citizen Services sought for additional budget provision of **Kshs.300Million** under **Article 223** to strengthen the security operations of Multi Agency security teams in order to address the then prevailing security issues across the country and the upcoming General Elections.

Subsequently the National Treasury granted approval of additional funding of **Kshs.125Million** vide letter Ref No. TNT/CONF/118/18/01/N (123) dated 3rd August, 2022 to implement the planned security related activities in respect to the August General Elections.

Honorable Chair, I wish to confirm that the funds were utilized for the intended purposes and the same was regularized under Supplementary Estimates No 1 for financial year 2022/2023 that was approved by the National Assembly in the month of February, 2023.

Thank you, **Honorable Chair**.



KITHURE KINDIKI
CABINET SECRETARY

MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

26th June, 2023

NATIONAL ASSEMBLY
RECEIVED
03 JUL 2023

NATIONAL ASSEMBLY
RECEIVED
03 JUL 2023

NATIONAL ASSEMBLY
RECEIVED
★ 03 JUL 2023 ★
CLERK'S OFFICE
P O Box 41842, NAIROBI

(1) DLPS



Please deal.

[Handwritten signature]

27/04/23

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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

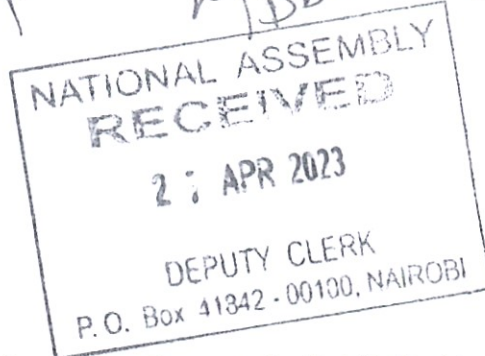
THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

Ref. TNT/CONF 51/07 'E' (70)

Mr. Kalama / PCH
please process
[Handwritten initials]

Date: 26th April, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
Nairobi.



Dear *Sam. Njoroge,*

Ref: Meeting with the Public Petitions Committee on the Public Petition Regarding Funds Spent by the National Government Contrary to the Provisions of Article 223 of the Constitution

Reference is made to your letter No. KNA/DLPS /PPETC/CORR/2023/52 dated 14th March, 2023 on the above subject matter. I have been invited to a meeting with the National Assembly Public Petitions Committee to make presentations on the following Petitions;

1. Public Petition regarding Funds Spent by the National Government Contrary to the Provisions of the Constitution;
2. Public Petition regarding Compensation for Nyanza-Western Caucus of Internally Displaced Persons (IDPSs);
3. Public Petition regarding Completion of House Units for Kibera Residents Funded by the World Bank.

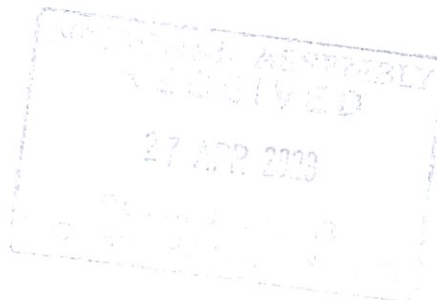
The meeting is scheduled for **Thursday, 27th April, 2023 from 12.00 noon** in the Committee Room on 4th Floor, Continental House, Parliament Buildings. Unfortunately, I am scheduled to attend a Cabinet meeting on the same date. It is for this reason that we seek your indulgence to request the Committee to reschedule the same to 10th May, 2023 at 10.00a.m.

Attached to this letter is a written submission responding to the three petitions for reference by the Honorable Committee. The National Treasury & Economic Planning sincerely regrets the inconvenience caused.

Yours

Sincerely,
[Handwritten signature]

Njuguna Ndung'u
Cabinet Secretary



Copy:

The Chairperson
Public Petitions Committee
National Assembly
Parliament Buildings,
Nairobi.



RESPONSES BY THE CABINET SECRETARY, NATIONAL TREASURY & ECONOMIC PLANNING TO THE PUBLIC PETITIONS COMMITTEE ON THE PUBLIC PETITION REGARDING FUNDS SPENT BY THE NATIONAL GOVERNMENT CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

1. Public Petition regarding Funds Spent by the National Government Contrary to the Provisions of the Constitution;

The Consumers Federation of Kenya (COFEK) has raised concern on the spending of **Ksh.55billion** by the National Government between July to September, 2022 without the approval of the National Assembly. However, COFEK did not provide a breakdown of the specific expenditures amounting to Ksh.55billion.

Article 223(1) of the Constitution provides that” *the National Government may spend money that has not been appropriated if:*

- i) The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
- ii) Money has been withdrawn from Contingencies Fund.

Article 223(2&3) of the Constitution provides that the approval of Parliament for any spending under this Article shall be sought within two months after the first withdraw of the money and if Parliament is not sitting during the time contemplated in Clause (20, or sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

All the spending by the National Government between July to September, 2022 was submitted to the National Assembly for approval vide letter Ref. dated ES 1/02'H'(7) dated 12th September, 2022(see copy attached). Further the National Assembly acknowledged receipt of the National Treasury Approvals vide letter Ref.NA/DLP/TBO/CORRES/2022 dated 28th September, 2022.

It's our opinion that the spending of the Ksh.55billion is in accordance to the provisions of the Article 223 of the Constitution. Attached are correspondences between Parliament and the National Treasury for your perusal and reference.

2. Public Petition regarding Compensation for Nyanza-Western Caucus of Internally Displaced Persons (IDPSs);

The Nyanza Western Kenya Caucus of Internally Displaced Persons is seeking compensation in order to ensure the affected persons revert back to a dignified life like their counterparts who benefited from the Government Resettlement or Compensation Programme.

We have reviewed the petition and wish to note as follows:

- i) That the Petition indicates that Nyanza Western Caucus IDPs were neither resettled nor compensated like their counterparts in other parts of the Country;
- ii) That the representatives of the Nyanza Western Caucus of IDPs have on several occasions, forwarded the petitioners concerns to the Ministry of Interior and Coordination of the National Government but no action has taken place;
- iii) That the National Treasury can only facilitate the compensation after getting approval from the Cabinet. Further, the processes of validating IDPs compensation fall under the Ministry of Interior and Coordination of the National Government

3. Public Petition regarding Completion of House Units for Kibera Residents Funded by the World Bank.

The World Bank provided USD 36 million under the above-named East Africa Trade & Transport Facilitation Project (EATTFP) – (CR. 4148-KE AND CR. 4944) Project. The funds were to pay aspects of 2011 disclosed Resettlement Action Plan (RAP) for Kibera and Mukuru.

However, the project closed on 31st March 2017 with some outstanding work which was to be completed using counterpart funds. The Government gave an undertaking to the World Bank to provide sufficient funds to complete the Project. These funds were to be availed through the Ministry of Transport.

The Ministry of Transport under which the project implementer Kenya Railways Corporation (KRC) falls is the one responsible for the budgeting of the funds. Therefore, KRC is more versed with the details on the resettlement.

The National treasury, therefore cannot provide a clear answer on the completion and resettlement of the affected persons. That is in the purview of the Ministry of Transport through KRC.



Njuguna Ndung'u, CBS
The Cabinet Secretary
National Treasury & Economic Planning



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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When Replying Please Quote

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

Ref: ES 1/02 'H' (7)

September 12, 2022

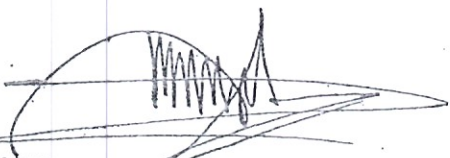
Clerk of the National Assembly
Parliament House
NAIROBI

RE: FY 2022/23 ADDITIONAL EXPENDITURES GRANTED UNDER ARTICLE 223 OF THE
CONSTITUTION

In line with Article 223 of the Constitution and Section 44(1) of the Public Finance Management Act, 2012, the National Government may spend money that has not been appropriated if the amount appropriated for any purpose is insufficient or a need has arisen for expenditure for which no amount has been appropriated or in case of withdrawal from the Contingencies Fund. Consequently, approval of Parliament for any spending under this Article should be sought within two months after the first withdrawal.

In this regard, forwarded herewith please find a schedule of additional expenditure approvals granted under Article 223 of the Constitution as at 9th September, 2022 for your necessary action. The votes and programme details of the approved additional funding under Article 223 of the Constitution are indicated in Annex 1.

Please take necessary action.


HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/THE NATIONAL TREASURY & PLANNING

Copy to: Parliamentary Budget and Appropriations Committee
National Assembly
NAIROBI

ANNEX I: SUMMARY OF THE APPROVALS GRANTED UNDER ARTICLE 223 OF THE CONSTITUTION IN THE FY 2022/23 SUPPLEMENTARY ESTIMATES NO.1

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
1011 Executive Office of the President	2,667,490,816	1,103,945,446	3,771,436,262	-	810,000,000		
0745000 Nairobi Metropolitan Services	1,857,490,816	1,103,945,446	2,961,436,262	5th July, 2022			Nairobi Metropolitan Services(Pending bills)
0704000 State House Affairs	810,000,000		810,000,000	5th July, 2022	810,000,000	22 July, 2022 & 31st August, 2022	Operations and Maintenance
1021 State Department for Interior and Citizen Services	125,000,000		125,000,000				
0629000 General Administration and Support Services	125,000,000		125,000,000	3rd August, 2022			Funds to cater for security operations
1041 Ministry of Defence	3,500,000,000		3,500,000,000		2,200,000,000		
0801000 Defence				3rd August, 2022 & 25th July, 2022 & 30th August, 2022			
1052 Ministry of Foreign Affairs	3,500,000,000		3,500,000,000				
0715000 Foreign Relation and Diplomacy	28,000,000		28,000,000		2,200,000,000	4th August, 2022	Funds on account of Level Five Forces Research Hospital
1065 State Department for University Education	28,000,000		28,000,000	8th September, 2022			Operations and Maintenance
0504000 University Education		138,600,000	138,600,000				
1066 State Department for Early Learning & Basic Education		138,600,000	138,600,000	22nd July 2022			Donor funded project to support enhancement of quality and relevance in higher education, science and technology(HIEST)
0501000 Primary Education		8,189,447,090	8,189,447,090				
0502000 Secondary Education		4,067,781,657	4,067,781,657	22nd August 2022			Funds on account of Kenya Primary Education Equity in Learning Programme(Foreign Financed project)
1071 The National Treasury		4,121,665,433	4,121,665,433				Funds for Kenya Secondary Quality Improvement Project(SEQIP)- Foreign Funded project
0718000 Public Financial Management		6,091,140,702	6,091,140,702	3rd August, 2022			
1081 Ministry of Health		6,091,140,702	6,091,140,702	27th August, 2022	6,091,140,702		
		420,400,000	420,400,000			5th August, 2022	Telikom Kenya

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
0401000 Preventive, Promotive & Reproductive Health	-	420,400,000	420,400,000	19th July 2022	9,450,000,000	-	Donor funded project to enter for Framework for return of Assets from Corruption and Crime in Kenya
1091 State Department for Infrastructure	-	11,350,000,000	11,350,000,000	3rd and 24th August, 2022	9,450,000,000	5th August, 2022	Funds to cater for ongoing construction of roads
0202000 Road Transport	200,000,000	-	200,000,000	2nd September, 2022	-	-	Operations and Maintenance
1152 Ministry of Energy	200,000,000	-	200,000,000	-	4,000,000,000	-	-
0211000 General Administration Planning and Support Services	4,000,000,000	500,000,000	4,500,000,000	-	4,000,000,000	29th July and 4th August, 2022	Maize flour subsidy
1169 State Department for Crop Development & Agricultural Research	4,000,000,000	-	4,000,000,000	21st July 2022	4,000,000,000	-	Funds to carry out maintenance and improve efficiency for Nzola Sugar Company
0120000 Agricultural Research & Development	-	-	-	-	-	-	-
0107000 General Administration Planning and Support Services	16,597,436,071	500,000,000	16,597,436,071	2nd August 2022	-	-	Funds to cater for fuel price stabilization
1194 Ministry of Petroleum and Mining	16,597,436,071	-	16,597,436,071	-	-	-	-
0215000 Exploration and Distribution of Oil and Gas	27,117,926,887	27,793,533,238	54,911,460,125	25th August, 2022	22,551,140,702	-	-
Total							

Confidential



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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

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

When replying please quote

Ref. No. ES 1/032 'H' (18)

October 06, 2022

Sarah M. Kioko, MBS
Ag. Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear *Kioko,*

**RE: FY 2022/23 ADDITIONAL EXPENDITURES GRANTED UNDER ARTICLE 223
OF THE CONSTITUTION**

Please refer to your letter Ref.NA/DLP/TBO/CORRES/2022 (03) dated 28th September, 2022 on the above subject matter.

We have reviewed your request and noted that you are requesting the National Treasury to provide information regarding the expenditures granted under Article 223 of the Constitution during the FY 2022/23.

Attached herewith, please find a statement of the approvals granted under Article 223 of the Constitution during the FY 2022/23 for your necessary action.

Yours

Sincerely,

HON. (AMB) UKUR K. YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy to: Chairperson
Budget and Appropriations Committee
NAIROBI



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING

STATEMENT ON THE FINANCIAL YEAR 2022/23
ADDITIONAL EXPENDITURE GRANTED UNDER
ARTICLE 223 OF THE CONSTITUTION

October 2022

1. INTRODUCTION

1. In the FY 2022/23 the National Treasury has approved additional expenditures under Article 223 of the Constitution and pursuant to the provisions of the Public Finance Management Act, 2012 (PFMA, 2012). The approved expenditures seek to address unforeseen and unavoidable expenditures including security related; maize and fertilizer subsidies; fuel price market stabilization; provisions to cater for shortfalls of the ongoing road projects; pending bills; and funds for Development Partners funded projects.

- *Overall Expenditures*

2. The Overall Ministerial cumulative expenditure in the FY 2022/23 as a result of the approved additional expenditure under Article 223 of the Constitution has increased by 2.8 per cent from the approved Ministerial Budget Estimates. The Recurrent Expenditure has increased by 2.0 per cent while the Development Expenditure has increased by 4.4 per cent. This is within the 10 per cent threshold as required by the PFMA, 2012. Table 1 indicates the overall change in the Ministerial Budget Estimates.

Table 1: Overall Change in the FY 2022/23 Budget Estimates (Ksh. Million)

Item	Approved Original Estimates	Revised Budget Estimates	Approvals under Article 223	% Change
Recurrent Budget Estimates	1,403,904.0	1,433,119.4	27,729.9	2.0
Development Budget Estimates	715,354.8	748,046.2	31,587.5	4.4
Total	2,119,258.8	2,181,165.6	59,317.4	2.8

3. The overall change in the FY 2022/23 Ministerial Budget (excluding Consolidated Fund Services and County allocations) from the approved Budget is an increase of **Ksh.59.3 billion** which reflects a 2.8 per cent increase. Out of this amount **Ksh.44.3 billion** has been disbursed to the Ministries/Departments/Agencies (MDAs).

II. Adherence to Fiscal Principles

4. The FY 2022/23 approvals granted under Article 223 of the constitution have adhered to the fiscal responsibility principles as set out in the Public Finance Management Act, 2012. These include;

i. Over the medium term, a minimum of thirty percent of the National Budget shall be allocated to Development Expenditure.

5. In line with this requirement, the National Government's Ministerial Development Budget in the FY 2022/23 as a result of approvals granted under Article 223 of the Constitution is 34.3 per cent of the total Ministerial Budget while Recurrent Budget is 65.7 per cent.

ii. The National Government's expenditure on the compensation of employees (including benefits and allowances) for public officers shall not exceed 35 percentage of the National Government equitable share of revenue raised national plus other revenues generated by the National Government pursuant to Article 209(4) of the Constitution.

6. The ministerial expenditure for compensation of employees in the FY 2022/23 after taking on board approvals granted under Article 223 of the Constitution is 25.7

per cent of the National Government's equitable share of revenues and other revenues raised nationally which is within the 35 percent threshold required in the PFM regulations.

iii. *Over the medium term, the National Government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure.*

7. The Government's medium to long term borrowing is aimed at financing of Development projects. This borrowing is undertaken in line with the Medium Term Debt Strategy (MTDs) approved by Parliament.

iv. *Fiscal risks shall be managed prudently*


8. To manage fiscal risks prudently in accordance to the law, the Government regularly reviews its macroeconomic forecasts and the impact of the projections and their implications on the budget.

v. *A reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, taking into account any tax reforms that may be made in the future.*

9. On the principle of maintaining a reasonable degree of predictability with respect to the level of tax rates and tax bases, the Government will continue to carry out tax reforms through modernizing and simplifying tax laws. Further the National Treasury is in the process of preparing Medium Term Revenue Strategy which will guide revenue projections going forward.

10. Following the approvals granted under Article 223 of the Constitution, we note that some programmes have exceeded the 10 percent threshold. In this regard,

we are requesting for special approval of the expenditures which are beyond the 10 percent threshold in accordance with regulation 40(9) of the Public Finance Management Regulations, 2015 (See attached Annex 2).



HON. (AMB). UKUR YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY AND PLANNING

October 6, 2022

ANNEX I: SUMMARY OF THE APPROVALS GRANTED UNDER ARTICLE 223 OF THE CONSTITUTION IN THE FY 2022/23

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
1011 Executive Office of the President	3,167,490,824	1,103,945,446	4,271,436,270		1,221,900,000		
07450000 Nairobi Metropolitan Services	1,857,490,824	1,103,945,446	2,961,436,270	5th July, 2022	411,900,000	26th Sep 2022	Nairobi Metropolitan Services (Pending bills)
Specialised Materials and Supplies	877,154,258		877,154,258				
Other Operating expenses	980,336,566		980,336,566				
Construction and Civil Works		1,103,945,446	1,103,945,446				
07040000 State House Affairs	810,000,000		810,000,000	5th July, 2022	810,000,000	22 July 2022 & 31st August, 2022	Operations and Maintenance
Other Operating Expenses	810,000,000		810,000,000				
07340000 Deputy President Services	500,000,000		500,000,000	21st September 2022			Implementation of the urgent planned activities
Domestic Travel and Subsistence, and Other Transportation Cost	50,000,000		50,000,000				
Foreign Travel and Subsistence, and Other Transportation Cost	10,000,000		10,000,000				
Rentals of Produced Assets	10,000,000		10,000,000				
Hospitality Supplies and Services	45,000,000		45,000,000				
Fuel Oil and Lubricants	20,000,000		20,000,000				
Other Operating expenses	175,000,000		175,000,000				
Routine Maintenance- Vehicles and Other Transport Equipments	20,000,000		20,000,000				
Routine Maintenance- Other Assets	50,000,000		50,000,000				
Purchase of Vehicles and Other Transport Equipment	100,000,000		100,000,000				
Purchase of Office Furniture and General Equipment	20,000,000		20,000,000				
1021 State Department for Interior and Citizen Services	125,000,000		125,000,000		125,000,000		
06290000 General Administration and Support Services	125,000,000		125,000,000	3rd August, 2022	125,000,000	5th Sep 2022	Funds to enter for security operations
Security operations	125,000,000		125,000,000				
1041 Ministry of Defence	3,500,000,000		3,500,000,000		2,200,000,000		
08010000 Defence	3,500,000,000		3,500,000,000				
1052 Ministry of Foreign Affairs	140,000,000		140,000,000		2,200,000,000		Funds on account of Level IAS Forces Research Hospital
07140000 General Administration Planning and Support Services	140,000,000		140,000,000				
Temporary Committees Expenses	140,000,000		140,000,000				
08010000 Defence	28,000,000		28,000,000	8th Sep 2022			Operations and Maintenance

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
Other Operating expenses	100,000,000		100,000,000	16th September, 2022			Operations and Maintenance
Temporary Committees Expenses	12,000,000		12,000,000	8th September, 2022			United Nations Secretary-General's Peace Building Fund
1065 State Department for University Education		138,600,000	138,600,000				
0504000 University Education		138,600,000	138,600,000	22nd July 2022			Donor funded project to support enhancement of quality and relevance in higher education science and technology(HESI)
Proo Residential Buildings (Offices, Schools, Hospitals, etc)		138,600,000	138,600,000				
1066 State Department for Early Learning & Basic Education		8,189,447,090	8,189,447,090		4,121,665,433		
0501000 Primary Education		4,067,781,657	4,067,781,657	22nd August 2022			Funds on account of Kenya Primary Education Equity in Learning Programmet Foreign Financed project)
Other Capital Grants and Transfers		4,067,781,657	4,067,781,657				
0502000 Secondary Education		4,121,665,433	4,121,665,433	3rd August, 2022	4,121,665,433	14th Sep 2022	Funds for Kenya Secondary Quality Improvement project(SIQIP)- Foreign Funded project
Other Capital Grants and Transfers		4,121,665,433	4,121,665,433				
1071 The National Treasury		6,091,140,702	6,091,140,702		6,091,140,702		
0718000 Public Financial Management		6,091,140,702	6,091,140,702	27th August, 2022	6,091,140,702	5th August, 2022	Telkom Kenya
Other Grants to Semi-Autonomous Government Agencies		6,091,140,702	6,091,140,702				
1081 Ministry of Health		420,400,000	420,400,000				
0401000 Preventive, Promotive & Reproductive Health		420,400,000	420,400,000	19th July 2022			Donor funded project to cater for Framework for return of Assets from Corruption and Crime in Kenya
Framework for return of Assets from Corruption and Crime-Kenya (FRACK)		420,400,000	420,400,000				
1091 State Department for Infrastructure		11,350,000,000	11,350,000,000		9,450,000,000		
0506000 Road Transport		11,350,000,000	11,350,000,000	3rd and 24th August, 2022	9,450,000,000	5th August, 2022	Funds to cater for ongoing construction of roads
Garissa-Jarua Garissa Road		2,800,000,000	2,800,000,000				
Trunking of Nairobi Eastern Bypass		4,800,000,000	4,800,000,000				
Construction of Makupa Causeway		1,850,000,000	1,850,000,000				

Vote & Programme	Approved Estimates			Revised Estimates			Gross Change			% Gross Change
	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	
071000 General Administration Planning and Support Services	44,707,920,949	14,515,790,000	59,223,710,949	44,707,920,949	14,515,790,000	59,223,710,949				
071900 Public Financial Management	7,561,808,918	67,394,602,689	68,956,411,607	7,561,808,918	67,485,743,391	75,047,552,309		6,091,140,702	6,091,140,702	8.8
071900 Economic and Financial Policy Formulation and Management	1,150,435,806	5,562,800,000	10,761,235,806	1,198,435,806	9,562,800,000	10,761,235,806				
072000 Market Competition	302,100,000	30,000,000	332,100,000	302,100,000	30,000,000	332,100,000				
072000 Government Clearing Services	74,820,240		74,820,240	74,820,240		74,820,240				
0800 Ministry of Health	68,503,000,000	54,016,254,652	122,519,254,652	68,503,000,000	54,436,654,652	122,939,654,652		420,400,000	420,400,000	0.1
0801000 Preventive, Promotive & Reproductive Health	2,184,752,720	24,370,825,152	26,555,577,872	2,184,752,720	24,791,225,152	26,975,977,872				
0802000 National Referral & Specialized Services	40,000,117,395	11,851,500,000	51,851,617,395	40,000,117,395	11,851,500,000	51,851,617,395		420,400,000	420,400,000	1.6
0803000 Health Research and Development	10,850,000,000	1,549,000,000	12,399,000,000	10,850,000,000	1,549,000,000	12,399,000,000				
0804000 General Administration, Planning & Support Services	7,747,571,056	1,082,000,000	8,829,571,056	7,747,571,056	1,082,000,000	8,829,571,056				
0805000 Health Policy, Standards and Regulations	7,720,558,829	15,162,929,500	22,883,488,329	7,720,558,829	15,162,929,500	22,883,488,329				
1090 State Department for Infrastructure	69,478,000,000	151,815,567,854	221,293,567,854	69,478,000,000	163,165,567,854	232,643,567,854				
109000 Road Transport	69,478,000,000	151,815,567,854	221,293,567,854	69,478,000,000	167,165,567,854	232,643,567,854				
1100 Ministry of Energy	14,656,000,000	80,971,855,000	95,627,855,000	14,895,000,000	80,971,855,000	95,866,855,000		11,350,000,000	11,350,000,000	5.1
110000 General Administration Planning and Support Services	411,000,000	208,000,000	619,000,000	411,000,000	208,000,000	619,000,000		200,000,000	200,000,000	5.1
1101000 Power Generation	2,914,000,000	17,584,000,000	20,498,000,000	2,914,000,000	17,584,000,000	20,498,000,000				
1102000 Power Transmission and Distribution	11,238,390,083	60,984,855,000	72,223,245,083	11,238,390,083	60,984,855,000	72,223,245,083				
1103000 Alternative Energy Technologies	132,609,917	2,195,000,000	2,327,609,917	132,609,917	2,195,000,000	2,327,609,917				
1104 State Department for Crop Development & Agricultural Research	14,463,700,000	27,042,327,321	41,506,027,321	14,463,700,000	31,336,250,521	45,799,950,521				
1104000 General Administration Planning and Support Services	5,227,448,432	3,609,417,513	8,836,865,945	5,227,448,432	4,109,417,513	9,336,865,945		4,293,923,200	4,293,923,200	10.0
110401000 Crop Development and Management	3,483,779,576	21,241,195,500	24,724,975,076	3,483,779,576	25,035,118,700	28,518,898,276		500,000,000	500,000,000	5.1
110402000 Agricultural Business and Information Management	178,940,730	1,470,714,308	1,609,655,038	178,940,730	1,470,714,308	1,609,655,038				
110403000 Agricultural Research & Development	5,613,531,242	721,000,000	6,334,531,242	5,613,531,242	721,000,000	6,334,531,242				
1190 Ministry of Petroleum and Mining	21,349,000,000	3,302,000,000	24,651,000,000	21,349,000,000	3,302,000,000	24,651,000,000				
1190000 Exploration and Distribution of Oil and Gas	87,000,000	2,910,000,000	2,997,000,000	87,000,000	2,910,000,000	2,997,000,000				
1190000 General Administration Planning and Support Services	20,933,425,590	266,574,410	21,199,999,999	20,933,425,590	266,574,410	21,199,999,999				
119001000 Mineral Resources Management	266,574,410	162,300,000	428,874,410	266,574,410	162,300,000	428,874,410				
119002000 Geological Survey and Geoinformation Management	62,000,000	229,700,000	291,700,000	62,000,000	229,700,000	291,700,000				
Total	739,783,045,430	478,085,868,551	1,217,868,913,981	767,512,972,325	509,673,324,989	1,277,186,297,314	27,729,926,895	31,587,456,438	59,317,383,333	4.9

Vote & Programme	Approved Estimates		Revised Estimates		Change
	ESTIMATES	GROSS TOTAL	ESTIMATES	GROSS TOTAL	
1011 Executive Office of the President	17,083,926,379	17,083,926,379	20,251,417,203	20,251,417,203	3,167,490,824
1012 State Department for Interior and Citizen Services	6,778,886,159	136,532,460,681	6,778,886,159	143,657,460,681	125,000,000
1013 Ministry of Defence	3,468,000,000	128,215,300,000	3,468,000,000	131,715,300,000	3,500,000,000
1014 Ministry of Education	124,969,600,000	128,437,600,000	128,469,600,000	131,937,600,000	3,500,000,000
1015 Ministry of Foreign Affairs	252,120,000	2,665,995,792	2,553,875,792	252,120,000	140,000,000
1016 State Department for Early Learning & Basic Education	95,302,000,000	15,379,239,910	95,302,000,000	118,870,687,000	8,189,447,090
1017 State Department for University Education	102,857,278,998	6,980,716,330	102,857,278,998	109,976,595,328	138,600,000
1018 State Department for Foreign Policy Research, Capacity Building and Technical Cooperation	139,769,940	150,000,000	139,769,940	289,769,940	138,600,000
1019 State Department for Economic and Commercial Diplomacy	51,823,239	14,630,710,647	51,823,239	16,024,710,647	140,000,000
1020 National Space Management	220,000,000	2,625,700,000	220,000,000	2,625,700,000	220,000,000
1021 The National Treasury	53,845,085,913	120,551,831,325	53,845,085,913	126,642,972,027	6,091,140,702
1022 National Metroplan Metropolitan Services	9,068,727,990	5,348,570,000	10,926,218,814	6,452,515,446	1,887,490,824
1023 National Metroplan President Services	1,690,451,519	20,400,000	2,190,451,519	20,400,000	500,000,000
1024 National Metroplan Advisory Services	4,080,817,716	286,850,000	4,890,817,716	286,850,000	810,000,000
1025 National Metroplan Printing Services	735,289,874	300,000,000	735,289,874	300,000,000	435,289,874
1026 National Metroplan Urbanization & Citizen Services	2,799,484,059	950,000,000	3,729,484,059	950,000,000	1,770,484,059
1027 National Metroplan Urbanization Management Services	4,003,392,724	1,232,000,000	4,003,392,724	1,232,000,000	2,771,392,724
1028 National Metroplan Urbanization and Support	24,551,166,737	1,881,030,000	24,676,166,737	1,881,030,000	26,557,196,737
1029 National Metroplan Urbanization Services	1,058,440,000	100,000,000	1,058,440,000	100,000,000	1,558,440,000
1030 National Metroplan Urbanization Services	128,215,300,000	3,468,000,000	128,469,600,000	3,468,000,000	251,300,000
1031 National Metroplan Urbanization Services	124,969,600,000	128,437,600,000	128,469,600,000	131,937,600,000	3,500,000,000
1032 National Metroplan Urbanization Services	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
1033 National Metroplan Urbanization Services	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000
1034 National Metroplan Urbanization Services	220,000,000	2,625,700,000	220,000,000	2,625,700,000	2,625,700,000
1035 National Metroplan Urbanization Services	17,236,179,618	1,796,120,000	17,376,179,618	1,796,120,000	19,172,299,618
1036 National Metroplan Urbanization Services	17,236,179,618	1,796,120,000	17,376,179,618	1,796,120,000	19,172,299,618
1037 National Metroplan Urbanization Services	2,413,875,792	252,120,000	2,665,995,792	252,120,000	2,805,995,792
1038 National Metroplan Urbanization Services	14,630,710,647	1,394,000,000	14,630,710,647	1,394,000,000	16,024,710,647
1039 National Metroplan Urbanization Services	51,823,239	51,823,239	51,823,239	51,823,239	51,823,239
1040 National Metroplan Urbanization Services	139,769,940	150,000,000	139,769,940	150,000,000	138,600,000
1041 National Metroplan Urbanization Services	102,857,278,998	6,980,716,330	102,857,278,998	7,119,316,330	108,585,354,903
1042 National Metroplan Urbanization Services	991,125,412	55,000,000	991,125,412	55,000,000	1,046,125,412
1043 National Metroplan Urbanization Services	345,115,013	345,115,013	345,115,013	345,115,013	345,115,013
1044 National Metroplan Urbanization Services	15,379,239,910	110,681,239,910	15,379,239,910	23,568,687,000	8,189,447,090
1045 National Metroplan Urbanization Services	1,884,700,000	19,877,383,260	17,992,683,260	23,945,164,917	4,067,781,657
1046 National Metroplan Urbanization Services	17,992,683,260	1,884,700,000	17,992,683,260	23,945,164,917	4,067,781,657
1047 National Metroplan Urbanization Services	4,080,817,716	286,850,000	4,890,817,716	286,850,000	810,000,000
1048 National Metroplan Urbanization Services	2,799,484,059	950,000,000	3,729,484,059	950,000,000	1,770,484,059
1049 National Metroplan Urbanization Services	4,003,392,724	1,232,000,000	4,003,392,724	1,232,000,000	2,771,392,724
1050 National Metroplan Urbanization Services	24,551,166,737	1,881,030,000	24,676,166,737	1,881,030,000	26,557,196,737
1051 National Metroplan Urbanization Services	1,058,440,000	100,000,000	1,058,440,000	100,000,000	1,558,440,000
1052 National Metroplan Urbanization Services	128,215,300,000	3,468,000,000	128,469,600,000	3,468,000,000	251,300,000
1053 National Metroplan Urbanization Services	124,969,600,000	128,437,600,000	128,469,600,000	131,937,600,000	3,500,000,000
1054 National Metroplan Urbanization Services	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
1055 National Metroplan Urbanization Services	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000
1056 National Metroplan Urbanization Services	220,000,000	2,625,700,000	220,000,000	2,625,700,000	2,625,700,000
1057 National Metroplan Urbanization Services	17,236,179,618	1,796,120,000	17,376,179,618	1,796,120,000	19,172,299,618
1058 National Metroplan Urbanization Services	2,413,875,792	252,120,000	2,665,995,792	252,120,000	2,805,995,792
1059 National Metroplan Urbanization Services	14,630,710,647	1,394,000,000	14,630,710,647	1,394,000,000	16,024,710,647
1060 National Metroplan Urbanization Services	51,823,239	51,823,239	51,823,239	51,823,239	51,823,239
1061 National Metroplan Urbanization Services	139,769,940	150,000,000	139,769,940	150,000,000	138,600,000
1062 National Metroplan Urbanization Services	102,857,278,998	6,980,716,330	102,857,278,998	7,119,316,330	108,585,354,903
1063 National Metroplan Urbanization Services	991,125,412	55,000,000	991,125,412	55,000,000	1,046,125,412
1064 National Metroplan Urbanization Services	345,115,013	345,115,013	345,115,013	345,115,013	345,115,013
1065 National Metroplan Urbanization Services	15,379,239,910	110,681,239,910	15,379,239,910	23,568,687,000	8,189,447,090
1066 National Metroplan Urbanization Services	1,884,700,000	19,877,383,260	17,992,683,260	23,945,164,917	4,067,781,657
1067 National Metroplan Urbanization Services	17,992,683,260	1,884,700,000	17,992,683,260	23,945,164,917	4,067,781,657
1068 National Metroplan Urbanization Services	4,080,817,716	286,850,000	4,890,817,716	286,850,000	810,000,000
1069 National Metroplan Urbanization Services	2,799,484,059	950,000,000	3,729,484,059	950,000,000	1,770,484,059
1070 National Metroplan Urbanization Services	4,003,392,724	1,232,000,000	4,003,392,724	1,232,000,000	2,771,392,724
1071 National Metroplan Urbanization Services	24,551,166,737	1,881,030,000	24,676,166,737	1,881,030,000	26,557,196,737
1072 National Metroplan Urbanization Services	1,058,440,000	100,000,000	1,058,440,000	100,000,000	1,558,440,000
1073 National Metroplan Urbanization Services	128,215,300,000	3,468,000,000	128,469,600,000	3,468,000,000	251,300,000
1074 National Metroplan Urbanization Services	124,969,600,000	128,437,600,000	128,469,600,000	131,937,600,000	3,500,000,000
1075 National Metroplan Urbanization Services	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
1076 National Metroplan Urbanization Services	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000
1077 National Metroplan Urbanization Services	220,000,000	2,625,700,000	220,000,000	2,625,700,000	2,625,700,000
1078 National Metroplan Urbanization Services	17,236,179,618	1,796,120,000	17,376,179,618	1,796,120,000	19,172,299,618
1079 National Metroplan Urbanization Services	2,413,875,792	252,120,000	2,665,995,792	252,120,000	2,805,995,792
1080 National Metroplan Urbanization Services	14,630,710,647	1,394,000,000	14,630,710,647	1,394,000,000	16,024,710,647
1081 National Metroplan Urbanization Services	51,823,239	51,823,239	51,823,239	51,823,239	51,823,239
1082 National Metroplan Urbanization Services	139,769,940	150,000,000	139,769,940	150,000,000	138,600,000
1083 National Metroplan Urbanization Services	102,857,278,998	6,980,716,330	102,857,278,998	7,119,316,330	108,585,354,903
1084 National Metroplan Urbanization Services	991,125,412	55,000,000	991,125,412	55,000,000	1,046,125,412
1085 National Metroplan Urbanization Services	345,115,013	345,115,013	345,115,013	345,115,013	345,115,013
1086 National Metroplan Urbanization Services	15,379,239,910	110,681,239,910	15,379,239,910	23,568,687,000	8,189,447,090
1087 National Metroplan Urbanization Services	1,884,700,000	19,877,383,260	17,992,683,260	23,945,164,917	4,067,781,657
1088 National Metroplan Urbanization Services	17,992,683,260	1,884,700,000	17,992,683,260	23,945,164,917	4,067,781,657
1089 National Metroplan Urbanization Services	4,080,817,716	286,850,000	4,890,817,716	286,850,000	810,000,000
1090 National Metroplan Urbanization Services	2,799,484,059	950,000,000	3,729,484,059	950,000,000	1,770,484,059
1091 National Metroplan Urbanization Services	4,003,392,724	1,232,000,000	4,003,392,724	1,232,000,000	2,771,392,724
1092 National Metroplan Urbanization Services	24,551,166,737	1,881,030,000	24,676,166,737	1,881,030,000	26,557,196,737
1093 National Metroplan Urbanization Services	1,058,440,000	100,000,000	1,058,440,000	100,000,000	1,558,440,000
1094 National Metroplan Urbanization Services	128,215,300,000	3,468,000,000	128,469,600,000	3,468,000,000	251,300,000
1095 National Metroplan Urbanization Services	124,969,600,000	128,437,600,000	128,469,600,000	131,937,600,000	3,500,000,000
1096 National Metroplan Urbanization Services	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
1097 National Metroplan Urbanization Services	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000	2,625,700,000
1098 National Metroplan Urbanization Services	220,000,000	2,625,700,000	220,000,000	2,625,700,000	2,625,700,000
1099 National Metroplan Urbanization Services	17,236,179,618	1,796,120,000	17,376,179,618	1,796,120,000	19,172,299,618
1100 National Metroplan Urbanization Services	2,413,875,792	252,120,000	2,665,995,792	252,120,000	2,805,995,792
1101 National Metroplan Urbanization Services	14,630,710,647	1,394,000,000	14,630,710,647	1,394,000,000	16,024,710,647
1102 National Metroplan Urbanization Services	51,823,239	51,823,239	51,823,239	51,823,239	51,823,239
1103 National Metroplan Urbanization Services	139,769,940	150,000,000	139,769,940	150,000,000	138,600,000
1104 National Metroplan Urbanization Services	102,857,278,998	6,980,716,330	102,857,278,998	7,119,316,330	108,585,354,903
1105 National Metroplan Urbanization Services	991,125,412	55,000,000	991,125,412	55,000,000	1,046,125,412
1106 National Metroplan Urbanization Services	345,115,013	345,115,013	345,115,013	345,115,013	345,115,013
1107 National Metroplan Urbanization Services	15,379,239,910	110,681,239,910	15,379,239,910	23,568,687,000	8,189,447,090
1108 National Metroplan Urbanization Services	1,884,700,000	19,877,383,260	17,992,683,260	23,945,164,917	4,067,781,657
1109 National Metroplan Urbanization Services	17,992,683,260	1,884,700,000	17,992,683,260	23,945,164,917	4,067,781,657
1110 National Metroplan Urbanization Services	4,080,817,716	286,850,000	4,890,817,716	286,850,000	810,000,000
1111 National Metroplan Urbanization Services	2,799,484,059	950,000,000	3,729,484,059	950,000,000	1,770,484,059
1112 National Metroplan Urbanization Services	4,003,392,724	1,232,000,000	4,003,392,724	1,232,000,000	2,771,392,724
1113 National Metroplan Urbanization Services	24,551,166,737	1,881,030,000	24,676,166,737	1,881,030,000	26,557,196,737
1114 National Metroplan Urbanization Services	1,058,440,000	100,000,000	1,058,440,000	100,000,000	1,558,440,000
1115 National Metroplan Urbanization Services	128,215,300,000	3,468,000,000	128,469,600,000	3,4	



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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

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

When replying please quote

Ref: NO ES 1/02'H' (46)

February 21, 2023

~~Mr. Samuel Njoroge~~
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear

**APPROVALS UNDER ARTICLE 223 OF THE CONSTITUTION IN THE FY 2022/23
SUPPLEMENTARY ESTIMATES NO.1**

Further to the submission of the FY 2022/23 Supplementary Estimates No.1 vide letter Ref No. ES 1/02'H' (42) dated 31st January, 2023, the National Treasury has since approved additional funding under Article 223 of the Constitution amounting to **Ksh.2,365million** to cater for wild fires, Fertilizer subsidy and security operations. Out of this amount, **Ksh.2.0billion** for fertilizer subsidy had already been factored in the FY 2022/23 Supplementary Estimates No.1 submitted to the National Assembly. However, **Ksh.365million** is new approvals which will be financed through rationalization of the Contingencies Fund under the National Treasury.

Further, we have since updated the list of Article 223 of the Constitution to include approvals under the Ministry of Health and State Department for Gender which were omitted during the submission of the FY 2022/23 Supplementary Estimates.

Table 1 provides the breakdown of the additional financing and the omitted Article 223 of Constitution.

Table 1: New Approvals granted under Article 223 of the Constitution		Ksh.
Vote and Item Details		
1.0 Additional Funding		2,659,055,072
1021 State Department for Interior and Citizen Services		300,000,000
Security Operations		300,000,000
1081 Ministry of Health		247,082,750
Medical Equipment and Associated Services Project by French Government		247,082,750
1169 State Department for Crop Development & Agricultural Research		2,000,000,000
Fertilizer Subsidy		2,000,000,000
1203 State Department for Wildlife		65,000,000
Wild Fires in Aberdare and Mt. Kenya National Parks		65,000,000
1212 State Department for Gender		46,972,322
Women Empowerment for Gender Equality Project		46,972,322
2.0 Financing		(365,000,000)
1071 The National Treasury		(365,000,000)
Contingencies Fund		(365,000,000)
TOTAL		2,294,055,072

Further, the provision earmarked for fertilizer for long rains should be rationalized by Ksh5.49billion. This will cater for unfunded emerging priorities and emergencies. The proposed changes to the FY 2022/23 Supplementary Estimates No.1 are provided in Annex 1.

The National Treasury has also updated the list of Article 223 of the Constitution to include the changes. The details of all the Article 223 of the Constitution are provided in Annex 2.

Please take necessary action.

Yours

NJUGUNA NDUNG'U, CBS
CABINET SECRETARY

Copy to: **Mr. Felix Koskei**
Chief of Staff and Head of Public Service
Executive Office of the President
NAIROBI

✓ **Hon. Ndindi Nyoro, MP**
Chairperson
Budget and Appropriations Committee
NAIROBI





REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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

When replying please quote

Ref: NO ES 1/02'H' (46)

February 21, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear

**APPROVALS UNDER ARTICLE 223 OF THE CONSTITUTION IN THE FY 2022/23
SUPPLEMENTARY ESTIMATES NO.1**

Further to the submission of the FY 2022/23 Supplementary Estimates No.1 vide letter Ref No. ES 1/02'H' (42) dated 31st January, 2023, the National Treasury has since approved additional funding under Article 223 of the Constitution amounting to **Ksh.2,365million** to cater for wild fires, Fertilizer subsidy and security operations. Out of this amount, **Ksh.2.0billion** for fertilizer subsidy had already been factored in the FY 2022/23 Supplementary Estimates No.1 submitted to the National Assembly. However, **Ksh.365million** is new approvals which will be financed through rationalization of the Contingencies Fund under the National Treasury.

Further, we have since updated the list of Article 223 of the Constitution to include approvals under the Ministry of Health and State Department for Gender which were omitted during the submission of the FY 2022/23 Supplementary Estimates.

Table 1 provides the breakdown of the additional financing and the omitted Article 223 of Constitution.

Table 1: New Approvals granted under Article 223 of the Constitution		Ksh.
Vote and Item Details		
1.0 Additional Funding		2,659,055,072
1021 State Department for Interior and Citizen Services	Security Operations	300,000,000
1081 Ministry of Health	Medical Equipment and Associated Services Project by French Government	247,082,750
1169 State Department for Crop Development & Agricultural Research	Fertilizer Subsidy	2,000,000,000
1203 State Department for Wildlife	Wild Fires in Aberdare and Mt. Kenya National Parks	65,000,000
1212 State Department for Gender	Women Empowerment for Gender Equality Project	46,972,322
2.0 Financing		(365,000,000)
1071 The National Treasury	Contingencies Fund	(365,000,000)
TOTAL		2,294,055,072

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	Fertilizer Subsidy	2,000,000,000
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Yours *Sincerely,*


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CABINET SECRETARY

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Hon. Ndindi Nyoro, MP
 Chairperson
 Budget and Appropriations Committee
 NAIROBI

ANNEX I: FY 2022/23 ADJUSTMENT TO THE SUPPLEMENTARY ESTIMATES NO.1

Vote and Programme Details	Supplementary Estimates No.1 Submission						Proposed Change			Revised Estimates		
	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES
1021 State Department for Interior and Citizen Services	18,348,420,745	645,301,728	18,993,722,473	300,000,000	-	300,000,000	18,648,420,745	645,301,728	19,293,722,473			
0629000 General Administration and Support Services	18,348,420,745	645,301,728	18,993,722,473	300,000,000	-	300,000,000	18,648,420,745	645,301,728	19,293,722,473			
1071 The National Treasury	6,662,576,513	54,661,725,086	61,324,301,599	-	(365,000,000)	(365,000,000)	6,662,576,513	54,296,725,086	60,959,301,599			
0718000 Public Financial Management	6,662,576,513	54,661,725,086	61,324,301,599	-	(365,000,000)	(365,000,000)	6,662,576,513	54,296,725,086	60,959,301,599			
1169 State Department for Crop Development & Agricultural Research	3,299,604,156	43,251,691,250	46,551,295,406	-	(5,490,000,000)	(5,490,000,000)	3,299,604,156	37,761,691,250	41,061,295,406			
0108000 Crop Development and Management	3,299,604,156	43,251,691,250	46,551,295,406	-	(5,490,000,000)	(5,490,000,000)	3,299,604,156	37,761,691,250	41,061,295,406			
1203 State Department for Wildlife	8,024,670,367	243,000,000	8,267,670,367	65,000,000	-	65,000,000	8,089,670,367	243,000,000	8,332,670,367			
1019000 Wildlife Conservation and Management	8,024,670,367	243,000,000	8,267,670,367	65,000,000	-	65,000,000	8,089,670,367	243,000,000	8,332,670,367			
Total	36,345,271,781	98,801,718,064	135,136,989,845	365,000,000	(5,855,000,000)	(5,490,000,000)	36,700,271,781	97,946,718,064	129,646,989,845			

ANNEX 2: SUMMARY OF THE CUMMULATIVE APPROVALS GRANTED UNDER ARTICLE 223 OF THE CONSTITUTION IN THE FY 2022/23

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
1014 Executive Office of the President	6,089,590,824	1,514,945,446	7,604,536,270	-	1,797,188,849		
0745000 Nairobi Metropolitan Services	1,857,490,824	1,314,945,446	3,172,436,270		622,909,903		
Specialised Materials and Supplies	877,154,258		877,154,258	1st Sep, 2022	411,909,903	26th Sep 2022	Nairobi Metropolitan Services(Pending bills)
Other Operating expenses	980,336,566		980,336,566	1st Sep, 2022			
Construction and Civil Works		1,103,945,446	1,103,945,446	1st Sep, 2022			
Construction and Civil Works		211,000,000	211,000,000	15th December, 2022	211,000,000	2nd February, 2023	Small claims courts
0704000 State House Affairs	2,597,100,000	200,000,000	2,797,100,000		910,000,000		Operations and Maintenance
Other Operating Expenses	2,597,100,000		2,597,100,000	5th July, 2022, 23rd Aug, 2022 8th November, 2022, 16th Nov, 2022, & 8th January, 2023 & 16th February, 2023	810,000,000	22 July, 2022 & 31st August, 2022	
Construction & Refurbishment		200,000,000	200,000,000	25th Nov, 2022 & 6th Dec, 2022	100,000,000	2nd February, 2023	
0734000 Deputy President Services	1,590,000,000	-	1,590,000,000		264,278,947		Operations and Maintenance
Operations and Maintenance				21st September 2022 & 28th October, 2022			
0702000 Cabinet Affairs	1,590,000,000		1,590,000,000		264,278,947	23rd Nov, 2022	
Hospitality Expenses	45,000,000		45,000,000				
State Department for Interior and Citizen Services	45,000,000		45,000,000	31st January, 2023			
0629000 General Administration and Support Services	5,497,368,879	375,000,000	5,872,368,879		125,000,000		
	425,000,000		425,000,000		125,000,000		
Security operations				3rd August, 2022 & 30th December, 2022 & 16th February, 2023			Funds to cater for security operations
0601000 Policing Services	425,000,000		425,000,000		125,000,000	5th Sep 2022	
	5,072,368,879		5,072,368,879				

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
Medical & CPA Insurance 0605000 Migration & Citizen Services Management	5,072,368,879	375,000,000	5,072,368,879	21st December, 2022 & 1st February, 2023			
Operations and Maintenance(cpasspori supplies)	3,500,000,000	375,000,000	3,75,000,000	13th December, 2022	2,200,000,000		
1041 Ministry of Defence	3,500,000,000	-	3,500,000,000	3rd August, 2022 & 25th July, 2022 & 30th August, 2022	2,200,000,000	4th August, 2022	Funds on account of Level V Forces Research Hospital
0801000 Defence	3,500,000,000	-	3,500,000,000				
1052 Ministry of Foreign Affairs	840,000,000	-	840,000,000				Operations and Maintenance
0714000 General Administration Planning and Support Services	840,000,000	-	840,000,000	8th Sep, 2022			
Temporary Committees Expenses	28,000,000		28,000,000	16th September, 2022			Operations and Maintenance
Other Operating expenses	100,000,000		100,000,000	8th September, 2022			United Nations Secretary-General's Peace Building Fund
Temporary Committees Expenses	12,000,000		12,000,000	8th January, 2023			
Other Operating expenses	700,000,000		700,000,000				
1065 State Department for University Education	-	138,600,000	138,600,000				Donor funded project to support enhancement of quality and relevance in higher education, science and technology(HIEST)
0504000 University Education		138,600,000	138,600,000	22nd July 2022			
Non-Residential Buildings (Offices, Schools, Hospitals, etc.)		138,600,000	138,600,000				
State Department for Early Learning & Basic Education	9,810,054,430	8,189,447,090	17,999,501,520		4,121,665,433		
0508000 General Administration, Planning and Support Services	237,100,000	-	237,100,000				
Operations and Maintenance	237,100,000		237,100,000	5th December, 2022			Presidential Working Party

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
0501000 Primary Education		4,067,781,657	4,067,781,657				Funds on account of Kenya Primary Education Equity Learning Programme (Foreign Financed project)
Other Capital Grants and Transfers		4,067,781,657	4,067,781,657	22nd August 2022			
0502000 Secondary Education	9,572,954,430	4,121,665,433	13,694,619,863		4,121,665,433		
Other Capital Grants and Transfers							
Current Grants	9,572,954,430	4,121,665,433	4,121,665,433	3rd August, 2022			Funds for Kenya Secondary Quality Improvement Project (SEQIP)- Foreign Funded project
1071 The National Treasury	100,000,000	11,611,140,702	9,572,954,430	27th January, 2023	4,121,665,433	14th Sep 2022	Capitation for Junior Secondary School
0718000 Public Financial Management	100,000,000	11,611,140,702	11,711,140,702	-	11,611,140,702		
Capital Grants to Semi-Autonomous Government Agencies							
Equity Participation		6,091,140,702	6,091,140,702	27th July, 2022			Telkom Kenya
Equity Participation		4,800,000,000	4,800,000,000	23rd December, 2022		30th December, 2022	Afreximbank capital call and increase
Equity Participation		720,000,000	720,000,000	28th December, 2022		31st December, 2022	Equity participation in the Eastern and Southern African Trade and Development Bank (TDB)
Current Grants	100,000,000		100,000,000	18th January, 2023			Kenya National Entrepreneurs Saving Trust (Informal Sector savings)
1072 State Department for Planning		10,985,641	10,985,641				
0706000 Economic Policy and National Planning		10,985,641	10,985,641				
Making Every Woman and Girl Count							
1081 Ministry of Health		10,985,641	10,985,641	29th December, 2022			
0401000 Preventive, Promotive & Reproductive Health		667,482,750	667,482,750				Foreign Financed (Grant)
Framework for return of Assets from Corruption and Crime-Kenya (FRACCK)		667,482,750	667,482,750				
Framework for return of Assets from Corruption and Crime-Kenya (FRACCK)		420,400,000	420,400,000	19th July 2022			Donor funded project to cater for Framework for return of Assets from Corruption and Crime in Kenya

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
Supply of Medical Equipment and Associated Services project funded by French Government		247,082,750	247,082,750	24th November, 2022	9,450,000,000		Funds to cater for ongoing construction of roads
1091 State Department for Infrastructure		11,350,000,000	11,350,000,000	3rd and 24th August, 2022	9,450,000,000	5th August, 2022	
0202000 Road Transport		11,350,000,000	11,350,000,000				
Lamu Jjara Garissa Road		2,800,000,000	2,800,000,000				
Dualling of Nairobi Eastern Bypass		4,800,000,000	4,800,000,000				
Construction of Makupa Causeway		1,850,000,000	1,850,000,000				
Marsabit-Shegel		850,000,000	850,000,000				
Shegel-Maikona		650,000,000	650,000,000				
Thika Town Roads		400,000,000	400,000,000				
1152 Ministry of Energy	200,000,000		200,000,000				
0211000 General Administration Planning and Support Services	200,000,000		200,000,000	2nd September, 2022			
Operations and Maintenance	200,000,000		200,000,000				
1169 State Department for Crop Development & Agricultural Research	4,000,000,000	7,993,923,200	11,993,923,200		8,793,923,200	29th July and 4th August, 2022	Maize flour subsidy
0120000 Agricultural Research & Development	4,000,000,000		4,000,000,000	21st July 2022	4,000,000,000		
Other Operating Expenses	100,000,000		100,000,000				
Subsidies to Non-Financial Private Enterp	3,367,000,000		3,367,000,000				
Acquisition of Strategic Stocks	533,000,000		533,000,000				Funds to carry out maintenance and improve efficiency for Nzima Sugar Company
0107000 General Administration Planning and Support Services		500,000,000	500,000,000		500,000,000	5th August, 2022	
Capital Grants to Semi-Autonomous Government Agencies		500,000,000	500,000,000	2nd August, 2022	500,000,000		Funds to cater for fertilizer subsidy programme.
0108000 Crop Development and Management		7,493,923,200	7,493,923,200		4,293,923,200		
Capital Grants to Semi-Autonomous Government Agencies		7,493,923,200	7,493,923,200	5th October, 2022 & 20th Feb 2023	4,293,923,200	7th October, 2022 & 22nd February, 2023	Financial Inclusion Fund(Hustlers Fund)
1173 State Department for Cooperatives	200,000,000	12,000,000,000	12,200,000,000				
0304000 Cooperative Development and Management	200,000,000	12,000,000,000	12,200,000,000		10,200,000,000		

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
Financial Inclusion Fund							
State Dpt for Social Protection, Senior Citizens Affairs & Special Programs	200,000,000	12,000,000,000	12,200,000,000	23rd November, 2022	10,200,000,000	1st December, 2022	
0909000 National Social Safety Net	3,200,000,000	-	3,200,000,000		1,881,380,527		
1194 Ministry of Petroleum and Mining	3,200,000,000	-	3,200,000,000		1,881,380,527		Special Programme for relief food
1007000 General Administration Planning and Support Services	42,736,088,490	-	42,736,088,490	25th August, 2022 & 14th Dec 2022	25,597,436,071	-	
Oil Market Price Stabilization	42,736,088,490	-	42,736,088,490		25,597,436,071	16th Sep. 2022	Funds to cater for fuel price stabilization
1203 State Department for Wildlife	65,000,000	-	65,000,000				
1019000 Wildlife Conservation and Management	65,000,000	-	65,000,000	15th February, 2023			
Current grant	65,000,000		65,000,000				
1212 State Department for Gender	65,000,000		65,000,000				Funds for wild fires in Abbedare and Mt. Kenya National Parks
0911000 Community Development	-	46,972,322	46,972,322				
Women Empowerment for Gender Equality Project	-	46,972,322	46,972,322				
Total	76,238,102,623	53,898,497,151	130,136,599,774	9th September, 2022			
					75,777,734,782		



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Ref. ES/1 02 'H' (32)

December 22, 2022

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear *Mr. Njoroge,*

RE: FY 2022/23 ADDITIONAL EXPENDITURES GRANTED UNDER ARTICLE 223 OF THE CONSTITUTION

Further to the National Treasury submission of the approvals granted under Article 223 of the Constitution and Pursuant to Section 44(1) of the Public Finance Management Act, 2012 to the National Assembly, vide letter Ref. No. ES 1/032 'H' (18) dated 6th October, 2022, the National Treasury has since updated approvals of additional expenditures under Article 223 of the Constitution.

In this regard, forwarded herewith please find a schedule of additional expenditure approvals granted under Article 223 of the Constitution as at 22nd December, 2022 for your necessary action. The votes and programme details of the approved additional funding under Article 223 of the Constitution are indicated in Annex 1 and II attached.

Please take necessary action.

Yours

NJUGUNA NDUNG'U, CBS
CABINET SECRETARY

Copy to: Hon. Ndindi Nyoro, MP
Chairperson, Budget and Appropriations Committee
NAIROBI


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Sincerely,

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CABINET SECRETARY

[Handwritten signature]

Copy to: Hon. Ndindi Nyoro, MP
Chairperson, Budget and Appropriations Committee
NAIROBI

✓

ANNEX I: SUMMARY OF THE CUMMULATIVE APPROVALS GRANTED UNDER ARTICLE 223 OF THE CONSTITUTION IN THE FY 2022/23

Vote and Programme Details		Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
1011	Executive Office of the President	3,167,490,824	1,103,945,446	4,271,436,270	-	1,486,188,849		
	0745000 Nairobi Metropolitan Services							
	Specialised Materials and Supplies	1,857,490,824	1,103,945,446	2,961,436,270	5th July, 2022	411,909,903	26th Sep 2022	Nairobi Metropolitan Services(Pending bills)
	Other Operating expenses	877,154,258		877,154,258				
	Construction and Civil Works	980,336,566		980,336,566				
			1,103,945,446	1,103,945,446				
	0704000 State House Affairs							
	Other Operating Expenses	810,000,000		810,000,000	5th July, 2022	810,000,000	22 July,2022 & 31st August,2022	Operations and Maintenance
		810,000,000		810,000,000				
	0734000 Deputy President Services							
	Domestic Travel and Subsistence, and Other Transportation Cost	500,000,000		500,000,000	21st September 2022	264,278,947	23rd Nov, 2022	Implementation of the urgent planned activities.
	Foreign Travel and Subsistence, and Other Transportation Cost	50,000,000		50,000,000				
	Rentals of Produced Assets	10,000,000		10,000,000				
	Hospitality Supplies and Services	10,000,000		10,000,000				
	Fuel Oil and Lubricants	45,000,000		45,000,000				
	Other Operating expenses	20,000,000		20,000,000				
	Routine Maintenance- Vehicles and Other Transport Equipment's	175,000,000		175,000,000				
	Routine Maintenance- Other Assets	20,000,000		20,000,000				
	Purchase of Vehicles and Other Transport Equipment	50,000,000		50,000,000				
	Purchase of Office Furniture and General Equipment	100,000,000		100,000,000				
		20,000,000		20,000,000				
1021	State Department for Interior and Citizen Services	125,000,000	-	125,000,000				
	0629000 General Administration and Support Services							
	Security operations	125,000,000	-	125,000,000	3rd August, 2022	125,000,000	5th Sep 2022	Funds to cater for security operations
1041	Ministry of Defence	125,000,000	-	125,000,000				
		3,500,000,000	-	3,500,000,000		2,200,000,000		
	0801000 Defence				3rd August, 2022 & 25th July,2022 & 30th August,2022	2,200,000,000	4th August,2022	Funds on account of Level Five Forces Research Hospital
		3,500,000,000		3,500,000,000				
1052	Ministry of Foreign Affairs	140,000,000	-	140,000,000				
	0714000 General Administration Planning and Support Services							
	Temporary Committees Expenses	140,000,000	-	140,000,000				
		28,000,000		28,000,000	8th Sep,2022			Operations and Maintenance
	Other Operating expenses							
		100,000,000		100,000,000	16th September, 2022			Operations and Maintenance
	Temporary Committees Expenses							
		12,000,000		12,000,000	8th September,2022			United Nations Secretary-General's Peace Building Fund
1065	State Department for University Education		138,600,000	138,600,000				

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
0504000 University Education Non-Residential Buildings (Offices, Schools, Hospitals, etc)		138,600,000	138,600,000	22nd July 2022			Donor funded project to support enhancement of quality and relevance in higher education, science and technology (HEST)
1066 State Department for Early Learning & Basic Education		8,189,447,090	8,189,447,090	-	4,121,665,433	14th Sep, 2022	Funds on account of Kenya Primary Education Equity in Learning Programme (Foreign financed project)
0501000 Primary Education Other Capital Grants and Transfers	4,067,781,657	4,067,781,657	4,067,781,657	22nd August 2022			Funds for Kenya Secondary Quality Improvement project (SEQIP)- foreign funded project
0502000 Secondary Education Other Capital Grants and Transfers	4,121,665,433	4,121,665,433	4,121,665,433	3rd August, 2022	4,121,665,433	14th Sep 2022	
1071 The National Treasury		6,091,140,702	6,091,140,702	26th July, 2022	6,091,140,702	5th August, 2022	Telkom Kenya
0718000 Public Financial Management Capital Grants to Semi-Autonomous Government Agencies		6,091,140,702	6,091,140,702	-			Donor funded project to cater for Framework for return of Assets from Corruption and Crime in Kenya
1081 Ministry of Health		420,400,000	420,400,000	19th July 2022			
0401000 Preventive, Promotive & Reproductive Health Framework for return of Assets from Corruption and Crime- Kenya (FRACCK)		420,400,000	420,400,000	3rd and 24th August, 2022	9,450,000,000	5th August, 2022	Funds to cater for ongoing construction of roads
1091 State Department for Infrastructure		11,350,000,000	11,350,000,000				
0202000 Road Transport		2,800,000,000	2,800,000,000				
Lamu Jara Garissa Road		4,800,000,000	4,800,000,000				
Dualling of Nairobi Eastern Bypass		1,850,000,000	1,850,000,000				
Construction of Nakupa Causeway		850,000,000	850,000,000				
Marsabit-Shegel		650,000,000	650,000,000				
Shegel-Maikona		400,000,000	400,000,000				
Trika Town Roads							
1152 Ministry of Energy		200,000,000	200,000,000				
0211000 General Administration Planning and Support Services		200,000,000	200,000,000	2nd September, 2022			
Operations and Maintenance		200,000,000	200,000,000				
State Department for Crop Development & Agricultural Research		4,000,000,000	9,993,923,200		8,293,923,200		
1169 Agricultural Research		5,993,923,200	9,993,923,200				
State Department for Crop Development & Agricultural Research		4,000,000,000	4,000,000,000	21st July 2022	4,000,000,000	29th July and 4th August, 2022	Maize flour subsidy
0120000 Agricultural Research & Development		4,000,000,000	4,000,000,000				

Vote and Programme Details	Current	Capital	Total	National Treasury Approval Dates	Amount Disbursed/Payment	Disbursement Dates	Remarks/Purpose
Other Operating Expenses	100,000,000		100,000,000				
Subsidies to Non-Financial Private Enterprise	3,367,000,000		3,367,000,000				
Acquisition of Strategic Stocks	533,000,000		533,000,000				
0107000 General Administration Planning and Support Services		500,000,000	500,000,000		500,000,000	5th August 2022	Funds to carry out maintenance and improve efficiency for Nzoia Sugar Company
Capital Grants to Semi-Autonomous Government Agencies		500,000,000	500,000,000	2nd August 2022	500,000,000	5th August 2022	
0108000 Crop Development and Management		5,493,923,200	5,493,923,200		3,793,923,200		Funds to cater for fertilizer subsidy programme.
Capital Grants to Semi-Autonomous Government Agencies		5,493,923,200	5,493,923,200		3,793,923,200	7th October 2022	
1173 State Department for Cooperatives		12,000,000,000	12,000,000,000		10,200,000,000	Dec-22	Financial Inclusion Fund(Hustlers Fund)
0304000 Cooperative Development and Management	200,000,000	12,000,000,000	12,200,000,000				
Financial Inclusion Fund	200,000,000	12,000,000,000	12,200,000,000				
State Dpt for Social Protection, Senior Citizens Affairs & Special Programs	200,000,000	12,000,000,000	12,200,000,000				
0909000 National Social Safety Net	3,200,000,000		3,200,000,000		1,881,380,527		
1194 Ministry of Petroleum and Mining	3,200,000,000		3,200,000,000		1,881,380,527		Special Programme for relief food
Oil Market Price Stabilisation	42,736,088,490		42,736,088,490	25th August 2022 & 14th Dec 2022	22,597,436,071		
1007000 General Administration Planning and Support Services	42,736,088,490		42,736,088,490		22,597,436,071	16th Sep. 2022	Funds to cater for fuel price stabilization
Oil Market Price Stabilisation	42,736,088,490		42,736,088,490				
Total	57,268,579,314	45,287,456,438	102,556,035,752		66,446,734,782		

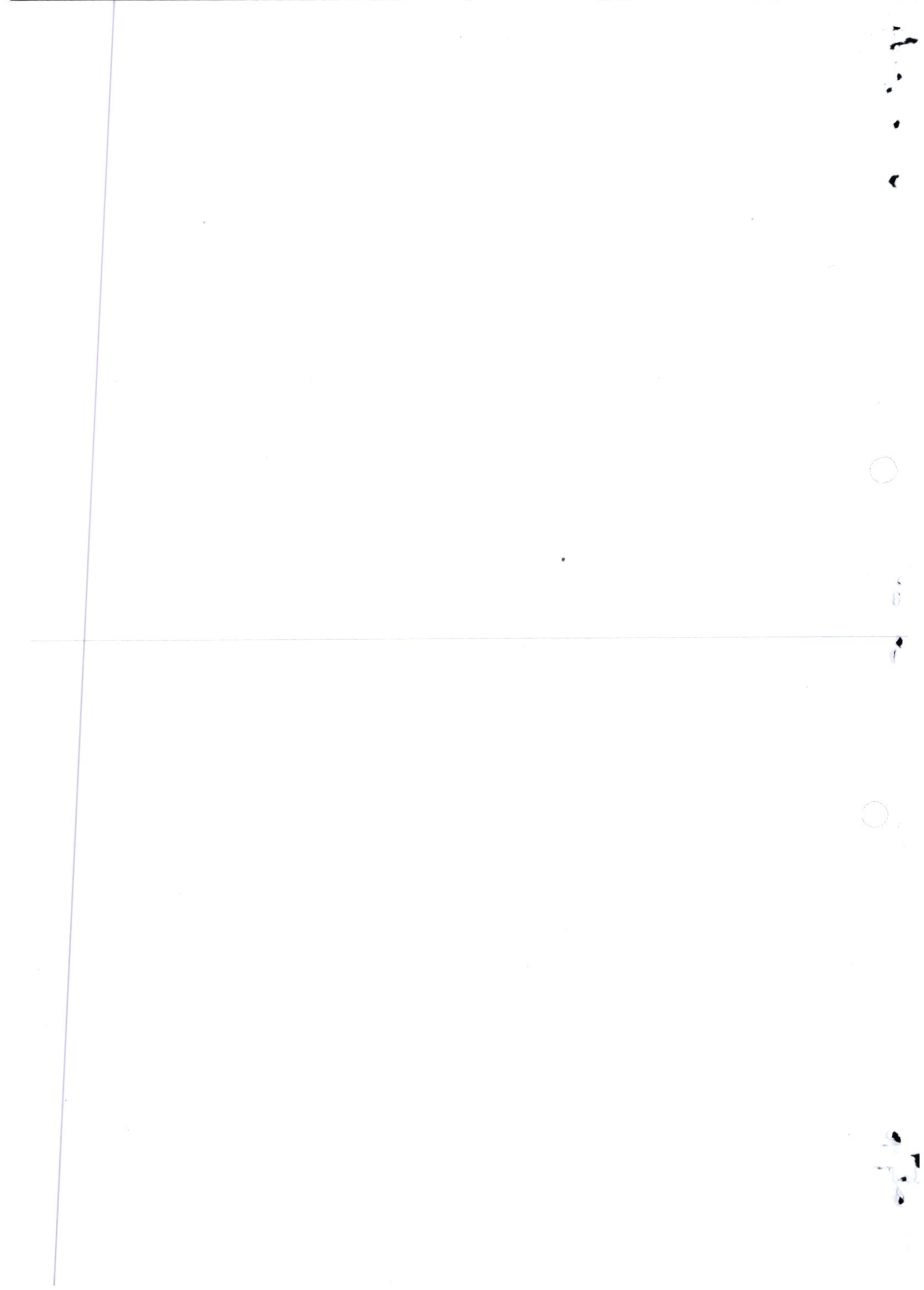


Annex II: FY 2022/23 Gross Expenditure Estimates Changes after factoring Approvals granted under Article 223 of the Constitution

Vote & Programme	GROSS CURRENT ESTIMATES			APPROVED ESTIMATES			REVISED ESTIMATES			GROSS CHANGE ESTIMATES			% Gross Change
	GROSS CURRENT ESTIMATES KSHS	GROSS CAPITAL ESTIMATES KSHS	GROSS TOTAL ESTIMATES KSHS	GROSS CURRENT ESTIMATES KSHS	GROSS CAPITAL ESTIMATES KSHS	GROSS TOTAL ESTIMATES KSHS	GROSS CURRENT ESTIMATES KSHS	GROSS CAPITAL ESTIMATES KSHS	GROSS TOTAL ESTIMATES KSHS	GROSS CURRENT ESTIMATES KSHS	GROSS CAPITAL ESTIMATES KSHS	GROSS TOTAL ESTIMATES KSHS	
1011 Executive Office of the President	17,083,926,379	5,983,070,000	23,066,996,379	20,251,417,203	7,087,015,446	27,338,432,649	20,251,417,203	7,087,015,446	27,338,432,649	3,167,490,824	1,103,945,446	4,271,436,270	18.5
0702000 Cabinet Affairs	1,594,629,154	252,250,000	1,846,879,154	1,594,629,154	252,250,000	1,846,879,154	1,594,629,154	252,250,000	1,846,879,154				
0703000 Government Advisory Services	649,300,000	75,000,000	724,300,000	649,300,000	75,000,000	724,300,000	649,300,000	75,000,000	724,300,000				
0704000 State House Affairs	4,080,817,716	286,850,000	4,367,667,716	4,080,817,716	286,850,000	4,367,667,716	4,080,817,716	286,850,000	4,367,667,716				
0745000 Deputy President's services	1,690,451,519	20,400,000	1,710,851,519	1,690,451,519	20,400,000	1,710,851,519	1,690,451,519	20,400,000	1,710,851,519				
0745000 Nairobi Metropolitan Services	9,068,727,990	5,348,570,000	14,417,297,990	10,926,218,814	6,452,515,446	17,378,734,260	10,926,218,814	6,452,515,446	17,378,734,260	1,857,490,824	1,103,945,446	2,961,436,270	20.5
1024 State Department for Interior and Citizen Services	136,753,574,522	6,778,886,159	143,532,460,681	136,878,574,522	6,778,886,159	143,657,460,681	136,878,574,522	6,778,886,159	143,657,460,681				
0601000 Policing Services	101,321,401,128	1,795,000,000	103,116,401,128	101,321,401,128	1,795,000,000	103,116,401,128	101,321,401,128	1,795,000,000	103,116,401,128				
0603000 Government Printing Services	735,289,874	300,000,000	1,035,289,874	735,289,874	300,000,000	1,035,289,874	735,289,874	300,000,000	1,035,289,874				
0625000 Road Safety	2,779,484,059	950,000,000	3,729,484,059	2,779,484,059	950,000,000	3,729,484,059	2,779,484,059	950,000,000	3,729,484,059				
0626000 Population Management Services	2,304,400,000	520,856,159	2,825,256,159	2,304,400,000	520,856,159	2,825,256,159	2,304,400,000	520,856,159	2,825,256,159				
0629000 General Administration and Support Services	4,003,392,724	1,232,000,000	5,235,392,724	4,003,392,724	1,232,000,000	5,235,392,724	4,003,392,724	1,232,000,000	5,235,392,724				
0630000 Policy Coordination Services	24,551,166,737	1,881,030,000	26,432,196,737	24,676,166,737	1,881,030,000	26,557,196,737	24,676,166,737	1,881,030,000	26,557,196,737				
1041 Ministry of Defence	1,058,440,000	100,000,000	1,158,440,000	1,058,440,000	100,000,000	1,158,440,000	1,058,440,000	100,000,000	1,158,440,000				
0801000 Defence	128,215,300,000	3,468,000,000	131,683,300,000	131,715,300,000	3,468,000,000	135,183,300,000	131,715,300,000	3,468,000,000	135,183,300,000				0.5
0802000 Civil Aid	124,969,600,000	3,468,000,000	128,437,600,000	128,469,600,000	3,468,000,000	131,937,600,000	128,469,600,000	3,468,000,000	131,937,600,000				2.7
0803000 General Administration, Planning and Support Services	400,000,000		400,000,000	400,000,000		400,000,000	400,000,000		400,000,000				2.7
0805000 National Space Management	2,625,700,000		2,625,700,000	2,625,700,000		2,625,700,000	2,625,700,000		2,625,700,000				
1052 Ministry of Foreign Affairs	220,000,000		220,000,000	220,000,000		220,000,000	220,000,000		220,000,000				
0714000 General Administration Planning and Support Services	17,230,179,618	1,796,120,000	19,032,299,618	17,376,179,618	1,796,120,000	19,172,299,618	17,376,179,618	1,796,120,000	19,172,299,618				
0715000 Foreign Relation and Diplomacy	2,413,875,792	252,120,000	2,665,995,792	2,553,875,792	252,120,000	2,805,995,792	2,553,875,792	252,120,000	2,805,995,792				0.7
0741000 Economic and Commercial Diplomacy	14,630,710,647	1,394,000,000	16,024,710,647	14,630,710,647	1,394,000,000	16,024,710,647	14,630,710,647	1,394,000,000	16,024,710,647				
0742000 Foreign Policy Research, Capacity Dev and Technical Cooperation	51,823,239		51,823,239	51,823,239		51,823,239	51,823,239		51,823,239				
1055 State Department for University Education	139,769,840	150,000,000	289,769,840	139,769,840	150,000,000	289,769,840	139,769,840	150,000,000	289,769,840				
0504000 University Education	102,857,278,998	6,980,716,330	109,837,995,328	102,857,278,998	6,980,716,330	109,837,995,328	102,857,278,998	6,980,716,330	109,837,995,328				
0506000 Research, Science, Technology and Innovation	101,521,038,573	6,925,716,330	108,446,754,903	101,521,038,573	6,925,716,330	108,446,754,903	101,521,038,573	6,925,716,330	108,446,754,903				
0508000 General Administration, Planning and Support Services	991,125,412	55,000,000	1,046,125,412	991,125,412	55,000,000	1,046,125,412	991,125,412	55,000,000	1,046,125,412				0.1
1066 State Department for Early Learning & Basic Education	345,115,013		345,115,013	345,115,013		345,115,013	345,115,013		345,115,013				
0501000 Primary Education	95,302,000,000	15,379,239,910	110,681,239,910	95,302,000,000	15,379,239,910	110,681,239,910	95,302,000,000	15,379,239,910	110,681,239,910				
0502000 Secondary Education	17,892,683,260	1,884,700,000	19,777,383,260	17,892,683,260	1,884,700,000	19,777,383,260	17,892,683,260	1,884,700,000	19,777,383,260				
0503000 Quality Assurance and Standards	68,516,221,630	12,898,539,910	81,414,761,540	68,516,221,630	12,898,539,910	81,414,761,540	68,516,221,630	12,898,539,910	81,414,761,540				7.4
0508000 General Administration, Planning and Support Services	3,638,785,872	446,000,000	4,084,785,872	3,638,785,872	446,000,000	4,084,785,872	3,638,785,872	446,000,000	4,084,785,872				20.5
1071 The National Treasury	5,154,309,238	150,000,000	5,304,309,238	5,154,309,238	150,000,000	5,304,309,238	5,154,309,238	150,000,000	5,304,309,238				5.1
0203000 Rail Transport	53,845,085,913	120,551,831,325	174,396,917,238	53,845,085,913	120,551,831,325	174,396,917,238	53,845,085,913	120,551,831,325	174,396,917,238				
0204000 Marine Transport	31,928,000,000	31,928,000,000	63,856,000,000	31,928,000,000	31,928,000,000	63,856,000,000	31,928,000,000	31,928,000,000	63,856,000,000				
			3,120,638,636			3,120,638,636			3,120,638,636			6,091,140,702	3.5
												125,000,000	
												125,000,000	0.5
												3,500,000,000	2.7
												3,500,000,000	2.7
												140,000,000	
												140,000,000	0.7
												140,000,000	5.3
												138,600,000	0.1
												138,600,000	0.1
												8,189,447,090	
												4,067,781,657	7.4
												4,121,665,433	5.1
												6,091,140,702	3.5

	Approved Estimates			Revised Estimates			Gross Change			% Gross Change
	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	
Vote & Programme										
0717000 General Administration Planning and Support Services	44,707,920,949	14,515,790,000	59,223,710,949	44,707,920,949	14,515,790,000	59,223,710,949	6,091,140,702	6,091,140,702	8.8	
0718000 Public Financial Management	7,561,808,918	61,394,602,589	68,956,411,507	7,561,808,918	67,485,743,391	75,047,552,309				
0719000 Economic and Financial Policy Formulation and Management	1,198,435,806	9,562,800,000	10,761,235,806	1,198,435,806	9,562,800,000	10,761,235,806				
0720000 Market Competition	302,100,000	30,000,000	332,100,000	302,100,000	30,000,000	332,100,000				
0720000 Government Clearing Services	74,820,240		74,820,240	74,820,240		74,820,240	420,400,000	420,400,000	0.3	
1181 Ministry of Health	68,503,000,000	54,016,254,652	122,519,254,652	68,503,000,000	54,436,654,652	122,939,654,652			1.6	
0401000 Preventive, Promotive & Reproductive Health	2,184,752,720	24,370,825,152	26,555,577,872	2,184,752,720	24,791,225,152	26,975,977,872				
0402000 National Referral & Specialized Services	40,000,117,395	11,851,500,000	51,851,617,395	40,000,117,395	11,851,500,000	51,851,617,395				
0403000 Health Research and Development	10,850,000,000	1,549,000,000	12,399,000,000	10,850,000,000	1,549,000,000	12,399,000,000				
0404000 General Administration, Planning & Support Services	7,747,571,056	1,082,000,000	8,829,571,056	7,747,571,056	1,082,000,000	8,829,571,056				
0405000 Health Policy, Standards and Regulations	7,720,558,829	15,162,929,500	22,883,488,329	7,720,558,829	15,162,929,500	22,883,488,329			5.1	
1091 State Department for Infrastructure	69,478,000,000	151,815,567,854	221,293,567,854	69,478,000,000	163,165,567,854	232,643,567,854	11,350,000,000	11,350,000,000	5.1	
0202000 Road Transport	69,478,000,000	151,815,567,854	221,293,567,854	69,478,000,000	163,165,567,854	232,643,567,854			0.2	
1152 Ministry of Energy	14,683,700,000	80,971,855,000	95,657,855,000	14,683,700,000	80,971,855,000	95,657,855,000	200,000,000	200,000,000	32.3	
0211000 General Administration Planning and Support Services	411,000,000	208,000,000	619,000,000	411,000,000	208,000,000	619,000,000				
0212000 Power Generation	2,914,000,000	17,584,000,000	20,498,000,000	2,914,000,000	17,584,000,000	20,498,000,000				
0713000 Power Transmission and Distribution	11,238,390,083	60,984,855,000	72,223,245,083	11,238,390,083	60,984,855,000	72,223,245,083				
0214000 Alternative Energy Technologies	132,609,917	2,195,000,000	2,327,609,917	132,609,917	2,195,000,000	2,327,609,917			24.1	
1169 State Department for Crop Development & Agricultural Research	14,463,700,000	27,042,327,321	41,506,027,321	14,463,700,000	33,036,250,521	51,499,950,521	4,000,000,000	5,993,923,200	9,993,923,200	5.7
0107000 General Administration Planning and Support Services	5,227,448,432	3,609,417,513	8,836,865,945	5,227,448,432	4,109,417,513	9,336,865,945	500,000,000	500,000,000	22.2	
0108000 Crop Development and Management	3,483,779,576	21,241,195,500	24,724,975,076	3,483,779,576	26,735,118,700	30,218,898,276				
0109000 Agribusiness and Information Management	138,940,750	1,470,714,308	1,609,655,058	138,940,750	1,470,714,308	1,609,655,058			63.1	
0110000 Agricultural Research & Development	5,613,531,242	721,000,000	6,334,531,242	5,613,531,242	721,000,000	6,334,531,242	4,000,000,000	4,000,000,000	59.3	
1173 State Department for Cooperatives	1,839,700,000	422,500,000	2,262,200,000	1,839,700,000	12,422,500,000	14,462,200,000	200,000,000	12,000,000,000	59.3	
0714000 Cooperative Development and Management	1,839,700,000	422,500,000	2,262,200,000	1,839,700,000	12,422,500,000	14,462,200,000				
1185 State Dept for Social Protection, Senior Citizens Affairs & Special Programs	31,805,940,000	2,870,300,000	34,676,240,000	31,805,940,000	2,870,300,000	37,876,240,000	3,200,000,000	3,200,000,000		
0715000 Social Development and Children Services	4,232,460,844	318,800,000	4,551,260,844	4,232,460,844	318,800,000	4,551,260,844				
0716000 National Social Safety Net	27,309,559,935	2,551,500,000	29,861,059,935	27,309,559,935	2,551,500,000	33,061,059,935				
0911000 General Administration, Planning and Support Services	243,919,221	3,302,000,000	243,919,221	243,919,221	3,302,000,000	243,919,221				
1194 Ministry of Petroleum and Mining	21,346,000,000	3,302,000,000	24,648,000,000	21,346,000,000	3,302,000,000	24,648,000,000	42,736,088,490	42,736,088,490	173.4	
0215000 Exploration and Distribution of Oil and Gas	87,000,000	2,910,000,000	2,997,000,000	87,000,000	2,910,000,000	2,997,000,000				

Vote & Programme	Approved Estimates			Revised Estimates			Gross Change			% Gross Change
	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	GROSS CURRENT ESTIMATES	GROSS CAPITAL ESTIMATES	GROSS TOTAL ESTIMATES	
1007000 General Administration Planning and Support Services	20,933,425,590	-	20,933,425,590	63,669,514,080	-	63,669,514,080	42,736,088,490	-	42,736,088,490	204.2
1009000 Mineral Resources Management	266,574,410	162,300,000	428,874,410	266,574,410	162,300,000	428,874,410	-	-	-	-
1021000 Geological Survey and Geoinformation Management	62,000,000	229,700,000	291,700,000	62,000,000	229,700,000	291,700,000	-	-	-	-
Total	773,428,685,430	481,378,668,551	1,254,807,353,981	830,697,264,744	526,666,124,989	1,357,363,389,733	57,268,579,314	45,287,456,438	102,556,035,752	8.2



31st August 2023

The Clerk of the National Assembly
The National Assembly
P.O. Box 41842-00100
NAIROBI

Attn: Serah Kioko, MBS

**RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE REGARDING A
PUBLIC PETITION ON FUNDS SPENT BY NATIONAL GOVERNMENT
CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION**

Reference is made to your letter dated 18th August 2023. Ref. KNA/DLPS/PPET/CORR/2023/68, on the above subject matter.

I have reviewed the Public Petition No. 004 of 2022 on funds spent by the National Government contrary to provisions of Article 223 of the Constitution and wish to state as follows:-

1) "...the Committee requires you to provide information necessary to facilitate consideration of the petition. In particular, the Committee would like you to provide information regarding funds spent towards Telkom Kenya and explain why the said expenditure could not await the annual appropriation process."

The Government of Kenya, through the National Treasury is a shareholder at Telkom Kenya Limited. The issue of funds spent towards Telkom Kenya or why the said expenditure could not await the annual appropriation process would therefore be adequately addressed by the Cabinet Secretary to the National Treasury.

2) "The purpose of this letter is to request you to attend the meeting to be held on Thursday, 31st August 2023 at 3:30pm. The venue of the meeting will be communicated in due course."

Following your invitation, I wish to inform the Committee that I presented myself in person at the Hilton Garden Inn on Thursday, 31st August 2023 by 3:00pm. However I was informed by the Principal Clerk Assistant, Mr. Samuel Kalama, that the committee was unable to constitute quorum to grant me audience. I signed the attendance sheet to confirm my appearance and it was countersigned by Mr. Kalama.



JOE MUCHERU, EGH

