

REPUBLIC OF KENYA



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

PARLIAMENT
OF KENYA
LIBRARY

TWELFTH PARLIAMENT – THIRD SESSION
(2019)

PROCEDURE AND HOUSE RULES COMMITTEE

REPORT ON THE STUDY VISIT TO THE
PARLIAMENT OF THE FEDERAL REPUBLIC OF
GERMANY
(18TH TO 21ST MARCH, 2019)

Clerk's Chambers
Directorate of Legislative and Procedural Services,
Parliament Buildings,
NAIROBI

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 07 AUG 2019	DAY: Wednesday
TABLED BY: Hon. Aden Duale CLOM	TABLED BY: Halima Ahmed

TABLE OF CONTENTS

PREFACE	iv
A. Mandate of the Committee	iv
B. Composition of the Committee	iv
C. Members of the Delegation	v
D. Purpose of the Visit	v
E. Areas of Interest	vi
EXECUTIVE SUMMARY	viii
ACKNOWLEDGEMENT	x
CHAPTER ONE	11
THE STUDY VISIT	11
1.0 Overview of the Government of Germany and Parliament of Germany	11
Bundestag	12
Parliamentary Parties	13
The Executive	13
1.1 Meeting with the Kenyan Ambassador to Germany	14
German support to Kenya	14
Kenya-German Bilateral Relations	15
Trade Relations	15
German Investments In Kenya	16
Scholarships	16
Agreements	16
1.2 Meeting with the Members of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure	17
1.3 Meeting with Members of the Petitions Committee	18

Types of Petitions	19
Registration of petitions.....	20
Published Petitions.....	20
Referral of petitions.....	21
Processing of Petitions.....	21
Preparation of Reports on Petitions	25
Debate on Petition Reports.....	25
Forwarding the resolution to the Petitioner	26
Petitions which are unsuccessful	26
Role of parliamentary groups with regard to Petition	26
1.4. Meeting with the Advisor to the Bundesrat Finance Committee	26
Organization of the Bundesrat	27
The President of the Bundesrat	27
Committees of the Bundesrat.....	28
The Work of the committees	28
Decision Making Process	29
CHAPTER TWO	31
OBSERVATIONS AND RECOMMENDATIONS.....	31
Observations.....	31
Recommendations.....	32

PREFACE

A. Mandate of the Committee

The Procedure and House Rules Committee (PHRC) is established under Standing Order 208 of the National Assembly Standing Orders and is mandated to, among other matters, *“consider and report on all matters relating to the Standing Orders”*. The Committee is also charged with the task of proposing amendments to the Standing Orders for consideration by the House. Further, the Committee may, from time to time, propose rules for the orderly and effective conduct of business of Committees.

B. Composition of the Committee

The Committee comprises of the following Members: -

- 1. The Hon. Justin B. N. Muturi, EGH, MP- Speaker of the National Assembly/Chairperson**
- 2. The Hon. Moses Cheboi, CBS, MP - Deputy Speaker**
- 3. The Hon. Rosalinda Soipan, CBS, MP- First Chairperson of Committees**
- 4. The Hon. Patrick Mariru, MP - Second Chairperson of Committees**
- 5. The Hon. Jessica Mbalu, CBS, MP- Third Chairperson of Committees**
- 6. The Hon. Christopher Omulele, MP- Fourth Chairperson of Committees**
- 7. The Hon. Cecily Mbarire, MP**
- 8. The Hon. David Kiaraho, MP**
- 9. The Hon. David Kangogo, MP**
- 10. The Hon. Abdul Rahim Dawood, MP**
- 11. The Hon. Capt. (Rtd) Didmus Wekesa Barasa, MP**
- 12. The Hon. Ruweida Mohamed Obo, MP**
- 13. The Hon. Gathoni Wamuchomba, MP**
- 14. The Hon. Cornelly Serem, MP**

15. The Hon. Alfred Keter, MP
16. The Hon. Abdikarim Osman, MP
17. The Hon. Samuel Arama, MP
18. The Hon. Olago Aluoch, MP
19. The Hon. Samuel Kinuthia Gachobe, MP
20. The Hon. Ben Momanyi, MP
21. The Hon. T.J. Kajwang, MP
22. The Hon. Zuleikha Hassan, MP
23. The Hon. Beatrice Adagala, MP
24. The Hon. Pamela Odhiambo, MP
25. The Hon. Ken Okoth, MP
26. The Hon. Teddy Mwambire, MP

C. Members of the Delegation

1. The Hon. Aden Duale, EGH, MP – Leader of the Majority Party and Leader of the Delegation
2. The Hon. Jessica Mbalu, CBS, MP
3. The Hon. David Kangogo, MP
4. The Hon. T. J. Kajwang, MP
5. The Hon. Samuel Kinuthia Gachobe, MP
6. The Hon. Obo Ruweida Mohamed, MP

D. Purpose of the Visit

1. To effectively study the operations of the Procedure and House Rules Committee and identify applicable best practices that may be recommended to the House.
2. To meet with the counterpart Parliamentary Committee(s) responsible for matters of the House Standing Orders of the German Bundestag with a

view to familiarize with their mandate, operations as well as share experiences.

3. To engage Members and other relevant officials with a view of exploring opportunities for learning, sharing and cooperating on matters of rules of procedure, and general parliamentary practice.

E. Areas of Interest

- a) Effective tools for Parliamentary oversight (Question Period; the Estimates process, the role of parliamentary committees; the role of statutory officers);
- b) The role of the German Bundestag and its parliamentary committees in the budget process;
- c) Rules of procedure in Committee meetings;
- d) Executive Bodies and how Chairpersons of Committees are arrived at;
- e) Process of discharge of Chairs and Members from Committees;
- f) Managing relations between Houses and avoiding conflict on legislation, oversight and general mandate;
- g) Relations, if any, with the Federal States;
- h) How the Bundestag handles matters that come from the EU Parliament and the EU Council, especially on customs (taxation) regime, fiscal policy, immigration and sovereignty of individual states;
- i) Management of Caucus and Friendship Groups and entitlements for each;
- j) House Leadership entitlements;
- k) Party groups in the House and facilities availed by the Institution of Parliament;
- l) Management of Petitions;

- m) Powers of the Chancellor in law making-veto power and how it is exercised;
- n) Role of Finance Committee in Budget making;
- o) Provision in the Standing Orders on procedure for the commencement, conduct and determination of an inquiry into alleged breach of the code of conduct applicable to Members of the German Parliament; and
- p) The sanctions that may be levied on a Member of the German Parliament for breach of the privileges of the House or the applicable code of conduct.

Hon. Speaker,

On behalf of the delegation, it is my pleasant duty and privilege, to present the Report of the Procedure and House Rule Committee on its study visit to the Parliament of the Federal Republic of Germany (Bundestag and Bundesrat)



**THE HON. ADEN DUALE, EGH, MP
THE LEADER OF THE MAJORITY PARTY &
LEADER OF THE DELEGATION**

Date..... 8 - 8 - 2019 .

EXECUTIVE SUMMARY

In the conduct of its mandate, the Procedure and House Rules Committee during its Sitting held in December 2018 resolved to seek appointments with the relevant authorities in the Parliaments of the Federal Republic of Germany with a view to organizing a benchmarking visit. The objectives of the visit being—

- a) To meet with the counterpart Parliamentary Committee(s) responsible for matters of the House Standing Orders of the German Bundestag with a view to familiarize with their mandate, operations as well as share experiences.
- b) To engage Members and other relevant officials with a view of exploring opportunities for learning, sharing and cooperating on matters of rules of procedure, and general parliamentary practice.
- c) To learn and understand Management and operations/procedures of a bicameral system of legislature;
- d) To learn the management of Petitions to Parliament; and
- e) To understand and enhance the effective tools and skills for oversight on Executive.

To achieve its objective, the Committee conducted the visit from 18th to 21st March 2018. The delegation had an opportunity to hold meetings with Kenyan Ambassador to Germany, Committee Members of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure, Committee on Petitions, Petition's Secretariat, the Advisor of the Finance Committee of the Bundesrat and Chancellor Angela Merkel.

During the visit, the Delegation gained the following insights on the procedures of the German Parliament—

- (a) The German Basic Law requires the establishment of a specific Committee of the Bundestag to consider all petitions forwarded to the House. The Petitions Committee may request comments from the specialized committees of the House. The work of the Committee is not subject to an express timeline, with the conclusion of some petitions taking up to 6 months;
- (b) Parliamentary Parties in the Bundestag hold caucus meetings every Tuesday to be briefed on upcoming business and a party position is taken during such meetings. A permanent caucus conference room is availed to each Parliamentary Party for this purpose;
- (c) There is a provision for the involvement of experts who are not members of Parliament in committee meetings during the consideration of a matter touching on their expertise. The Committees utilize the expertise of these experts in furtherance of the execution of their mandate; and
- (d) Voting in the German Parliament is conducted during specified day of the week to ensure the required number of Members are present. Currently, the voting is still done manually.

ACKNOWLEDGEMENT

The Committee wishes to thank the offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate, particularly in the conduct of this visit.

The Committee further extends thanks to the Ministry of Foreign Affairs and particularly the Kenyan Ambassador to Germany, Amb. Joseph Magutt, Prof. Dr. Patrick Ernst Hermann Sensburg, Chair Scrutiny of Elections, Immunity and the Rule of Procedure Committee, Mr. Marian Wendt, Chair, Petitions Committee, Mr. Christian Rodenberg Chair of Finance Committee the for their warm welcome and their entire effort ensured that the delegation successfully conducted its visits. From these visits, the Committee was able to learn significantly and achieved the objectives of the visit.

The Committee also thanks the Secretariat for their input and valuable contributions during and after the visit and compilation of this report. Finally, the Members of the delegation deserve particular commendation. Their committed participation and contribution in in the deliberations held during visit was invaluable to its success.

CHAPTER ONE

THE STUDY VISIT

1.0 Overview of the Government of Germany and Parliament of Germany

1. Germany is a democratic, federal parliamentary republic, where federal legislative power is vested in the Bundestag (the parliament of Germany) and the Bundesrat (the representative body of the Länder, Germany's regional states). The multilateral system has, since 1949, been dominated by the Christian Democratic Union (CDU) and the Social Democratic Party of Germany (SPD). The judiciary of Germany is independent of the executive and the legislature, and it is common for leading members of the executive to be members of the legislature, as well. The political system is outlined in the 1949 constitution, the *Grundgesetz* (Basic Law), which remained in effect with minor amendments after the German reunification in 1990.
2. The German Constitution emphasizes the protection of individual liberty in an extensive catalogue of human and civil rights and divides powers both between the federal and state levels and between the legislative, executive and judicial branches.
3. West Germany was a founding member of the European Community in 1958, which became the EU in 1993. It is part of the Schengen Area, and has been a member of the eurozone since 1999. It is a member of the United Nations, the North Atlantic Treaty Organisation (NATO), the Group of 8 (G8), the Group of 20 (G20) and the Organisation for Economic Co-operation and Development (OECD).

4. Federal legislative power is divided between the Bundestag and the Bundesrat. The Bundestag is directly elected by the German people, while the Bundesrat represents the governments of the regional states (Länder). The federal legislature has powers of exclusive jurisdiction and concurrent jurisdiction with the states in areas specified in the Constitution.
5. The Bundestag is more powerful than the Bundesrat and only needs the latter's consent for proposed legislation related to revenue shared by the federal and state governments, and the imposition of responsibilities on the states. In practice, however, the agreement of the *Bundesrat* in the legislative process is often required, since federal legislation frequently has to be executed by state or local agencies. In the event of disagreement between the *Bundestag* and the *Bundesrat*, a conciliation committee is formed to find a compromise.

Bundestag

6. The Bundestag (Federal Diet) is elected for a four-year term and consists of 598 or more members elected by a means of mixed-member proportional representation, which Germans call "personalised proportional representation". 299 members represent single-seat constituencies and are elected through a first past the post electoral system. Parties that obtain fewer constituency seats than their national share of the vote are allotted seats from party lists to make up the difference. In contrast, parties that obtain more constituency seats than their national share of the vote are allowed to keep these so-called overhang seats. For instance, with regard to the Parliament

that was elected in 2009, there were 24 overhang seats, giving the Bundestag a total of 622 members. The current Bundestag is the largest in German with 709 members.

Parliamentary Parties

7. A party must receive either five percent of the national vote or win at least three directly elected seats to be eligible for non-constituency seats in the Bundestag. This rule, referred to as the “five percent hurdle”, was incorporated into Germany's election law to prevent political fragmentation and strong minor parties. The first Bundestag elections were held in the then West Germany, on 14 August 1949. Following reunification, elections for the first all-German Bundestag were held on 2 December 1990. The last federal election was held on 24 September 2017.

The Executive

8. The German Government is headed by a President, a ceremonial position. The current President is **H.E. Frank-Walter Steinmeier**. Executive authority rests with the Federal Government led by the Federal Chancellor, who is elected by an absolute majority of the Federal Assembly. **H.E. Dr. Angela Merkel** was re-elected on 24th September 2017 for a third consecutive term as Chancellor.
9. On 4th March 2018, Germany's second biggest party, the Social Democrats (SPD), gave the all-clear to renew their partnership with Dr. Merkel's conservatives, ending a political impasse that had plagued the country since September's 2017 inconclusive election.

1.1 Meeting with the Kenyan Ambassador to Germany

10. The Delegation paid a courtesy call to the Kenyan Ambassador to Germany Amb. Joseph Magutt. The Ambassador welcomed the delegation and informed them that Kenya and Germany signed the Technical and Financial Agreements for 2014-2017 on 7th December 2018 at the National Treasury, during the visit to Kenya by Mr. Niels Breyer, the Head of the East Africa Division of the Federal Ministry for Economic Development. In addition, the Ambassador briefed the Committee as follows—

German support to Kenya

11. The Delegation was informed that Kenya has partnered with the German Government to address the issue of growing unemployment among youth. Germany has undertaken to share its experience, plans and resource to transform the education system by encouraging growth of technical institutes and tie them to vocational and technical trainings in Germany. Germany and Kenya have agreed to promote sustainable economic development through the Technical and Vocational Education and Training (TVET). The Kenya Germany TVET Initiative (KGTI) is in the process of establishing three centers of excellence to provide world class technical training at the Kiambu Institute of Science and Technology (KIST), Thika Technical Training Institute and the Nairobi Technical Training Institute.
12. The Delegation was further informed that Germany is one of Kenya's traditional trading partners and is currently among the five-major export markets for Kenyan goods. Germany committed €260.35 million for the 2017-2018 period, to fund projects and programmes in the framework of bilateral Kenyan-German Development Cooperation with priority areas being

Agriculture & Rural development, Health and Water, Water Resource Management and Sanitation, Promotion of Youth Employment, Energy and Good Governance.

13. In addition, Lufthansa Airline resumed flights to Kenya in November 2015, which is a boost to the Tourist industry and a confidence building factor to Kenya. Lufthansa Airline has commenced an additional flight in 2017, raising its flights to 6 per week. A German chartered airline, Condor Airlines, flies to Mombasa 3 times a week.

Kenya-German Bilateral Relations

14. The Delegation was informed that Germany was the first country to recognize Kenya after independence and that diplomatic relations between the two countries were established in 1963. The two countries have enjoyed a long tradition of close partnership especially in the fields of politics, economics, culture, and development cooperation.

Trade Relations

15. The Delegation was informed that Germany is Kenya's fourth largest trading partner after Uganda, Tanzania and the United Kingdom. Direct imports from Kenya to Germany are coffee, cut-flowers, fish, tea, spices, fresh fruits and vegetables. Other products include handicrafts, semi-precious stones and textiles. In 2017, Kenya exports to Germany amounted to about Kshs.11.8 billion while imports amounted to about Kshs.43 billion resulting to a balance of trade of Kshs.31.2 billion, heavily in favour of Germany. Goods imported

from Germany include motor vehicles, electronics, machinery, medicaments, used clothing, and insecticides.

German Investments In Kenya

16. The Delegation was informed that It is estimated that current German investments in Kenya are worth more than \$120 million. There are over 90 registered German companies in Kenya which have created 4,200 jobs. The main German firms operating in Kenya are Henkel, Bayer, BASF and Pollmans Safaris.

Scholarships

17. The Delegation was informed that Germany provided 300, one-year scholarships to Garissa University students who survived the deadly attack on 2nd April 2015, to continue their studies. Germany also offers various scholarships to teaching staff from Kenyan Public Universities through a joint scholarship programme between the German Academic Exchange Service (DAAD) and the Ministry of Education, Science and Technology. Majority of the teaching staff are pursuing courses in Mathematics and Natural Sciences.

Agreements

18. The Delegation was informed that Kenya and Germany have signed the following agreements—
 - (a) Agreement on Technical and Financial Cooperation (December 2018);
 - (b) Treaty on the Encouragement and Reciprocal Protection of Investments (signed in 1996 in Nairobi came into force 1n 2000);
 - (c) Agreement on the Avoidance of Double Taxation (1977); and
 - (d) Technical Cooperation Agreement (1964).

1.2. Meeting with the Members of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure

19. The delegation met six (6) Members of the Scrutiny of Elections, Immunity and the Rules of Procedure Committee. During the meeting the delegation was informed that the Members of the Bundestag are elected in general, direct, free, equal and secret elections for an electoral term of four years. The German Bundestag is composed of at least 598 Members, whereby half of them are elected directly in 299 constituencies on the basis of the first two votes cast by each voter, while a further 299 Members are elected on the basis of the second vote which is cast in favour of one of the lists of candidates nominated by political parties in each federal state. The Second Votes determine the composition of Bundestag. The current Bundestag is the largest with a membership of 709 Members.

20. The Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure, also referred to as the First Committee, deals with the Bundestag's internal affairs. The Chairperson highlighted the responsibilities and the mandate of the Committee as—

- (a) interpretation and updating of the Rules of Procedure, the parliamentary procedure in connection with criminal proceedings against Member of the Bundestag;
- (b) the screening of Members for any previous activity for the State Security Service of the former German Democratic Republic;
- (c) scrutiny of whether Bundestag and European elections are properly conducted;
- (d) resolving questions on the application of individual provisions of the Rules of Procedure;

- (e) proposing amendments to the Rules of Procedure to offer solution for future disputes that may arise in the Bundestag;
- (f) facilitating the resolution of procedural conflicts that arise in the Bundestag plenary and committees;
- (g) at the conclusion of every Bundestag election, dealing with any objections to the conduct of the election;
- (h) guarding the immunity of Members, the purpose of which is to protect them from unjustified criminal prosecution;
- (i) preserving the ability of the Bundestag to function effectively and maintain its standing; and
- (j) intervening as a kind referee in the business of the Bundestag.

1.3 Meeting with Members of the Petitions Committee

21. The Delegation met with 8 Members of the Bundestag Petitions Committee. The Delegation was informed that the Petitions Committee is a central point of contact at the German Parliament for anyone who wishes to raise their concerns, draw attention to hardships or make suggestions. The Committee intervenes in a mediating role when people have problems with federal authorities or other institutions subject to federal supervision. The Committee's mandate is derived from Article 17 of the German Basic Law which has been an immutable fundamental right since 1949. Article 17 provides—

“Every person shall have the right individually or jointly with others to address written requests or complaints to competent authorities and to the legislature.”

22. This right of petition is available to both adults and minors, Germans and foreigners, including persons living outside Germany. However, members of the armed forces forward their petitions through the Parliamentary Commissioner for the Armed Forces who sits in the Bundestag. A petitioner can address the Petitions Committee on their own behalf, on behalf of third parties or in the general interest. The Petitions Committee deals with all petitions which relate to the Bundestag's legislative functions or constitute complaints against federal authorities. However, it forwards other submissions to the competent bodies, such as the parliaments of the Lander (federal states). The Petitions Committee is supported in its work by a secretariat.

23. It was emphasized to the Delegation that the Petitions Committee is a corrective mechanism for society which takes action when members of the public contact Parliament with requests or complaints or to draw attention to failure by relevant authorities. Hence the right to petition provides a direct means of contacting Parliament with several consequences: firstly, people can complain about specific administrative acts and draw attention to failings; secondly, people can submit suggestions for legislation, consequently the Members of Parliament gain a picture of the public mood.

Types of Petitions

24. The Delegation was informed that there are four types of Petitions, namely,—
- (a) Multiple petitions, which are individually written submissions concerning the same matter;
 - (b) Collective petitions which comprise a collection of signatures concerning the same matter;

- (c) Mass petitions, being a large number of submissions concerning the same matter, the text of which is completely or largely identical; and
- (d) Public petitions which are requests or complaints to the German Bundestag of general interest. In agreement with the petitioner, public petitions are published on the Petitions Committee's webpage. The publication allows additional persons or groups of persons the opportunity to co-sign the petition through the internet or post a comment within a period of four weeks.

Registration of petitions

- 25. The Delegation was informed that, in principle, each petition is registered separately. However, in the case of multiple petitions, one petition is treated as the principal petition. Mass petitions are treated as one petition for processing purposes and the number of the individual petitions recorded. A public petition with co-signatures is treated as one petition.

Published Petitions

- 26. It was highlighted to the Delegation that the right of Petition as enshrined in the Basic Law has evolved to keep up with the times, subsequently, beginning 2005, a petitioner can submit his or her Petition to the Bundestag electronically (EPetition). Such petitions are published on the Petitions Committee's website. It was emphasized that the members of the public who are registered users of the website have four weeks from the time of publication of a petition to comment and give their views on the subject in question in dedicated forums, and thus play an active part in the political opinion-forming process. The petition can also be signed online during this period, as an expression of support for its substance. The petitioner therefore

does not need to painstakingly collect signatures manually, as is the case for traditional collective petitions. A petitioner who gains 50,000 supporters for his or her petition within four weeks is invited to present his or her request or complaint to the Members of Parliament in person at a public meeting of the Petitions Committee.

Referral of petitions

27. The Delegation was informed that the President of the Bundestag refers petitions to the Petitions Committee. Thereafter the Committee may request the comments of the specialized committees if the petitions relate to a subject under debate in the respective committees.

28. It was noted that the Petitions Committee is empowered to develop principles governing the treatment of requests and complaints and use them as the basis for its decision in each case. In addition, the Committee may, in the discharge of its mandate, request for the submission of files, information, or access to premises are made direct to authorities of the Federation and to federal corporate bodies, institutions and foundations under public law.

29. The Delegation was informed that on average, the Bundestag receives 600 Petitions every year.

Processing of Petitions

30. The Delegation was informed that to enable the Petitions Committee to prepare decisions on petitions, the Federal Government and the federal authorities are required to submit files to the Petitions Committee, provide it with necessary information and grant it access to their premises.

31. It was highlighted that the petitioner, witnesses and experts summoned by the Committee receive remuneration in accordance with the German Law on the Remuneration of Witnesses and Experts.
32. The Delegation was further informed that to ensure the full enjoyment of the right to petition, there are only a few criteria which have to be met. A petition must be sent to the Committee in writing by post or fax, and must be legible and include a signature, or alternatively it must be submitted using the online form on the Petitions Committee's website; and a petitioner must provide a contact address. Anonymous or insulting submissions are not dealt with by the Petitions Committee.
33. The Delegation was informed that Committee Service/Petitions Secretariat may decline to process a petition if it—
- (a) contains personal requests or complaints;
 - (b) is not written in German;
 - (c) infringes the principle of human dignity;
 - (d) contains expressions of opinion which are evidently false, misleading or insulting;
 - (e) is evidently not based on fact or predicated on a false premise;
 - (f) demands for something which is impossible, a criminal offence or a breach of an administrative regulation, or a measure in contravention of the constitutional order or moral law;
 - (g) contains confidential information or interferes with the right to privacy of individual persons (e.g. by stating names),

- (h) advertises commercial products or services or contain any other kind of advertising;
 - (i) contains links to other websites; or
 - (j) uses language not befitting the dignity of Parliament.
34. The Committee Service is obligated to inform a petitioner of any defect identified in a petition. Where the defect is not corrected either by the petitioner within an appropriate period or by the Committee Service, the Service is required to file the petition away after consulting the Chairperson.
35. The Committee can decide not to publish a petition, if—
- (a) the Committee has already taken a decision on a largely identical matter during its electoral term and no new issues of relevance to the decision have been presented;
 - (b) a petition on the same matter is already undergoing parliamentary examination;
 - (c) the petition appears likely to strain social peace, international relations or intercultural dialogue;
 - (d) the petitioner already has public petitions on the Petitions Committee's Webpage;
 - (e) the petition evidently has no prospect of success, or
 - (f) there are insufficient technical or staff resources for an appropriate public presentation.
36. Where a petition is approved for consideration, the petitioner receives confirmation that his or her petition has been received. The relevant federal ministry or federal supervisory authority is requested to provide a statement

on the petitioner's request. Where the statement does not dispense with the petition, what follows is the "rapporteur procedure" which entails the consideration of a report containing a reasoned recommendation for a decision examined by at least two Members of Parliament, one from governing parliamentary group and one from an opposition parliamentary group.

37. In case the Committee requires further clarification on the subject matter of the Petition, it can invite experts, inspect files, or carry out site visits to gain a first-hand impression of the situation. The Committee can also invite state secretaries or ministers to attend its meetings to answer questions in relation to the petition. In case of complicated petitions, the Committee discusses the petition and adopts a recommendation, on which the German Bundestag as a whole then takes a decision.

38. In the event a petition is deemed to be justified in whole or in part, the Bundestag takes a decision to this effect on the Petitions Committee's recommendation, and this decision is transmitted to the Federal Government or the European Parliament, if affected. A range of different decisions can be taken, varying in scope, requiring the Federal Government to take action in response to the petition. Petitioners are finally informed about the outcome of the deliberations on their petitions.

Preparation of Reports on Petitions

39. The Delegation was informed that a report on the petitions drawn by the Petitions Committee is submitted to the Bundestag in the form of a list together with a recommendation. The Committee submits its reports on a monthly basis but there is not express time limit for the resolution of a petition, with some taking up to six months to conclude. In addition, the Petitions Committee submits to the Bundestag an annual written report on its work. The reports are printed, distributed and placed on the agenda within three weeks of sittings after they have been distributed and a rapporteur may give supplementary oral explanations of the report.
40. The attention of the Delegation was drawn issue of appointment of rapporteurs where for every petition the Committee Service proposes two members of the Committee from different parliamentary groups as rapporteurs. One of these rapporteurs must be a Member from a parliamentary group supporting the government and the other from an opposition parliamentary group. Every other parliamentary group represented on the Committee may, in addition demand a rapporteur of its own.
41. The Delegation was further informed that the Committee is assisted in its work by a secretariat and staff of 80 people.

Debate on Petition Reports

42. The Bundestag may debate a report on a Petition if a parliamentary group or five per cent of the Members of the Bundestag so demand, in light of the weighty subject matter of the Petition.

Forwarding the resolution to the Petitioner

43. The petitioner is informed of the manner in which their petition has been dealt with and a copy of the report is availed to them.

Petitions which are unsuccessful

44. The Delegation was informed that in the event the Committee Service considers that a petition will evidently be unsuccessful, it may advise the petitioner of the reasons and inform him or her that the petition proceedings will be concluded unless he or she lodges an objection within six weeks. If the petitioner does not react within this period, the Committee Service shall include the petition in the list of processed petitions.

Role of parliamentary groups with regard to Petition

45. The Delegation was informed that petitions may be forwarded to the parliamentary groups in the Bundestag for their information if they constitute a matter suitable for resolution through parliamentary initiative and to draw the attention of the groups to the matter raised by the petitioner.

1.4. Meeting with the Advisor to the Bundesrat Finance Committee

46. The Delegation met Mr. Christian Rodenberg, Advisor of the Finance Committee on the Bundesrat, the representative body of the Länder, Germany's federal states.
47. Mr. Rodenberg gave a brief introduction of the establishment and functions of the Bundesrat. Though the Bundesrat, Germany's 16 federal states participate

the legislation and administration of the Federation and in matters concerning the European Union. The Bundesrat therefore constitutes a counterweight to the central political organs, the Bundestag and the Federal Government.

Organization of the Bundesrat

48. The Bundesrat is composed of members of the state governments which may appoint or recall them. Under the German Basic Law, each federal state is entitled to at least 3 votes in the Bundesrat. A State inhabited by more than 2 million persons is entitled to 4 votes; a State inhabited by more than 6 million persons is entitled to 5 votes; and a States inhabited by more than 7 million persons is entitled to 6 votes. It was noted that each State can appoint only as many members as the number of votes it has in the Bundesrat. Currently, the Bundesrat has a total of 69 votes and, consequently, has 69 full members. In addition the remaining members of state cabinets are usually sent to the Bundesrat as deputy members. It was highlighted that the votes of a federal state may only be cast as a unit and only by the Members p[resent or their alternates.

49. It was interestingly noted that the Members of the Bundesrat are not paid a salary for their work in the Bundesrat but get a fixed daily allowance for expenses related to their travel and accommodation when they attend the sittings of the House.

The President of the Bundesrat

50. The Delegation was informed that the Presidency of the Bundesrat rotates among the 16 federal States with the order of rotation determined on the basis of population. The current rotation began with the premier of North

Rhine-Westphalia, the most populous State and is slated to end with the premier of Bremen. The main duty of the President of the Bundesrat is to convene and chair the plenary session and represent it in all federal matters. He or she is ranked second after the Federal President and acts as the Federal President in the event of any vacancy in the office.

Committees of the Bundesrat

51. The Delegation was informed that the Bundesrat has 16 Committees with responsibilities aligned to the line Ministries of the Federal Government. Each of the 16 states has one member and one vote in each of Committee. Unlike the procedure in the Kenyan Parliament, which is informed by Article 118 of the Constitution, Committee meetings in both Houses of the German Parliament are not open to the public for purposes of facilitating open and candid debate.

The Work of the committees

52. The Delegation was informed that every piece of legislation, whether initiated by the Federal Government, the Bundestag or a federal state, is first examined in the committees. Ministers from the federal states regularly attend the meetings of sensitive committees such as the Finance Committee which considers the Federal Budget. In other committees the Ministers are frequently represented by employees from the state ministries. It was noted that civil servants from the federal ministries are expected to attend the meetings for information or to answer questions from the experts of the State ministries.

Decision Making Process

53. The Delegation was informed that Bundesrat holds 13 sittings a year, on average, and that most of the work is done in committees where the Federal government submits its draft proposals at least six weeks before the dates of the Sittings. Recommendations for the plenary session are drawn up in the Bundesrat committee meetings and compiled by the secretary of the respective committee.

54. The Finance Committee is responsible for considering the federal budget, budget laws and the budgetary system; national and international financial policy including the banking, insurance and investment sector, the stock exchange and securities; currency policy; taxes and levies and financial relations between the Federal Government and the states.

55. The Delegation was informed that the Members of the Finance Committee are co-opted in the Stability Council which is a joint body of the Federal government and federal states mandated to strengthen the institutional framework for safeguarding the long-term sustainability of public budgets at both levels of government. The Stability Council supervises and monitors the budget and is able to intervene in the event a state experiences financial distress.

56. With regard to the Budget and other financial legislation, the Delegation was informed that the role of the Bundesrat is primarily limited to the giving of consent. Once a Budget Bill is adopted by the Bundestag and presented to

the Bundesrat, where the Bundesrat through the Finance Committee agrees to it, it is signed by the Federal Minister of Finance, the Federal Chancellor and the Federal President and becomes law. Where the Bundesrat has reservations on a Budget Bill, a mediation committee of the two Houses is convened.

57. The German Basic Law grants the federal states constitutional autonomy in their budgetary affairs subject to the principle of solidarity and mutual support. This principle allows redistribution of resources and revenue from financially strong to financially weak states. The Finance Committee is mandated to discharge the constitutional role of the Bundesrat of ensuring the establishment of equal living standards in all federal states.
58. The Delegation was also informed that Article 115 of the German Basic Law requires both the Federal Government and the States to run a balanced budget with only a structural deficit of 0.35% of each level of government's Gross Domestic Product allowed.

CHAPTER TWO

OBSERVATIONS AND RECOMMENDATIONS

Observations

The Delegation observed that—

- (1) Majority of the work of the Bundestag is done in the Committees, to which the Members dedicate their time;
- (2) The German Basic Law requires the establishment of a specific Committee of the Bundestag to consider all petitions forwarded to the House. The Petitions Committee may request comments from the specialized committees of the House;
- (3) With regard to the processing of petitions sent to the German Parliament the Committee on Petitions—
 - (a) receives, on average, 600 petitions;
 - (b) is served by a secretariat and support staff of 80 people; and
 - (c) is not subject to an express timeline in its work, with the conclusion of some petitions taking up to 6 months; and
 - (d) appoints two rapporteurs, one from the party forming the government and one from the opposition party to consider and advise it.
- (4) Parliamentary Parties in the Bundestag hold caucus meetings every Tuesday to be briefed on upcoming business and a party position is taken during such meetings. A permanent caucus conference room is availed to each

Parliamentary Party for this purpose. These meetings allow members to decide what position to adopt on various proposals before the House;

(5) There is a provision in the Rules of Procedure of the Bundestag for the involvement of experts who are not members of Parliament in committee meetings during the consideration of a matter touching on their expertise. The Committees utilize the expertise of these experts in furtherance of the execution of their mandate;

(6) Voting in the German Parliament is conducted during specified day of the week to ensure the required number of Members are present. Currently, the voting is still done manually; and

(7) Committee meetings are not open to the public to ensure candid deliberations between the Members of Parliament.

Recommendations

In light of its observations, the Delegation recommends that—

- 1) The House amends its Standing Orders to establish a dedicated Committee on Petitions. In light of the number of petitions that may be received, the Committee should be empowered to consult with a Departmental Committee on a petition whose subject matter is under consideration before that Departmental Committee and be facilitated with adequate staff. In addition, the House should review the timeline of 60 days currently applying to all petitions; the rule against petitions containing any annexures and affidavits;

- 2) The House operationalizes the provisions of Standing Order 203 which allows the Speaker to approve the engagement of experts to assist Committees in the discharge of their mandate;
- 3) The House consider facilitating Parliamentary Parties with dedicated meeting rooms for the purpose of regular caucusing; and
- 4) The House establishes a Parliamentary Friendship Group with the Parliament of Germany to enhance cooperation amongst the two Parliaments.



**THE HON. ADEN DUALE, EGH, MP
THE LEADER OF THE MAJORITY PARTY &
LEADER OF THE DELEGATION**

Date... 8/8/2019