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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

REPORT ON THE PETITION REGARDING SUSPENSION OF TEACHERS
PROFESSIONAL DEVELOPMENT (TPD) BY THE TEACHERS SERVICE
COMMISSION PRESENTED BY HON. OMBOKO MILEMBA, MP

 THE NATIONAL ASSEMBLY PARLIAMENT BUILDINGS	
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TABLED BY:	CHAIRPERSON EDUCATION HON. FLORENCE MUTUA MP
CLERK-AT THE TABLE:	C. Ndlovu

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CHAIRPERSON'S FOREWORD

This Report contains the Committee's proceedings on the consideration regarding suspension of the Teachers Professional Development (TPD) by the Teachers Service Commission (TSC).

The Petition was presented to Parliament pursuant to Article 119 of the Constitution, Standing Order 220 and Section 4(1b) of the Petition to Parliament (Procedure) Act No. 22 of 2012 by Hon. Omboko Milemba, MP, on behalf of Mr. Moses Mbori, Mr. Francis Yivo and Mr. Justus Nyakundi. The public Petition was presented to the National Assembly on 29th September, 2021 regarding suspension of the Teachers Professional Development (TPD) by the Teachers Service Commission (**ANNEX I**).

The Petition was referred to the Departmental Committee on Education and Research pursuant to Standing Order 227 for consideration.

In the Petition, the Petitioner drew the attention of the Committee to the following: -

On 22nd September, 2021, the Teachers Service Commission (TSC) rolled out the Teacher Professional Development (TPD) undertaken by all practicing teachers every five years as mandatory refresher modules for renewal of certification.

The Teachers Service Commission did not involve teachers in the preparation of the policy framework for the TPD and its subsequent roll-out, contrary to the mandatory requirements of Article 232(1)(d) of the Constitution, despite the fact that teachers are directly affected by the TPD policy.

The Commission committed teachers to personally meet the burden of paying Ksh. 6,000 for each module of the TPD Programme, or a total of Ksh. 180,000 for the entire programme, without any consultations with teachers.

The Commission has not made public to the teachers and other stakeholders in the education sector the considerations it based on in arriving at the exorbitant cost per module.

In unclear circumstances and notwithstanding the existence of reputable public universities countrywide, the Teachers Service Commission selected only four education institutions namely Riara University, Mount Kenya University, Kenyatta University and the Kenya Education Management Institute (KEMI), all based in Nairobi region, to run the TPD programme for teachers drawn from all over the country.

The Teacher Professional Development Programme ought to have been integrated in the ongoing capacity strengthening programmes for teachers on the Competency Based Curriculum (CBC) so as to avoid duplication of Government effort, waste of public resources and subjecting teachers to bearing the burden of a mandatory programme, to achieve a well-coordinated and holistic approach.

If the Commission is not restrained from implementing the Teacher Professional Development Programme, the rights of teachers and stakeholders under Article 232(1)(d) of the Constitution stand the risk of being prejudiced.

The matters raised in the Petition are not pending before any court of law, constitutional or legal body.

The Petitioner prayed for intervention of the House to: -

1. Cause the Teacher Service Commission to undertake public participation on the TPD policy as required under Article 232(1)(d) of the Constitution and take into account the views of teachers and stakeholders in order to build consensus on and ownership of the programme;
2. Restrain the Teachers Service Commission from rolling out the Teacher Professional Development Programme as currently designed, until the concerns raised by the Petitioners are resolved;
3. Inquire into the circumstances under which the Teachers Service Commission selected only four (4) institutions, all in Nairobi region, to offer the TPD programme despite there being other reputable universities countrywide.
4. Recommend to the Ministry of Education to take over implementation of the Teacher Professional Development Programme for teachers in public institutions in line with international labour practices that obligate an employer who comes with compulsory employee's capacity strengthening to plan to shoulder the attendant cost of training;
5. Put in place necessary legislative framework to provide for establishment of a professional regulatory body for teachers so as to avoid conflict of interest where the Teachers Service Commission acts both as an employer and as a regulator of teachers; and
6. Make any other recommendations deemed fit in securing the Petitioner's property, economic and social rights.

In considering the Petition, the Committee held a total of four sittings. During the sittings the Committee received a legal brief from the Directorate of Legal Services of the NATIONAL Assembly as well as oral and written submissions from the Petitioners and stakeholders.

The Committee thereafter considered and deliberated on the prayer by the Petitioner.

The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations/findings and recommendations as outlined in the Report and can be obtained in the Parliament Library.

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the Committee to fulfil its mandate. The Committee is also grateful to all stakeholders who appeared before the Committee to present their views on the Petition and finally the staff of the National Assembly for the services they rendered. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

On behalf of the Members of the Departmental Committee on Education and Research, I beg to table the Report on the Petition regarding suspension of Teachers Professional Development (TPD) by the Teachers Service Commission pursuant to Standing Order 227 (2).

Hon. Florence Mutua, CBS, MP

1.0 PREFACE

1. The Departmental Committee on Education and Research is established under the National Assembly Standing Order 216.

1.1 Mandate of the Committee

2. The Committee is mandated, among others, to: -

- i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii) study the programmes and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii) study and review all legislation referred to it;
- iv) study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
- v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- vi) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
- vii) examine treaties, agreements and conventions;
- viii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- ix) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- x) examine any questions raised by Members on a matter within its mandate.

1.2 Subjects

3. The subjects falling within the purview of the Departmental Committee on Education and Research are Education, Training and Research.
4. The Committee oversees the Ministry of Education, agencies under the Ministry and the Teachers Service Commission.

1.3 Committee Membership

5. The Committee comprises of the following members: -

Chairperson

Hon. Florence Mutua, CBS, MP
Busia County

Orange Democratic Movement Party

Vice Chairperson

Hon. Ngunjiri Wambugu, CBS, MP
Nyeri Town Constituency

Jubilee Party

Hon. Geoffrey Makokha Odanga, MP
Matayos Constituency
Orange Democratic Party

Hon. Joseph Tonui, MP
Kuresoi South Constituency
Jubilee Party

Hon. (Dr.) Pamela Ochieng, MP
Migori County
Orange Democratic Movement Party

Hon. Omboko Milemba, MP
Emuhuya Constituency
Amani National Congress

Hon. (Eng.) Nzambia Kithua, MP
Kilome Constituency
Wiper Democratic Movement Kenya

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. (Prof.) Zadoc Abel Ogutu, MP
Bomachoge Borabu Constituency
Independent

Hon. Wilson Sossion, MP
Independent

Hon. Eric Muchangi Njiru, MP
Runyenjes Constituency
Jubilee Party

Hon. Wilson Kogo, MP
Chesumei Constituency
Jubilee Party

Hon. Eve Obara, MBS, MP
Kabondo Kasipul Constituency
Orange Democratic Movement Party

Hon. (Dr.) Daniel Kamuren Tuitoek, MP
Mogotio Constituency
Jubilee Party

Hon. Jackson Lekumontare, MP
Samburu East Constituency
KANU Party

Hon. Gichuki Mugambi, MP
Othaya Constituency
Jubilee Party

Hon. Jerusha Mongina Momanyi, MP
Nyamira County
Jubilee Party

Hon. Paul Mwirigi, MP
Igembe South Constituency
Independent

Hon. Ali Lokiru Mohammed, MP
Turkana East Constituency
Orange Democratic Movement Party

1.4 Committee Secretariat

6. The Committee secretariat comprise the following officers: -

Mr. Philip Lekarkar
Clerk Assistant II
Lead Clerk

Ms. Grace Wahu
Clerk Assistant III

Mr. Eric Kanyi
Fiscal Analyst II

Ms. Winnie Kulei
Research Officer II

Mr. Collins Mahamba
Audio Officer

Ms. Catherine Mukunyi
Serjeant-at-Arms

2.0 CONSIDERATION OF THE PETITION

7. The Committee invited the Petitioner to present his Petition and thereafter various stakeholders to present their views which informed the Committee findings and recommendations contained in this Report.

2.1 Meeting with the Petitioner, Hon. Omboko Milemba, MP

8. The Hon. Omboko Milemba, MP, on behalf of Mr. Moses Mbora, Mr. Francis Yivo and Mr. Justus Nyakundi, being representatives of the Kenya Union of Post Primary Education Teachers (KUPPET), Nairobi Branch and other concerned teachers across the country appeared before the Committee on 5th October, 2021 and presented the Petition to the Committee. He drew the attention of the Committee to the following: -
9. That on 22nd September 2021, the Teachers Service Commission rolled out the Teacher Professional Development to be undertaken by all practicing teachers every five years as mandatory refresher modules for renewal of certification;
10. That, despite the fact that teachers are directly affected by the Teacher Professional Development policy, the Teachers Service Commission did not involve teachers in the preparation of the policy framework for the TPD and its subsequent roll-out, contrary to the mandatory requirements of Article 232(1) (d) of the Constitution that require involvement of people in the process of policy making;
11. That, without consultations with teachers, the Commission committed teachers to personally meet the burden of paying Kshs. 6,000 for each module of the TPD Programme, or a total of Kshs. 180,000 for the entire programme;
12. That, the Teachers Service Commission has not made public to the teachers of this country and other stakeholders in the education sector the considerations used in arriving at the exorbitant cost per module of the programme;
13. That, it is in public domain that teachers are underpaid, most of them have stagnated at the same Job Group for a period varying between ten and twenty-five years. Further, in view of the non-monetary Collective Bargaining Agreement (CBA) signed in 2021, it is insensitive for the Commission to require underpaid teachers to pay Kshs. 180,000 for a certification Programme;
14. That, fair international labour practices demand that an employer who comes up with compulsory employees' capacity strengthening programmes should shoulder the attendant cost of the training;
15. That, in unclear circumstances and notwithstanding the existence of reputable public universities countrywide, TSC selected only four education institutions namely, Riara University, Mount Kenya University, Kenyatta University and the Kenya Education Management Institute (KEMI), all based in Nairobi region to run the TPD Programme for teachers drawn from all over the country;
16. That, given the nature of basic education as a mandatory public good guaranteed under the Constitution, professional development of teachers ought to be approached holistically and the certification process standardized under the ambit of the Ministry of Education and not the

Teachers Service Commission;

17. That, the decision by the Commission to manage teachers' professional development and regulate the teaching profession is a departure from the established practice where professions have self-regulatory mechanisms and bodies that are distinct from employers;
18. That, to achieve a well-coordinated and holistic approach, the Teacher Professional Development Programme ought to have been integrated in the ongoing capacity strengthening programmes for teachers on Competency Based Curriculum so as to avoid duplication of Government effort, waste of public resources and subjecting teachers to bearing the burden of a mandatory programme;
19. That, if the Commission is not restrained from implementing the programme, the rights of teachers and stakeholders under Article 232(1)(d) of the Constitution stand the risk of being prejudiced;
20. That, the matters raised in this Petition are not pending before any court of law, constitutional or legal body as at 28th September 2021;
21. The Petitioners prayed that the Committee to: -
 - (i) Cause the Teachers Service Commission to undertake public participation on the Teachers Professional Development policy are required under Article 132(1)(d) of the Constitution and take into account the views of teachers and stakeholders in order to build consensus and ownership of the programme;
 - (ii) Restrain the Teachers Service Commission from rolling out the Teacher Professional Development Programme as currently designed, until the concerns raised by the Petitioners are resolved;
 - (iii) Inquire into the circumstances under which the Teachers Service Commission selected only four institutions, all in Nairobi region, to offer the TPD Programme despite there being other reputable universities countrywide;
 - (iv) Recommend that the Ministry of Education takes over implementation of the Teacher Professional Development Programme as an integral part of the Competency Based Curriculum uptake;
 - (v) Recommend that the Ministry of Education meets the cost of the mandatory professional development programme for teachers in public institutions in line with international labour practices that obligate an employer who comes with compulsory employees to pay for the cost of the programme.

2.2 Rationale of the Petition

Teachers concerns

22. The Petition is expected to address the roll-out of the Teachers Professional Development (TPD) by the Teachers Service Commission. As the main stakeholders and beneficiaries of TPD, teachers' acceptance of the programme is necessary for its successful implementation, hence the need to address their concerns.

Cost of the programme

23. The requirement that teachers pay for the programme has caused uncertainty, given the fact that most teachers' pay slips are committed to the limit. Teachers failed to get a monetary Collective Bargaining Agreement (CBA) owing to the fact that Covid 19 has affected the economy of the nation.
24. Despite their stagnant wages, the cost of living increased in September 2021 compared to September 2020. The inflation rate in September 2021 is 6.91 compared to 4.20 in September 2020 meaning that disposable income of teachers has been reduced due to increased prices of food items.

Selection of service providers

25. Teachers are concerned that the four institutions namely Riara University, Kenyatta University, Mount Kenya University and Kenya Education Management Institute approved to offer the courses are not sufficient to cover their huge numbers.
26. The distribution of service providers leaves teachers in Northern Kenya, Coastal regions, Nyanza and Western regions disadvantaged by their geographical catchment areas. Teachers from these areas will be overburdened by substantial travel and accommodation costs incidental to their attending the programme.

Public Tender for Institutions

27. There is for need for justification for charging Ksh. 6,000 per module in only four (4) institutions and whether the cost would remain the same if provided by ten (10) service providers including universities such as Moi, Egerton, Maseno and Masinde Muliro that have long experiences in the training of educators.
28. Given the huge benefit the universities would derive in terms of fees paid by teachers, it would be important to subject their procurement to an open tender.

2.3 Subjudice Rule in the consideration of the Petition

29. In a Committee sitting held on 5th October, 2021, it was reported that the matters raised in the Petition were pending before a court of law under a Constitutional Petition No. 24 of 2021 pending in the Nakuru Employment and Labour Relations Court, Petition No. 24 of 2021 [Joseph Ngethe Karanja-Vs- TSC, the Cabinet Secretary responsible for Basic Education, the Attorney General, KUPPET, KNUT, Kenyatta University, Mount Kenya University, Riara University and the Kenya Education Management Institute] filed on 27th September 2021.
30. Filing of the case in Court was done after the Petitioner presented the Petition in the House.
31. The Committee noted that the matters raised in the Constitutional Petition No. 24 of 2021 pending in the Nakuru Employment and Labour Relations Court are of similar nature as those raised in the Public Petition filed in the House by Hon. Omboko Milemba, MP.
32. The Committee further noted that the *Sub judice* rule as provided for under National Assembly Standing Order 89 applies to the Public Petition by Hon. Omboko Milemba, MP.

33. After examining the prayers in Hon. Omboko Milemba's Petition, the Committee observed that the matter raised in the Petition are of immense public interest and that the House should pronounce itself on the matter.
34. In light of the foregoing, the Committee resolved to seek direction from the Speaker noting that Standing Order 89(5) provides that Speaker may allow reference to any matter before the House or a Committee notwithstanding the *Sub judice* rule.

2.4 Ruling on the *Sub Judice* Rule

35. In a letter dated 21st October, 2021, the Chairperson on the Committee on Education and Research sought direction from the Office of the Speaker of the National Assembly as to whether the *Sub judice* rule was applicable thin consideration of the Petition.
36. In response, the Speaker in a letter dated 9th November, 2021 directed that the Committee should proceed to consider the Petition and table its Report. This is in line with Standing Order 89(5) which provides that notwithstanding the Standing Order, the Speaker may allow reference to any matter before the House or a Committee"; noting that-
- (i) The Petition touched on matters of great public interest as it concerned the introduction of a compulsory teacher professional development programme which was not subjected to public participation prior to being introduced.
 - (ii) Pursuant to Article 95(2) of the Constitution, the House is mandated to deliberate on and resolve issues of concern to the people. Consequently, the sub judice rule should be used sparingly and only be invoked by a Member with evidence proving that the matters under consideration are pending in Court of Law;
 - (iii) The National Assembly had become seized of the matter long before it was filed in court;
 - (iv) The House was not a party to the case filed at the Employment and Labour Relations Court at Nakuru.

3.0 MEETING WITH STAKEHOLDERS

3.1 Meeting with the Kenya Union of Post Primary Education Teachers (KUPPET)

37. The Committee invited the Kenya Union of Post Primary Education Teachers (KUPPET) for a meeting to give their views regarding the roll-out of the Teacher Professional Development by the Teachers Service Commission as highlighted in the Petition.
38. In response, KUPPET submitted that they had engaged the Teachers Service Commission on a social dialogue platform over the TPD. In addition, the Union requested to be absolved from appearing before the Committee because the Union is an enjoined party in the Public Petition No. 47 of 2021 regarding the suspension of Teachers Professional Development (TPD) by the Teachers Service Commission in the High Court.

3.2 Meeting with the Kenya National Union of Teachers (KNUT)

39. Similarly, the Committee invited the Kenya National Union of Teachers (KNUT) for a meeting to give their views regarding the roll-out of the Teacher Professional Development by the Teachers Service Commission as highlighted in the Petition.

40. In response, KNUT submitted that the matters in the Petition were before a Nakuru Employment and Labour Relations Court as Petition No. 24 of 2021 Joseph Nge'the Karanja and 8 others vs TSC and as such the Union did not wish to engage in a public forum about it before it had been dispensed with by the Court.
41. The Union further asserted that as a major teachers' trade union and with interest on the matter, the Union had entered into a tentative agreement with the Teachers Service Commission, that they would engage through a bi-partite meeting to address the matters raised by the teachers as the concerned parties and if possible, enter consent in Court.
42. The Union requested the Committee for more time to find an amicable solution to the matters in the Petition together with the Teachers Service Commission.

3.3 Meeting with the Teachers Service Commission

The Committee invited the Teachers Service Commission for a meeting to respond to the Petition. In response the Commission informed the Committee as follows:-

43. That the issues raised in the Petition were similar and subject of the Constitutional Petition filed at Nakuru Law Courts being Nakuru ELRC Petition No. 24 of 2021: Joseph Ngethe Karanja vs. Teachers Service Commission and 8 others. The Petition was still active in court pending hearing and determination, and was set for mentioning on 29th November, 2021.
44. That in recognizing Parliament's role under Article 95(2) and the provisions of Standing Order 89(1), the Committee's deliberation of the issues raised in the Petition would defeat the intent sought to be cured by the doctrine of *sub judice*.
45. That deliberating on the contents of the Petition and subsequently reaching a resolution, two independent Constitutional organs, the National Assembly and the High Court, were likely to arrive at conflicting decisions on the same matter. This would leave the Commission in an awkward position on which decision to implement.
46. That it was a Constitutional imperative that Parliament's oversight mandate should be exercised in obedience and full perspective of the provisions of the law and the relevant doctrines including the doctrine of separation of powers.
47. The Commission appealed to the Committee to invoke the provisions of Standing Orders 89(1) and defer the Petition to await the hearing and determination of the court matter.

Further, in a written submission, the Commission informed the Committee as follows: -

48. That Teachers Professional Development programmes are formal trainings that registered teachers are required by the law to undertake in order to continuously improve their pedagogical skills, management skills and learner outcomes.

Conceptualization of Teacher Professional Development

49. The process of professionalizing the teaching profession started in 2012 with the enactment of the Teachers Service Commission Act. The Act was subjected to vigorous stakeholder engagement before being enacted by Parliament. Teacher Professional Development is provided under Section 11 and 35 of the Act. The Act requires TSC to develop regulations before implementing the provisions of the Act.

50. The Code of Regulations for Teachers (CORT) on the other hand was literally negotiated by all the teacher unions and associations. The CORT were tabled before the Parliamentary Committees of Education and Delegated legislation who also conducted their own stakeholder engagement before presenting the same to the National Assembly for adoption.
51. Prior to the launch of the programme of the TPD programmes on 22nd September, 2021, the Commission engaged all teacher unions KNUT, KUPPET and KUSNET and the professional associations who endorsed the same and gave the Commission a green light for roll-out.
52. That the programme is a coordinated and structured professional development programme organized by the Commission based on the Kenya Professional Teaching Standards (KePTS), a set of competency standards that describe the current global trends in the teaching profession for improved learning outcomes. The programme is delivered through prescribed modules developed by the Commission.
53. Like other professionals, for example, advocates, doctors, engineers and accountants, teachers are required by the Teachers Service Commission Act, 2012 to undertake professional development programmes to enhance their knowledge and skills so as to improve their competence and leadership capacity through structured programmes developed by the Teachers Service Commission. The main objective of the programme is to professionalize the teaching service and bring it at par with other professions in Kenya and globally.

Legal Provisions Underpinning Teachers Professional Programme

54. That Article 237(2)(a) and (3) of the Constitution establishes TSC as a regulator of the Teaching Service. The Article grants the Commission the power to regulate the Register of teachers, review the standards and training for persons entering the teaching service and to advise the national government on all matters relating to the teaching profession.
55. Section 11(e) of the Teacher Service Commission Act mandates the Commission to facilitate career progression and professional development for teachers in the teaching service.
56. On the other hand, Section 35 of the Teachers Service Commission Act, 2012, provides for compliance with teaching standards. Instructively, it provides:
 1. *The Commission shall take all necessary steps to ensure that persons in the teaching service comply with the teaching standards prescribed by the Commission under this Act.*
 2. *For purposes of subSection (1), the Commission shall—*
 - (a) *require every registered teacher to undertake career progression and professional development programmes as may be prescribed by regulations made under this Act;*
 - (b) *require every registered teacher to take out a teaching certificate as prescribed by regulations made under this Act;*
 - (c) *enter into agreements with any institution, body, department or agency of the Government pursuant to its functions and powers prescribed under this Section; and*
 - (d) *appoint an agent or designate a member or staff of the Commission who may enter any educational institution and make an enquiry in that regard.*
 - (3) A teacher who fails to—

- (a) undertake a prescribed career and professional development programmes; or*
 - (b) take out a teaching certificate under Section 35(2)(b) of this Act, shall be dealt with in accordance with the regulations.*
57. In view of the above, Teachers Professional Development is therefore a statutory requirement underpinned by the provisions of Section 11 and 35 of the Teachers Service Commission Act. The Commission has no option but to implement the provisions of the law as required of it.
58. Regulation 48 of the Code of Regulations for Teachers provides:
- (1) Every teacher shall undertake the professional teacher development programmes prescribed or recommended by the Commission from time to time.*
 - (2) The Commission shall approve training institutions to conduct teacher development programmes.*
 - (3) The approved institutions shall issue certificates to teachers upon completion of the programme.*
59. Regulation 49 of the Code of Regulations for Teachers provides:
- (1) Every teacher who successfully completes a professional teacher development programme under regulation 48 shall be issued with a teaching certificate by the Commission in the manner prescribed under the Ninth Schedule.*
60. As may be discerned from the Constitution, statute law and regulations, the programme falls within the mandate of the Commission as a Regulator of the teaching profession. Teachers have a legal obligation to comply with the regulatory requirements attendant to the profession.

Procurement of Service Providers for Teacher Development Programme

61. The service providers were procured by the Commission following a rigorous procurement process as per the provisions of Article 227 and the Public Procurement and Asset Disposal Act (PPAD).
62. The institutions that filed their bids were Mt. Kenya University, Kenya Education Management Institute (KEMI), Riara University, Kenyatta University, Kenya Institute of Special Education (KISE), CEMASTEIA (Private Company), Moi University and the French Embassy out of which only four were awarded the contract namely Kenyatta University, Mt. Kenya University, Riara University and Kenya Education Management Institute
63. At the expiry of the contract period of the current tender, the Commission will re-advertise the same for willing institutions to bid.

Mode of Delivery of the Programme

64. Teachers Professional Development will be delivered by the service provider through physical sessions of 5 days only once per year. The rest of the sessions will be delivered through an online platform. The physical sessions will be undertaken at the sub-county level and will be non-residential in order to minimize travelling cost of the teacher.

Cost of the Programme

65. The Commission negotiated with the contracted service providers who agreed to reduce the cost from the initial Ksh. 12, 000 to Ksh. 6,000 per year. The cost of Ksh.6,000 is envisaged to cater for course facilitators fees; learning and assessment resources; online platform hosting; online application software for subjects, for example, virtual lab, online courses; and contract management. To implement the programme requires Kshs 4.5 billion as in the analysis below:-

	Subject Matter	Number
1.	Teachers employed by the Commission	341,760
2.	Teachers in the private sector	170,000
3.	Teachers not employed	238,686
4.	Total number of registered	750,446
	Cost of TPD 750,446 x 6,000	4.5 Billion

66. The Commission requested the National Assembly to consider budgetary allocation of Ksh. 4.5 billion to cater for TPD costs for all registered teachers as shown below.

4.0 COMMITTEE FINDINGS

Issues for Determination by the Committee

(i) Public Participation on the roll-out and implementation of Teacher Professional Development Policy

The Committee observed that Teacher Professional Development is anchored under Sections 11 and 35 (2) (a) of the Teachers Service Commission Act and under Regulations 48 & 49 of Code of Regulations which obligates all teachers to undertake career progression as may be prescribed by the Commission.

Prior to the roll out of the programme, the Commission ought to have conducted extensive public participation on the programme as required under Article 232(1)(d) and address concerns on the programme. During consideration of the petition the Committee could not ascertain whether public participation on Teacher Professional Development programme as designed was undertaken before roll-out.

That diverse views and public debate on the programme would have made teachers more aware and prepared for the implementation of the TPD programme as well as improvement of the programme by the employer.

(ii) Restraining Teachers Service Commission from rolling out Teacher Professional Development

The Committee observed that the prayer of restraining the Teachers Service Commission from rolling-out Teachers Professional Development programme is within the authority of the National Assembly pursuant to Article 95 (2) of the Constitution which mandates the House to deliberate on and resolve issues of concern to people. Further Article 119 (1) empowers any person to Petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

(iii) Circumstances under which Teachers Service Commission selected only four institutions to offer Teacher Professional Development.

The Committee observed that the Teachers Service Commission procured service providers through a procurement process as per Article 227 of the Constitution and the Public Procurement and Disposal Act. According to TSC, eight institutions bid for the contract namely Mt. Kenya University, Moi University, Kenya Education Management Institute (KEMI), Riara University, Kenyatta University, Kenya Institute of Special Education (KISE), Centre for Mathematics, Science and Technology Education in Africa and the French Embassy out of which only four (4) were awarded the contract. It was not clear why top universities and institutions did not bid despite having adequate infrastructural network, human resource capacity and experience to successfully run the programme.

The Commission has however undertaken to advertise the tender once the current contract expires.

(iv) Recommendation to the Ministry of Education to take over Teacher Professional Development for Teachers

The Committee observed that Article 237 empowers the Teachers Service Commission to register, recruit and employ registered trained teachers. The Commission is further mandated under Article 237(3) to review standards of education and training of persons entering the teaching service.

Further, Section 35 of the Teachers Service Commission Act, 2012, provides that the Commission shall take all necessary steps to ensure that persons in the teaching service comply with the teaching standards prescribed by the Commission and shall require every registered teachers to undertake career progression and professional development programmes as may be prescribed by regulations made under the Act.

Thus its solely the mandate of the Teachers Service Commission to undertake professional development of teachers.

(v) Legislation of the necessary legislative framework for establishment of a professional body

The Committee observed that the Teachers Service Commission holds the constitutional and statutory mandate of the employer and regulator with the powers conferred by Article 237 of the Constitution and Teachers Service Commission Act, 2012. There is need to establish a separate regulatory agency to remedy conflict of interest.

(vi) Any other intervention by the Committee

The Committee observed that teachers are required to personally bear the cost of Kshs. 6,000 for each module of the TPD Programme which amounts to a total of Kshs. 180,000 for the entire programme. This is despite low salary increments for teachers, stagnation in the same job group and the rising inflation rate which has reduced the disposal income of teachers.

That unlike in other professionals in other sectors, teachers would derive no personal benefit from their continuous professional development out of the workplace since they are debarred from practicing their profession outside official public employment.

In view of the foregoing and as an intervention measure, the Committee has made a proposal to the National Treasury through the Budget and Appropriations Committee of the National Assembly for the Government to allocate funds annually to the Teachers Service Commission to cater for Teacher Professional Development to ensure that the burden of paying for the programme is lifted off the teachers.

5.0 COMMITTEE RECOMMENDATIONS

In response to the Petitioners' prayers, the Committee recommends: -

1. That the Teachers Service Commission suspends the roll-out and implementation of the Teacher Professional Development programme until the following concerns regarding the programme are addressed by the Commission: -
 - (i) That the Teachers Service Commission should conduct extensive public participation as required under Article 232(1)(d) of the Constitution and take into account the views of teachers, teachers trade unions and other stakeholders with a view of building consensus on the programme.
 - (ii) That sourcing of service providers/institutions/centres to offer the programme should be broadened to ensure even distribution of the centres across the counties for easy access.
2. That the Teacher Professional Development programme being a training initiated by the employer should be paid for by the Government.
3. That Parliament should enact legislation and pass amendments to Article 237 of the Constitution and the Teachers Service Commission Act, 2012 to remedy on the conflict of interest of the Commission being a regulator and an employer and further scrutinize and approve regulations governing Teacher Professional Development.

Sign  Date 01/03/2022
HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

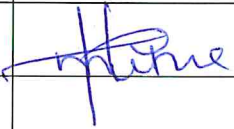
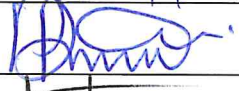
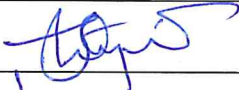
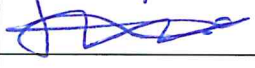
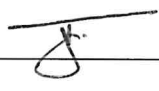
ANNEXURES

1. Report Adoption List
2. Minutes
3. Copy of the Petition

KENYA NATIONAL ASSEMBLY

COMMITTEE ON EDUCATION AND RESEARCH

Adoption of the Report on the Petition Regarding the Suspension of Teachers Professional Development (TPD) by the Teachers Service Commission (TSC)

	NAME	
1.	Hon. Florence Mutua, CBS, MP - Chairperson	
2.	Hon. Ngunjiri Wambugu, CBS, MP - Vice Chairperson	
3.	Hon. Geoffrey Odanga, MP	
4.	Hon. (Dr.) Pamela Ochieng, MP	
5.	Hon. (Eng.) Nzambia Kithua, MP	
6.	Hon. (Prof.) Zadoc Ogutu, MP	
7.	Hon. Eric Muchangi, MP	
8.	Hon. Eve Obara, MBS, MP	
9.	Hon. Jackson Lekumontare, MP	
10.	Hon. Jerusha Momanyi, MP	
11.	Hon. Joseph Tonui, MP	
12.	Hon. Omboko Milemba, MP	
13.	Hon. Peter Lochakapong, MP	
14.	Hon. Wilson Sossion, MP	
15.	Hon. (Dr.) Wilson Kogo, MP	
16.	Hon. (Dr.) Daniel Kamuren Tuitoek, MP	
17.	Hon. James Gichuki Mugambi, MP	
18.	Hon. John Paul Mwirigi, MP	
19.	Hon. Mohammed Ali Lokiru, MP	

**MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION AND RESEARCH HELD ON TUESDAY, 22ND FEBRUARY 2022, IN 4TH
FLOOR COMMITTEE BOARD ROOM, CONTINENTAL HOUSE, AT 10.00 AM**

PRESENT

1. Hon. Florence M. Mutua, CBS, MP – **Chairperson**
2. Hon. Geoffrey Odanga, MP
3. Hon. (Dr.) Pamela Ochieng, MP
4. Hon. (Eng.) Nzambia Kithua, MP
5. Hon. (Prof.) Zadoc Ogutu, MP
6. Hon. Jackson Lekumontare, MP
7. Hon. Jerusha Momanyi, MP
8. Hon. Joseph Tonui, MP
9. Hon. Peter Lochakapong, MP
10. Hon. Wilson Sossion, MP
11. Hon. (Dr.) Daniel Kamuren Tuitoek, MP

ABSENT WITH APOLOGY

1. Hon. Wambugu Ngunjiri, MP - **Vice- Chairperson**
2. Hon. Eric Muchangi, MP
3. Hon. Eve Obara, MBS, MP
4. Hon. Omboko Milemba, MP
5. Hon. (Dr.) Wilson Kogo, MP
6. Hon. Gichuki Mugambi, MP
7. Hon. John Paul Mwirigi, MP
8. Hon. Mohammed Ali Lokiru, MP

COMMITTEE SECRETARIAT

1. Mr. Philip Lekarkar – Clerk Assistant II
2. Ms. Grace Wahu – Clerk Assistant III
3. Mr. Eric Kanyi – Fiscal Analyst I
4. Ms. Winnie Kulei – Research Officer II
5. Ms. Catherine Mukunyi – Sergeant At Arms I
6. Mr. Collins Mahamba – Audio Officer

MIN. NO. EDUC/2022/36: PRELIMINARIES

The meeting was called to order at 10.10 am. A word of prayer was said by Hon. (Prof.) Zadoc Ogutu, MP. The Agenda of the meeting was adopted having been proposed by Hon. Jerusha Momanyi, MP, and seconded by Hon. (Dr.) Pamela Ochieng, MP.

MIN. NO. EDUC/2022/37: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO. EDUC/2022/38: ADOPTION OF THE REPORT ON THE PETITION REGARDING THE TEACHERS' PROFESSIONAL DEVELOPMENT (TPD) BY HON. OMBOKO MILEMBA, MP

COMMITTEE OBSERVATIONS

The Members considered the Report and made the following observations:-

(i) Public Participation on the roll-out and implementation of Teacher Professional Development Policy

The Committee observed that Teacher Professional Development is anchored under Sections 11 and 35 (2) (a) of the Teachers Service Commission Act and under Regulations 48 & 49 of Code of Regulations which obligates all teachers to undertake career progression as may be prescribed by the Commission. No evidence was presented the Committee that the Commission undertook public participation on the programme before roll-out.

Prior to the roll out of the programme, the Commission ought to have conducted extensive public participation on the programme as required under Article 232(1)(d) and address concerns on the programme.

That diverse views and public debate on the programme would have made teachers more aware and prepared for the implementation of the TPD programme as well as improvement of the programme by the employer.

(ii) Restraining Teachers Service Commission from rolling out Teacher Professional Development

The Committee observed that the prayer of restraining the Teachers Service Commission from rolling-out Teachers Professional Development programme is within the authority of the National Assembly pursuant to Article 95 (2) of the Constitution which mandates the House to deliberate on and resolve issues of concern to people. Further Article 119 (1) empowers any person to Petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

(iii) Circumstances under which Teachers Service Commission selected only four institutions to offer Teacher Professional Development.

The Committee observed that the Teachers Service Commission procured service providers through a procurement process as per Article 227 of the Constitution and the Public Procurement and Disposal Act. According to TSC, eight institutions bid for the contract namely Mt. Kenya University, Moi University, Kenya Education Management Institute (KEMI), Riara University, Kenyatta University, Kenya Institute of Special Education (KISE), Centre for Mathematics, Science and Technology Education in Africa and the French Embassy out of which only four (4) were awarded the contract. It was not clear why top universities and institutions did not bid despite having adequate infrastructural network, human resource capacity and experience to successfully run the programme.

The Commission has however undertaken to advertise the tender once the current contract expires.

(iv) Recommendation to the Ministry of Education to take over Teacher Professional Development for Teachers

The Committee observed that Article 237 empowers the Teachers Service Commission to register, recruit and employ registered trained teachers. The Commission is further mandated under Article 237(3) to review standards of education and training of persons entering the teaching service.

Further, Section 35 of the Teachers Service Commission Act, 2012, provides that the Commission shall take all necessary steps to ensure that persons in the teaching service comply with the teaching standards prescribed by the Commission and shall require every registered teacher to undertake career progression and professional development programmes as may be prescribed by regulations made under the Act.

Thus, it is solely the mandate of the Teachers Service Commission to undertake professional development of teachers.

(v) Legislation of the necessary legislative framework for establishment of a professional body

The Committee observed that the Teachers Service Commission holds the constitutional and statutory mandate of the employer and regulator with the powers conferred by Article 237 of the Constitution and Teachers Service Commission Act, 2012. There is need to establish a separate regulatory agency to remedy conflict of interest.

(vi) Any other intervention by the Committee

The Committee observed that teachers are required to personally bear the cost of Kshs. 6,000 for each module of the TPD Programme which amounts to a total of Kshs. 180,000 for the entire programme. This is despite low salary increments for teachers, stagnation in the same job group and the rising inflation rate which has reduced the disposal income of teachers.

That unlike in other professionals in other sectors, teachers would derive no personal benefit from their continuous professional development out of the workplace since they are debarred from practicing their profession outside official public employment.

In view of the foregoing and as an intervention measure, the Committee has made a proposal to the National Treasury through the Budget and Appropriations Committee of the National Assembly for the Government to allocate funds annually to the Teachers Service Commission to cater for Teacher Professional Development to ensure that the burden of paying for the programme is lifted off the teachers.

COMMITTEE RECOMMENDATIONS

In response to the Petitioners' prayers, the Committee recommended: -

1. That the Teachers Service Commission suspends the roll-out and implementation of the Teacher Professional Development programme until the following concerns regarding the programme are addressed by the Commission: -
 - (i) That the Teachers Service Commission should conduct extensive public participation as required under Article 232(1)(d) of the Constitution and take into account the views of teachers, teachers trade unions and other stakeholders with a view of building consensus on the programme.
 - (ii) That sourcing of service providers/institutions/centres to offer the programme should be broadened to ensure even distribution of the centres across the counties for easy access.
2. That the Teacher Professional Development programme being a training initiated by the employer should be paid for by the Government.
3. That Parliament should enact legislation and pass amendments to Article 237 of the Constitution and the Teachers Service Commission Act, 2012 to remedy on the conflict of interest of the Commission being a regulator and an employer and further scrutinize and approve regulations governing Teacher Professional Development.

The Report was unanimously adopted having been proposed by Hon. Jackson Lekumontare, MP and seconded by Hon. Jerusha Momanyi, MP.

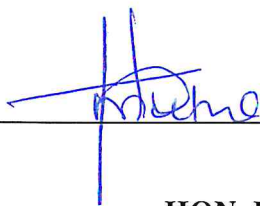
MIN. NO. EDUC/2022/39: ANY OTHER BUSINESS

There was no other business

MIN. NO. EDUC/2022/40: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.30 pm. The next meeting will be held on notice.

SIGN



DATE

01/03/2022

HON. FLORENCE MUTUA, CBS, MP
CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY (FIFTH SESSION)

PUBLIC PETITION

(No. 047 of 2021)

REGARDING SUSPENSION OF TEACHERS PROFESSIONAL DEVELOPMENT (TPD) BY THE TEACHERS SERVICE COMMISSION

I, the **UNDERSIGNED**, on behalf of Messers Moses Mboru, Francis Yivo and Justus Nyakundi, being representatives of the Kenya Union of Post Primary Education Teachers (KUPPET), Nairobi Branch and other concerned teachers across the country;

DRAW the attention of the House to the following: -

1. **THAT**, on 22nd September 2021, the Teachers Service Commission (TSC) rolled out the Teacher Professional Development (TPD) undertaken by all practicing teachers every five years as mandatory refresher modules for renewal of certification;
2. **THAT**, despite the fact that teachers are directly affected by the TPD policy, the Teachers Service Commission did not involve teachers in the preparation of the policy framework for the TPD and its subsequent roll-out, contrary to the mandatory requirements of Article 232(1)(d) of the Constitution;
3. **THAT**, without consultations with teachers, the TSC committed teachers to personally meet the burden of paying Kshs. 6,000.00 for each module of the TPD Programme, or a total of Kshs. 180,000.00 for the entire programme;
4. **THAT**, the Teachers Service Commission has not made public to the teachers of this country and other stakeholders in the education sector the considerations it based on in arriving at the above exorbitant cost per module;

PUBLIC PETITION

REGARDING SUSPENSION OF TEACHERS PROFESSIONAL DEVELOPMENT (TPD) BY THE TEACHERS SERVICE COMMISSION

5. **THAT**, it is in public domain that teachers are underpaid, most of them have stagnated at the same Job Group for a period varying between ten and twenty five years and, with the recently signed a non-monetary Collective Bargaining Agreement (CBA), it is insensitive for the TSC to require underpaid teachers to pay a whopping Kshs. 180,000 for a certification Programme;
6. **THAT**, fair international labour practices demand that an employer who comes up with compulsory employees' capacity strengthening programmes should shoulder the attendant cost of the training;
7. **THAT**, in unclear circumstances and notwithstanding the existence of reputable public universities countrywide, TSC selected only four education institutions namely, Riara University, Mount Kenya University, Kenyatta University and the Kenya Education Management Institute (KEMI), all based in Nairobi region to run the TPD Programme for teachers drawn from all over the country;
8. **THAT**, given the nature of basic education as a mandatory public good guaranteed under the Constitution, professional development of teachers ought to be approached holistically and the certification process standardized under the ambit of the Ministry of Education and not the Teachers Service Commission;
9. **THAT**, the decision by TSC to manage teachers professional development and regulate the teaching profession is a departure from the established practice where professions have self-regulatory mechanisms and bodies that are distinct from employers;
10. **THAT**, to achieve a well-coordinated and holistic approach, the Teacher Professional Development Programme ought to have been integrated in the ongoing capacity strengthening programmes for ~~teachers on the Competency Based Curriculum so as to avoid~~ duplication of Government effort, waste of public resources and subjecting teachers to bearing the burden of a mandatory programme;

PUBLIC PETITION

REGARDING SUSPENSION OF TEACHERS PROFESSIONAL DEVELOPMENT (TPD) BY THE TEACHERS SERVICE COMMISSION

11. THAT, if the TSC is not restrained from implementing the Teacher Professional Development Programme, the rights of teachers and stakeholders under Article 232(1)(d) of the Constitution stand the risk of being prejudiced;

12. THAT, the matters raised in this petition are not pending before any court of law, constitutional or legal body;

THEREFORE, your humble petitioners pray for intervention of this House to –

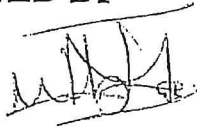
- (1) cause the Teachers Service Commission to undertake public participation on the TPD policy as required under Article 132(1)(d) of the Constitution and take into account the views of teachers and stakeholders in order to build consensus on and ownership of the programme;
- (2) restrain the Teachers Service Commission from rolling out the Teacher Professional Development Programme as currently designed, until the concerns raised by the Petitioners are resolved;
- (3) inquire into the circumstances under which the Teachers Service Commission selected only four institutions, all in Nairobi region, to offer the TPD Programme despite there being other reputable universities countrywide;
- (4) recommend to the Ministry of Education to take over implementation of the Teacher Professional Development Programme as an integral part of the Competency Based Curriculum uptake;
- (5) recommend that the Ministry of Education meets the cost of the mandatory professional development programme for teachers in public institutions in line with international labour practices that obligate an employer who comes with compulsory employees

capacity strengthening to plan to shoulder the attendant cost of the training;

- (6) put in place necessary legislative framework to provide for establishment of a professional regulatory body for teachers so as to avoid conflict of interest where the Teachers Service Commission acts both as an employer and as a regulator of teachers; and
- (7) make any other recommendations deemed fit in securing the petitioners' property, economic and social rights.

And your **PETITIONER** will ever pray.

PRESENTED BY



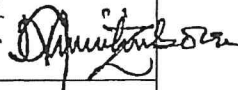
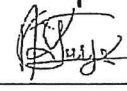
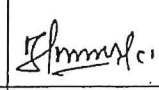
HON. OMBOKO MILEMBA, MP
MEMBER FOR EMUHAYA CONSTITUENCY

DATE:

28/09/2021

PUBLIC PETITION

REGARDING SUSPENSION OF TEACHERS PROFESSIONAL DEVELOPMENT (TPD) BY THE TEACHERS SERVICE COMMISSION

No.	NAME	ID NUMBER	ADDRESS OR TELEPHONE NO.	SIGNATURE OR THUMP IMPRESSION
1.	MOSES MBORA	9794090	KUPPET NRB BRANCH 0721884325	
2.	YIVO FRANCIS	27296710	KUPPET NARI 0722743442	
3.	JUSTUS NYAKUNDIO.	22193265	0725419037 KUPPET-NAIROBI	
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