Approved
SNA
11/6/24

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (THIRD SESSION)
PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 70 OF 2023 REGARDING HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR TEACHERS IN CHONYI SUB COUNTY BY HON. RICHARD KEN CHONGA, MP, MEMBER FOR KILIFI SOUTH CONSTITUENCY

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 11 JUN 2024 DAY: Tuesday
TABLED BY: Chair, Public petitions committee Hon. Nimrod Mbai, MP
CLERK-AT THE-TABLE: Benson Inzofu

JUNE, 2024

NATIONAL ASSEMBLY
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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County. The petition was presented to the House pursuant to Standing Order No. 225 (2) (b) by the Member for Kilifi South Constituency, the Hon. Richard Ken Chonga, MP on 23rd November, 2023.

The Petitioner prayed that the National Assembly through the Public Petitions Committee engages Teachers Service Commission (TSC) to ensure teachers working in Chonyi are paid hardship allowance and recommends that the entire Kilifi County be gazetted as a hardship area.

The Committee considered the Petition and observed that the Ministry of Public Service, Performance & Delivery Management had constituted an Inter-Agency Technical Committee to address disparities regarding hardship areas across the public service and promote fairness, ensure parity of treatment among public servants.

The Committee recommends that the Ministry of Public Service, Performance & Delivery Management fast-tracks the review of relevant policies with a view to designate all regions meeting the set-out criteria as hardship areas; and submit the report to the National Assembly within three (3) months upon tabling of this report and that the Ministry of Public Service, Performance & Delivery Management reviews the categorization and gazettement of hardship areas every ten years.

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of the Petition.

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

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

Date.....11/6/2024.....

PART ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

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

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

1.2. Committee Membership

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

Chairperson
Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson
Hon. Janet Jepkemboi Sitienei, M.P
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
Wiper Democratic Movement-Kenya (WDM-K)

1.3. Committee Secretariat

The Public Petitions Committee is facilitated by the following secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Senior Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Ms. Patricia Gichane
Legal Counsel II

Ms. Roselyne Njuki
Senior Serjeant-at-Arms I

Mr. Calvin Karungo
Media Relations Officer III

Ms. Miriam Modo
First Clerk Assistant

Mr. Isaasc Nabiswa
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Paul Shana
Serjeant-at-Arms

Mr. Peter Muteithia
Audio Officer

PART TWO

2. BACKGROUND INFORMATION ON THE PETITION

2.1. INTRODUCTION

1. Public Petition No. 70 of 2023 by the Hon. Richard Ken Chonga, MP on behalf the teachers in Chonyi Sub-County, Kilifi County was presented on Thursday, 23rd November 2023.

2. The Petitioner stated that despite the provisions of Article 27 of the Constitution against inequality and discrimination, teachers working in Chonyi area have endured hardship hurdles since independence;

3. The teachers travel long distances without access to medical services, proper housing, food, and other essential social amenities which are only available in Kilifi Town, the headquarter of Kilifi County which is thirty (30) kilometres away. Further, even the Teachers Service Commission (TSC) offices are located in Vipingo area where a teacher from Chonyi area spends about Kshs. 1,000 to access their employer's office.

4. Hardship allowance was introduced as an incentive to teachers and other public officers working in remote areas to compensate for lack of basic amenities such as hospitals, improved infrastructure, harsh climatic conditions and communication access.

5. The aforementioned challenges have caused many teachers working in Chonyi area to seek transfers to other areas with better working conditions leading to insufficient number of teachers in the area.

6. The Petitioner averred that a countrywide data collection exercise aimed at reviewing hardship areas was led by an Inter-Agency Committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17th September, 2021 and listed Mbita, Lunga Lunga, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers.

7. Despite the proposal, Chonyi has never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA.

8. Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including

Chonyi. Further most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale.

2.2. PETITIONER'S PRAYERS

The Petitioner prayed that the National Assembly through the Public Petitions Committee—

9. Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances.

10. Inquires into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward.

11. Makes any other appropriate recommendations it deems fit in addressing the circumstances raised in this Petition.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1. SUBMISSIONS BY THE PETITIONER

On Thursday, 29th February 2024, Member for Kilifi South Constituency (Hon. Richard Ken Chonga, M.P), appeared before the Committee and submitted as follows—

12. Teachers working in Chonyi area endured hardship hurdles since independence as they travel long distances without access to medical services, proper housing, food, and other essential social amenities which were only available in Kilifi Town, the headquarter of Kilifi County, 30 kilometres away. Teachers Service Commission (TSC) offices located in Vipingo area where a teacher from Chonyi area spends about Kshs. 1,000 to access their employer's office.

13. The hardship allowance was introduced as an incentive to teachers and other public officers working in remote areas to compensate for lack of basic amenities such as hospitals, improved infrastructure, harsh climatic conditions and communication access.

14. Teachers in some neighbouring constituencies in Kilifi South and areas such as Ganze were benefiting from hardship allowance.

15. The aforementioned challenges had caused many teachers working in Chonyi area to seek transfers to other areas with better working conditions leading to insufficient number of teachers in the area.

16. The shortage of teachers had caused the ripple effect and created low morale for teachers remaining in the region due to heavy workload. Parents also were burdened to pay extra resources to hire teachers despite the poverty levels in the county.

17. The hardship allowance would motivate teachers in Chonyi and motivate others to come to Chonyi and improve the readiness of students to take exams.

18. A countrywide data collection exercise aimed at reviewing hardship areas was led by an inter-agency committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17th September, 2021 and listed Mbita, Lunga Lunga, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers.

19. Despite the proposal, Chonyi was never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA.

20. Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including Chonyi. Further, most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale.

21. Efforts made to have the matter addressed by TSC had not resulted into satisfactory response.

22. Regarding whether the gazettement should benefit Chonyi Sub County or the entire Kilifi County, the Petitioner indicated that the petition targeted teachers in Chonyi to benefit. However, the entire Kilifi County should also be considered as ASAL area to benefit from other concession that comes along with that.

23. Regarding the justification for gazetting Chonyi as a hardship area and whether the issues were perennial or seasonal, the Petitioner stated that the area deserved the gazettement as other areas with similar working conditions were already gazetted. Further, despite some of the challenges affecting other parts of the country the infrastructure in Chonyi was a perennial problem.

24. Regarding municipality status and in contributed to extra allowances for teachers, the Petitioner indicated that a municipality status would attract various benefits such as enhanced house allowance for teachers not accorded to rural areas.

25. Regarding the efforts made for TSC to address the concerns raised by the teachers, the Petitioner and KUPPET officials indicated that despite following up the matter with TSC, no action had been taken.

26. Regarding the fate of other civil servants in relation to the gazettement, the Petitioner indicated that the teachers were putting pressure for gazettement but other civil servants would also benefit as per the respective employers' terms.

3.2. SUBMISSIONS BY THE CHAIRPERSON OF THE KENYA UNION OF POST PRIMARY EDUCATION TEACHERS (KUPPET), KILIFI BRANCH

On Thursday, 29th February 2024, the Chairperson, KUPPET Kilifi Branch, Mr. Morris Chiguba accompanied by the Executive Secretary, Mr. Caleb Mogere appeared before the Committee and submitted that they were in support of the petition and added as follows—

27. Despite its geographical location and lack of municipality status, Chonyi area was not gazetted as a hardship area. Consequently, teachers in the region were unable to benefit from hardship allowances, unlike other areas with similar work conditions.

28. On medical services, the area lacked even a single medical facility accredited by various medical schemes for teachers. It only had a poorly facilitated health centre, putting the health of teachers at risk. Teachers relied on Kilifi County Referral hospital, located about 30 kilometres away.

29. On poor housing conditions for teachers, the Chairperson submitted that due to inadequate housing in Chonyi, most teachers resided in Kilifi town hence the need for a hardship allowance.

30. The area is faced with food insecurity because of the harsh climatic conditions, unpredictable weather conditions leading to poor agricultural production.

31. There is shortage of water as there are no key water infrastructure in many parts of Chonyi. The available water sources are unhygienic and untreated, raising health concerns.

32. The electricity infrastructure is poorly developed in the area leading to exorbitantly high connection costs.

33. There are poor roads and communication networks as the major roads in Chonyi are impassable during the rainy seasons and inconvenient during the dry season due to dust, potholes, and general damages making it difficult for teachers to reach the schools. Some areas have limited network coverage, hence affecting communication.

34. Mass application of transfers by teachers has led to high staff turnover and understaffing in schools. For instance, only one out of the twelve secondary schools in Chonyi Sub County has a substantive Deputy Principal.

3.3. SUBMISSIONS BY THE MINISTRY OF PUBLIC SERVICE, PERFORMANCE & DELIVERY MANAGEMENT

The Cabinet Secretary, Ministry of Public Service, Performance & Delivery Management, Hon. Moses Kuria, HSC vide a letter Ref No. MPSG&DM/3/7 and dated 20th March 2024 forwarded written submissions as follows—

35. The Ministry had noted the many petitions presented to the National Assembly on the important matter of hardship areas and payment of hardship allowances.

36. The Government took cognizance of the existing disparities in designated hardship areas in the public service. To address these disparities across the public service and promote fairness, ensure parity of treatment among Public Servants, the Government constituted an Inter-Agency Technical Committee Constitution of an Inter-Agency Technical Committee to address existing disparities.

37. The committee comprised of representatives from the Ministry responsible for Public Service, Ministry of Interior and National Administration, Ministry of Education, The National Treasury & Economic Planning, the Judiciary, Public Service Commission (PSC), Teachers Service Commission (TSC), Salaries and Remuneration Commission (SRC), the Kenya National Bureau of Statistics (KNBS) and the Council of Governors (COG).

38. The Terms of Reference for the Committee were as follows:

    i. Study the current policies and applicable Circulars on designated hardship areas and payment of hardship allowance in the civil service;

    ii. Undertake a comparative analysis of other existing policies on designated hardship areas and payment of hardship allowance in the public service and other jurisdictions;

    iii. Study the issues in petitions presented to the National Assembly on the matter of designated hardship areas and payment of hardship allowance to public servants;

    iv. Study concerns raised by Union of Kenya Civil Servants (UKCS) regarding designated hardship areas and payment of hardship allowance as provided in the Collective Bargaining Agreement (CBA), 2017;

    v. Address any other issues incidental to the matter on designated hardship areas and payment of Hardship Allowance; and

vi. Prepare a Report on the study with recommendations and way forward on categorization of designated hardship areas and payment of hardship allowance.

39. The report on the review of designated hardship areas and rates for hardship allowances was submitted to the Salaries and Remuneration Commission (SRC) for consideration. Once a response is received from SRC, the report will then be forwarded to Cabinet for approval.

40. Designated hardship areas in the public service for purposes of payment of hardship allowance are remote areas categorized as lacking or having inadequate basic social services, amenities and infrastructure.

41. Prior to 1997, the civil and teaching services had similar designated hardship areas, which included the former North Eastern Province (Wajir, Mandera & Garissa), Samburu, Isiolo, Lamu, Marsabit, Tana River, West Pokot, Turkana and Northern area of Baringo. This comprised of eleven (11) fairly distinct hardship areas.

42. Designation of such areas was undertaken in consultation with the Office of the President - the then Directorate of Personnel Management and Provincial Administration and Internal Security.

43. In 1997, the Minister for Education through Legal Notice No. 534 of 11th November, 1997 gazetted an additional twenty-five (25) hardship areas for the teaching service following a recommendation by the Teachers Service Remuneration Committee. This followed a Collective Bargaining Agreement (CBA) with the Kenya National Union of Teachers (KNUT). The recommendation was based on the agreement that teachers work in more remote areas as compared to civil servants who were mostly posted to District and Divisional Headquarters.

44. In 2005, the number of designated hardship areas for the teaching service was increased from thirty-six (36) to forty-four (44) based on the CBA between TSC and the Union.

45. The civil service (national and county governments) had sixteen (16) designated hardship areas while the Judiciary had twenty-one (21) areas designated as hardship based on location of the law courts as indicated in the Table 1 below:

COMPARISON OF HARDSHIP DESIGNATED AREAS IN PUBLIC SERVICE

	Civil Service/ Parastatal	Status		Judicial Service Commission	Status		Teachers Service Commission	Status
1	Tana River	Entire County	1.	Daadab	Town/Centre	1	Suba	Mfangano and Rusinga Islands
2	Lamu	Entire County	2.	Garissa	Town/Centre	2	Kuria	Kegonga Division
3	Garissa	Entire County	3.	Garsen	Town/Centre	3	Busia	Budalangi Division
4	Wajir	Entire County	4.	Habaswein	Town/Centre	4	Kajiado	Entire District
5	Mandera	Entire County	5.	Hola	Town/Centre	5	Nakuru	Mbogoini and Makongeni Divisions(lower Solai)
6	Marsabit	Entire County	6.	Kabarnet	Town/Centre	6	Laikipia	Entire District
7	Isiolo	Entire County	7.	Kakuma	Town/Centre	7	Kitui	Entire District

8	Makueni	Entire County	8. Kapenguria	Town/Centre	8	Kilifi	Ganze Division
9	Turkana	Entire County	9. Kehancha	Town/Centre	9	Keiyo	Entire District
10	West Pokot	Entire County	10. Kyuso	Town/Centre	10	Marakwet	Entire District
11	Samburu	Entire County	11. Lamu	Town/Centre	11	Kwale	Kinango and Samburu Divisions
12	Elgeyo	Entire County	12. Lodwar	Town/Centre	12	Trans Mara	Entire District
13	Laikipia	Entire County	13. Mandera	Town/Centre	13	Mwingi	Entire District
14	Baringo	Excludes Koibatek Sub-county	14. Mararal	Town/Centre	14	Tharaka	Entire District
15	Nandi	Tinderet Sub- County only	15. Marimanti	Town/Centre	15	Mbeere	Entire District
16	Taita Taveta	Manyani Area in Ngolia Ward	16. Marsabit	Town/Centre	16	Malindi	Magarini,Marafa and Kakoneni Division
	Total: 16 Areas		17. Moyale	Town/Centre	17	Machakos	Yatta and Masinga Division
			18. Mutomo	Town/Centre	18	Nyeri	Kieni Division
			19. Mwingi	Town/Centre	19	Kiambu	Ndeiya and Karai locations
			20. Taveta	Town/Centre	20	Maragwa	Makuyu Division
			21. Wajir	Town/Centre	21	Nyandarua	Nyahururu High school
			Total: 21 Areas		22	Nyandarua	Nyandarua Boarding Primary
					23	Kericho	Divisions
					24	Kisumu	Muhoroni Valley and Sondu Divisions
					25	Thika	Kakuzi Division
					26	Koibatek	Kimg'orom Divisions
					27	Narok	Eastern Mau, Osupuko, Mara, Loita and Southern Olulunga Divisions
					28	Makueni	Entire District
					29	Isiolo	Entire District
					30	Moyale	Entire District
					31	Marsabit	Entire District
					32	Garissa	Entire District
					33	Mandera	Entire District
					34	Wajir	Entire District
					35	Lamu	Entire District
					36	Tana River	Entire District
					37	Taita Taveta	Entire District
					38	Baringo	Entire District
					39	Samburu	Entire District
					40	Turkana	Entire District
					41	West Pokot	Entire District
					42	Ijara	Entire District
					43	Nandi	Tinderet Division
					44	Meru North (Nyambene)	Mutuati,Ndoleli and Igembe East Divisions; Buuri, Giika locations; Linjoka, Ankamia Sub -locations; Amung'enti, Thangatha, Mumui, Kiujuline and Akithi zones
						Total: 44 Areas	

Source: Ministry of Public Service, Performance & Delivery Management

46. Chonyi Sub County in Kilifi County was not designated as a hardship area for purposes of payment of hardship allowance of both civil service/parastatals, Judicial Service Commission (JSC) and Teachers Service Commission (TSC).

47. The Kenya National Bureau of Statistics (KNBS) identified and weighted seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index as indicated in Table 2 below—

Sno	Criterion	How to GiveFull Mark	Weight
1.	**Food** - Unavailability and Inaccessibility		**25**
	i. Area on (perpetual) relief food	Yes	5
	ii. Availability of market place	None	5
	iii. Average Distance to food markets	Long	5
	iv. Cost of food expensive	High	5
	v. Low agricultural productivity of the area/ supply of food	Low	5
2.	**Water** - Unavailability and Inaccessibility		**15**
	i. Availability of piped water	None	3
	ii. Area gets water from seasonal rivers/borehole/springs	Yes	3
	iii. Area has permanent river	None	3
	iv. Private water tanks/vendor supply water to the area	Yes	3
	v. Average Distance to water point	Long	3
3.	**Transport and Communication Service** - Inadequacy		**20**
	i. Availability/Distance of tarmac roads	None	4
	ii. Availability/Distance of all-weather roads	None	4
	iii. Mobile-phone connectivity	None	4
	iv. Availability/Reliability of mode of public transport	None	4
	v. Roads impassable during rainy season	Yes	4
4.	**Social Services** - Unavailability and Inaccessibility		**15**
	i. Schools are available/Distance	None	3
	ii. Availability/Average Distance of Bank/Postal services	None	3
	iii. Availability/Distance of hospitals/health facilities	None	3
	iv. Electricity available	None	3
	v. Housing for Public Servants / Availability of housing facilities	None	3
5.	**Climate and Terrain** - Harshness		**15**
	i. Area dries with erratic rainfall	Yes	5
	ii. Area gets flooding during rainy season	Yes	2.5
	iii. The region is hot and dry	Yes	2.5
	iv. The region is semi- arid	Yes	2.5
	v. Difficult terrain (mountainous with deep gullies)	Yes	2.5
6.	**Security** - High Possibility of Threats		**5**
	i. Human wildlife conflict	Yes	2.5
	ii. Banditry / cattle rustling	Yes	2.5
7.	**Poverty** - Severity	**High Index**	**5**
	TOTAL		**100**

Source: *Kenya National Bureau of Statistics (KNBS)*

48. The determination of designation of the specified areas as hardship and payment of hardship allowance shall be done upon approval by the Salaries and Remuneration Commission and the Cabinet.

PART FOUR

4. COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and other witnesses, the Committee observed that—

49. The Ministry of Public Service, Performance & Delivery Management had constituted an Inter-Agency Technical Committee to address disparities regarding hardship areas across the public service and promote fairness, ensure parity of treatment among public servants.

50. The Kenya National Bureau of Statistics (KNBS) has identified and weighted seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index.

51. Chonyi Sub County is not among of the forty-four (44) designated as hardship areas based on the CBA between TSC and the Union.

52. Chonyi Sub County has various challenges that warrant its inclusion as a hardship area including poor access to medical services, housing, food, and other essential social amenities which are only available in Kilifi Town.

PART FIVE

5. ANALYSIS OF ISSUES FOR DETERMINATION

The Committee makes determination on the issues raised in the petition as follows—

Prayer 1: ***Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances.***

The Committee notes that—

53. The review of hardship areas which leads to the payment of hardship allowances for civil servants is the role of the Ministry of Public Service, Performance and Delivery Management in consultation with various agencies including Teachers Service Commission (TSC).

54. Further, the TSC had made submissions before the Inter-Agency Technical Committee addressing the existing disparities regarding gazettement of hardship areas to facilitate the payment of hardship allowance for civil servants.

Prayer 2: ***Inquires into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward.***

The Committee notes that—

55. Article 10 of the Constitution binds all state organs, state officers, public officers and all persons to adhere to the national values and principles of governance including equity, social justice, equality, human rights, non-discrimination and protection of the marginalised.

56. The Ministry of Public Service, Performance and Delivery Management has established an Inter-Agency Technical to address existing disparities regarding gazettement of hardship areas to facilitated the payment of hardship allowance for civil servants.

57. The designation of hardship areas in the public service for purposes of payment of hardship allowance relied on the seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index as identified by Kenya National Bureau of Statistics (KNBS).

58. The determination of designation of the specified hardship areas and subsequent payment of hardship allowances for teachers and other civil servants is concluded upon approval by the Salaries and Remuneration Commission (SRC) and the Cabinet.

PART FIVE

6. COMMITTEE RECOMMENDATIONS

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

59. **The Ministry of Public Service, Performance & Delivery Management fast-tracks the review of relevant policies with a view to designate all regions meeting the set-out criteria as hardship areas; and submit the report to the National Assembly within three (3) months upon tabling of this report.**

60. **The Ministry of Public Service, Performance & Delivery Management reviews the categorization and gazettement of hardship areas every ten years.**

61. **Pursuant to the provisions of Standing Order 208A(c), the findings arising from the consideration of this Petition be debated by the House.**

Sign: ----------

Date: 11/6/2024 ----------

THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

ANNEXURES

Annex 1: The Adoption Schedule

Annex 2: Public Petition No. 70 of 2023 regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County

Annex 3: Letter Ref No. MPSG&DM/3/7 and dated 20th March 2024 by the Ministry of Public Service, Performance and Delivery Management

Annex 4: Minutes of the 5th Sitting held on 29th February, 2024

Annex 5: Minutes of the 32nd Sitting held on Wednesday, 22nd May, 2024

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 70 OF 2023 REGARDING HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR TEACHERS IN CHONYI SUB COUNTY

DATE.....22/05/2024.....

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of a **Public Petition No. 70 of 2023 regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County** to confirm our approval and confirm its accuracy, validity and authenticity:

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

1 of 3

Approved
SNA
21/11/23

Hon. Speaker, You may approve. 16.11.23

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION

(No. 70 of 2023)

REGARDING HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR TEACHERS IN CHONYI SUB-COUNTY

I, the **UNDERSIGNED** on behalf of teachers in Chonyi Sub-County, Kilifi County;

DRAW the attention of the House to the following—

1. **THAT** despite the provisions of Article 27 of the Constitution against inequality and discrimination, teachers working in Chonyi area have endured hardship hurdles since independence;

2. **THAT** the teachers travel long distances without access to medical services, proper housing, food, and other essential social amenities which are only available in Kilifi Town, the headquarter of Kilifi County which is thirty kilometers away. Further, even the Teachers Service Commission (TSC) offices are located in Vipingo area where a teacher from Chonyi area spends about Kshs.1,000 to access their employer's office;

3. **THAT** hardship allowance was introduced as an incentive to teachers and other public officers working in remote areas to compensate for lack of basic amenities such as hospitals, improved infrastructure, harsh climatic conditions and communication access;

4. **THAT** the aforementioned challenges have caused many teachers working in Chonyi area to seek transfers to other areas with better working conditions leading to insufficient number of teachers in the area;

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NATIONAL ASSEMBLY
PETITIONS DESK
25 OCT 2023
SERIAL No.....

5. **THAT** a countrywide data collection exercise aimed at reviewing hardship areas was led by an inter-agency committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17th September, 2021 and listed Mbita, Lunga Lunga, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers;

6. **THAT** despite the proposal, Chonyi has never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA;

7. **THAT** Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including Chonyi. Further, most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale;

8. **THAT** efforts made to have this matter addressed by TSC have not resulted into satisfactory response;

9. **THAT** the issues in respect of which this Petition is raised are not pending before any court of law, or any constitutional or legal body;

THEREFORE, your humble Petitioners pray that the National Assembly through the Public Petitions Committee—

i. Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances;

ii. Inquire into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward; and

iii. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONERS** will ever pray.

PRESENTED BY:

THE HON. KEN CHONGA, MP
MEMBER FOR KILIFI SOUTH CONSTITUENCY

DATE 24/OCT/2023

REPUBLIC OF KENYA
MINISTRY OF PUBLIC SERVICE, PERFORMANCE AND DELIVERY MANAGEMENT
Office of the Cabinet Secretary

Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2227411
Telex: 23125
Fax: 2243620
When replying please quote

P.O. BOX 30050- 00100
NAIROBI
KENYA

(1) DLPS
Please deal.
21/03/24

Ref No: **MPSG&DM/3/7**

20th March, 2024

The Clerk of the National Assembly
Parliament Buildings
NAIROBI

RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON VARIOUS PUBLIC PETITIONS

Reference is made to your letter Ref. KNA/DLPS/PPETC/CORR/2024/019 dated 13th March, 2024 on the above subject matter.

The Public Petitions Committee has invited me to make a presentation and provide information regarding various Petitions before them. The Ministry of Public Service, Performance and Delivery Management takes note of the key oversight role played by Committees in the National Assembly.

In this regard, the Ministry has prepared adequate and comprehensive responses on the four (4) petitions raised. I wish to express my sincere apology for being unable to appear in person for the scheduled meeting.

It is therefore my humble request that the Committee accepts written submissions by the Ministry.

(4) Ms. Modo
Respond to this w
the Committee Resolut
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DEPUTY CLERK S. KIOKO
P. Box 41842 - 00100, NAIROBI

Hon. Moses K. Kuria, HSC
CABINET SECRETARY
Encl.

Copy to: **Amos N. Gathecha, EBS, 'ndc' (K)**
Principal Secretary
State Department for Public Service
NAIROBI

(2) Head, PAJ
please process
21/3/24

(3) Kaelu
please, bring this
before the

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21 MAR 2024
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P O Box 41842, NAIROBI

Thirteenth Parliament

Third Session

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 5TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, FEBRUARY 29, 2024, IN COMMITTEE ROOM 12, NEW WING, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

1. Hon. Ernest Ogesi Kivai, M.P. - Chairing
2. Hon. Joshua Chepyegon Kandie, M.P
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Edith Vethi Nyenze, M.P.
8. Hon. Suzanne Ndunge Kiamba, M.P.
9. Hon. John Bwire Okano, M.P.
10. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Patrick Makau King'ola, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.

IN ATTENDANCE

PETITIONERS

1. The Hon. Richard Ken Chonga - Member for Kilifi Constituency
2. Mr. Chibuga Morris - Chairman, KUPPET Kilifi Branch
3. Mr. Caleb Mogere - Executive Secretary, KUPPET Kilifi County

MINISTRY OF LANDS

1. Hon. Alice Wahome - Cabinet Secretary
2. Hon. Nixon Korir - PS for State Department for Lands
3. Mr. Eric Mulevu - PA to the CS
4. Cathrine Muindi
5. Mr. Joseph Kamuyu
6. Mr. Andrew Kositany
7. Ms. Wambui Nganju

SECRETARIAT

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

MIN./PPETC/2024/ 035: PRELIMINARIES

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

MIN./PPETC/2024/036: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with CS, Lands, Public Works, Housing and Urban Develpment on consideration of the following Petitions—**

    i. *Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land;*
    ii. *Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord;*
    iii. *Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency; and*
    iv. *Illegal acquisition of private land by the defunct Awendo Town Council*

6. **Meeting with CEC in charge of Lands, Migori County (Hon. John Kobado) regarding the consideration of the following Petitions—**

    i. *Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land; and*
    ii. *Illegal acquisition of private land by the defunct Awendo Town Council*

7. **Consideration of public petition regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County—**

    i. *Meeting with Petitioner (Hon. Ken Chonga, MP)*
    ii. *Meeting with KUPPET Kilifi Branch Chairperson (Mr. Morris Chiguba)*

8. Any Other Business
9. Adjournment

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

MIN./PPETC/2024/037: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/038: MEETING WITH CEC IN CHARGE OF LANDS, MIGORI COUNTY, HON. JOHN KOBADO

The meeting was informed that Hon. John Kobado had not indicated his attendance before the committee after the invitation vide a letter Ref KNA/DLPS/PPETC/CORR/2024/008 dated 15th February 2024.

MIN./PPETC/2024/039: CONSIDERATION OF PUBLIC PETITION REGARDING HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR TEACHERS IN CHONYI SUB COUNTY

Meeting with Petitioners

The Petitioner, the Hon. Richard Ken Chonga, MP appeared before the Committee and submitted as follows—

Background of the Petition

i. Teachers working in Chonyi area endured hardship hurdles since independence as they travel long distances without access to medical services, proper housing, food, and other essential social amenities which were only available in Kilifi Town, the headquarter of Kilifi County, 30 kilometres away. Teachers Service Commission (TSC) offices located in Vipingo area where a teacher from Chonyi area spends about Kshs. 1,000 to access their employer's office.

ii. The hardship allowance was introduced as an incentive to teachers and other public officers working in remote areas to compensate for lack of basic amenities such as hospitals, improved infrastructure, harsh climatic conditions and communication access.

iii. Teachers in some neighbouring constituencies in Kilifi South and areas such as Ganze were benefiting from hardship allowance.

iv. The aforementioned challenges had caused many teachers working in Chonyi area to seek transfers to other areas with better working conditions leading to insufficient number of teachers in the area.

v. The shortage of teachers had caused the ripple effect and created low morale for teachers remaining in the region due to heavy workload. Parents also were burdened to pay extra resources to hire teachers despite the poverty levels in the county.

vi. The hardship allowance would motivate teachers in Chonyi and motivate others to come to Chonyi and improve the readiness of students to take exams.

Efforts made to address the issues

i. A countrywide data collection exercise aimed at reviewing hardship areas was led by an inter-agency committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17th September, 2021 and listed Mbita, Lunga Lunga, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers.

ii. Despite the proposal, Chonyi was never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA.

iii. Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including Chonyi. Further, most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale.

iv. Efforts made to have this matter addressed by TSC had not resulted into satisfactory response.

Prayers

That the Committee—

i. Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances.

ii. Enquires into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward.

Meeting with KUPPET, Kilifi Branch

The Chairperson, KUPPET Kilifi Branch Mr. Morris Chiguba accompanied by the Executive Secretary, Mr. Caleb Mogere appeared before the Committee and submitted that they were in support of the petition for the following reasons—

i. *Discrimination in Chonyi area as a hardship:* Despite its geographical location and lack of municipality status, Chonyi area was not gazetted as a hardship area. Consequently, teachers in the region were unable to benefit from hardship allowances, unlike other areas with similar work conditions.

ii. *Medical services:* The area lacked even a single medical facility accredited by various medical schemes for teachers. It only had a poorly facilitated health center, putting the health of teachers at risk. Teachers relied on Kilifi County Referral hospital, located about 30 kilometres away.

iii. *Poor housing conditions for teachers:* Due to inadequate housing in Chonyi, most teachers resided in Kilifi town hence the need for a hardship allowance.

iv. *Food insecurity and harsh climatic conditions:* Unpredictable weather conditions led to failures in agricultural production, causing food insecurity.

v. *Shortages and absence of water:* Key water and electricity infrastructure were absent in many parts of Chonyi. The available water sources were unhygienic and untreated, raising health concerns.

vi. *Poor roads and communication network:* Major roads in Chonyi were impassable during bad weather and inconvenient during the dry season due to dust, potholes, and general damages, making it difficult for teachers to move around. Some areas had limited network coverage, hence affecting communication.

vii. *Mass teacher transfers and understaffing:* All schools experienced understaffing, with only one out of the twelve secondary schools in Chonyi Sub County having a substantive deputy principal. The rest had deputies serving in acting capacities. This understaffing was a result of mass teacher transfers away from Chonyi due to poor working conditions.

Committee Concerns

i. Regarding whether the gazettement should benefit Chonyi Sub County or the entire Kilifi County, the Petitioner indicated that the petition targeted teachers in Chonyi to benefit. However, the entire Kilifi County should also be considered as ASAL area to benefit from other concession that comes along with that.

ii. Regarding the justification for gazetting Chonyi as a hardship area and whether the issues were perennial or seasonal, the Petitioner stated that the area deserved the gazettement as other areas with similar working conditions were already gazetted. Further, despite some of the challenges affecting other parts of the country the infrastructure in Chonyi was a perennial problem.

iii. Members sought cclarification regarding municipality status and in contributed to extra allowances for teachers. The Petitioner indicated that a municipality status would attract various benefits such as enhanced house allowance for teachers not accorded to rural areas.

iv. The Committee sought clarification on the report quoted to recommend the gazettement of Mbita, Lunga Lunga, Suba and Chonyi. The Petitioner indicated that the report recommended the regions including Chonyi but there was no follow up yet Chonyi featured in the inter-agency committee collecting data on areas due for gazettement.

v. Regarding the efforts made for TSC to address the concerns raised by the teachers, the Petitioner and KUPPET officials indicated that despite following up the matter with TSC, no action had been taken.

vi. Regarding the fate of other civil servants in relation to the gazettement, the Petitioner indicated that the teachers were putting pressure for gazettement but other civil servants would also benefit as per the respective employers' terms.

MIN./PPETC/2024/040: MEETING WITH CS, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

The Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, Hon. Alice Wahome apepared before the Committee and submitted on the various petitions as follows—

Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land

i. Macalder Mines was within a parcel registered as Muhuru/ Kadem/Macalder/498 measuring approximately 2167.5 Hectares (approximately 5,355.9 Acres)

ii. The total acreage of the land gazetted as a forest by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry in Legal Notice No. 85 of 2023 marked annexure 2 is 2494.95 Hectares (approximately 6,165.0 Acres)

iii. The initial land was MR. NO. 123 with an acreage of 6178 acres as presented in Survey plan FR. NO. 4948. A resurvey was done in 1993 which converted MR. NO. 123 to LR. NO. 17955 with an acreage of 2,500 Hectares (6,178 acres).

iv. In 1993, a subdivision of LR. NO. 17955 resulted into LR. NO. 17955/1 and 17955/2 with acreages of 1.019 Hectares (2.518 acres) and 4.170 Hectares (10.30 acres), respectively.

Committee Concern

The Committee sought clarity on the process of gazetting a land as a forest. The CS clarified that all lands are registered by the Ministry whether private, public or community land. The land in question was registered under the County Government of Migori but was leased to individuals. After the expiry of the lease, the land reverted to the county. Therefore, any negotiation on gazettement as a forest was between the county and the Ministry of Environment, Forestry and Climate Change but the Ministry of Lands was only to document the records.

Illegal acquisition of private land by the defunct Awendo Town Council

The Committee had requested the CS to provide information on:

i. The nature of restriction put on the Parcel No. North Sakwa/Kamasoga/1193 land;
ii. A list of all original owners of the entire land, which was the subject matter of the Petition; and
iii. A list of the owners who were compensated after compulsory acquisition of the land.

The CS submitted as follows—

i. The parcel North Sakwa/Kamasoga/1 193 measuring 0.5 Ha was initially registered in favor of Obiero Omedo on 9th February, 1977 as the absolute proprietor. However, on 18th April 1984, a restriction was registered against the said parcel of land restricting any dealings on the within written land until a portion measuring 0.5 Ha set aside for the expansion of the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District has been transferred to the Government.

ii. The parcels which were supposed to be surrendered to the Government were advertised vide Gazette Notice No. 3737 of 24th December 1976 outlining various parcels to be acquired by the government for the aforesaid reason.

iii. The parcel LR No. North Sakwa/Kamasoga/1193 was unutilized for gazetted reason as the lands were found to be unsuitable for sugarcane farming and were not occupied by South Nyanza Sugar Scheme. Considering section 75 of the Constitution required that once land has been compulsorily acquired it ought to be used for designated purpose only, the original owners ought to be registered as the lawful owners of the unutilized parcels of the land.

iv. A case was filed by the registered owner of the land together with twelve (12) others where they placed seventeen (17) issues for court determination. A decision was made vide a court judgment dated 19th November 2009 in Civil Suit No. 133 of 2005 at Kisii High Court.

v. According to the decree, the court ordered for the restriction to be withdrawn and a transfer to be registered in favor of the initial owner (Obiero Omedo). Upon the registration of the transfer a title deed was issued in favor of one Obiero Omedo the initial registered proprietor.

vi. On 26th May 2021 vide Succession Case No. 179 of 2019 in Migori Law Courts the said parcel of land was transferred to George Otieno Obiero as a beneficiary and a title deed was issued. Upon transfer the register was closed on 25th September, 2023 on subdivision in to two portions number 2945 and 2946 and therefore, the above register ceased to exist.

The CS provided a list of the original owners of the land and requested for more time to provide a list of persons who were compensated after the compulsory acquisition.

Committee Concern

In relation to the timelines for providing the list of individuals compensated following the compulsory acquisition, the CS stated that obtaining the list of original landowners was more straightforward through the gazette notice. However, when it came to identifying the actual beneficiaries who were compensated and those who were not, the records were inaccessible due to the relocation of the State Department of Lands from one ministry to another. The Ministry was working towards compiling the list and assured that it would be made available at the earliest opportunity.

Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency

The Committee had requested the CS to provide the ownership status of LR No's 5046/9-38. The CS provided a list of ownership status of the LR No's 5046/9-38 noting that the Coast Development Company Ltd. was the registered owner of the parcels. However, there was a caution dated 9th May 2023 by Victoria Naishorua Keen claiming beneficiary interested in on the majority of the parcels as per the records in the Ministry.

Committee Concerns

i. Concerning the significance of the claim of beneficiary interest placed on the parcels on 9th May 2023, by Victoria Naishorua Keen, the CS clarified that it signaled a dispute over the ownership of the land. It implied that the matter was either under investigation or subject to legal proceedings. However, the CS committed to engaging with the party issuing the caution to ascertain whether it still needed to be in place, as allowed by land laws. Should there be disagreement regarding her claimed interest, the matter would be resolved in court.

ii. In response to the query by the Committee on whether due diligence was conducted on the Coast Development Company, which had not filed returns for 25 years but managed to renew the lease, the Ministry explained that the search results indicated lease tenures from 1st May 1929, with varying periods of 999 years and others for 99 years, both on leasehold and freehold. The Ministry acknowledged a potential inconsistency in tenure, particularly with the 999 years on leasehold, and committed to confirming whether that was an error since the standard should have been 99 years and not 999 years.

iii. The Committee inquired about the awareness of the Ministry of allegations suggesting that squatters had made payments for settlement. The CS responded, expressing uncertainty regarding the terms and capacity in which the payments were made. She emphasized that, in most instances, Kenyans were deceived into making payments for land and were at risk of financial loss.

The adjudication and settlement fund strictly adhered to official records, ensuring that no money was accepted before the allocation. Any payments made without official documentation fell beyond the control of the Ministry. The CS pledged to investigate the matter further during discussions with Victoria Keen, including an inquiry into the available land for allocation, if any, for the settlers.

iv. The Committee raised a question regarding the renewal of a lease for 99 years, starting from 1st May 1929, set to expire in 2028, which, according to the search, was renewed before its expiration. In response, the CS clarified that the renewal process typically commences before the lease term concludes.

However, she noted that extension was allowed for an expired lease, with renewal allowed for those who failed to apply for an extension before the expiration. Applying for lease renewal before the term lapsed was not a serious concern. Various motivations for application of renewals, include the intention to sell the land or the desire to embark on development projects. The Planning Department routinely

rejected expiring leases and recommended renewal to facilitate the approval of new development plans.

Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord

The Committee had requested the CS to provide a comprehensive response and way forward to the petition. The CS submitted as follows—

i. As per the records, the land in question was under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It was registered as LT. 45, Folio 475, File 15284 on freehold basis in favor of Wakf of Khadija Binti Suleiman El-Busaidy who was registered owner.

ii. However, the parcel of land was encumbered by three different caveats registered in favor of three different parties as follows:

   a) Caveat dated April 21, 1965 by Ag. Registrar of Titles Mombasa claiming Ownership by compulsory acquisition by virtue of Gazette Notice No. 12 of 1965 -7.20 acres;

   b) Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement; and

   c) Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.

iii. The Ministry would in the next Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

Committee Concerns

i. Concerning the adjudication of Wakf land and whether the previous government had extended an offer of compensation to Khadija Binti Suleiman El-Busaidy, the Ministry acknowledged the possibility of previous engagements with Wakf for land acquisition through settlement or compensation. However, it clarified that such plans were occasionally formulated but not executed due to budgetary constraints. The Ministry expressed the intention to initiate discussions regarding the purchase of the land after budget allocation.

   The CS pledged to engage with the Wakf of Khadija Binti Suleiman El-Busaidy to determine the available land for compensation. Notably, the land was registered as private and could not be allocated to individuals without a transfer, which would require payment through compulsory acquisition or settlement purchase. The land remained unavailable for allocation as it was titled under the name of Wakf Khadija Binti Suleiman El-Busaidy.

ii. In response to the query by the Committee about the completion of the government's acquisition of the land, the CS clarified that the government's focus was on settling

individuals. The Ministry would identify the Wakf of Khadija Binti Suleiman El-Busaidy, negotiate ownership, and work towards compensating and resettling the occupants, aiming to put the land into economic use.

iii. Regarding compensation for the landowners affected by roads built by KeNHA, the Ministry directed the inquiry to the National Lands Commission, emphasizing that it was the appropriate authority responsible for land acquisition matters.

MIN./PPETC/2024/041: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:50 p.m. The next meeting will be held on Tuesday, 5th March 2024 at 12.00 noon.

Sign: .....

(CHAIRPERSON)

Date.....07-03-2024

Thirteenth Parliament

Third Session

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 32ND SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, MAY 22, 2024, IN GARDEN SUITE 1, HILTON GARDEN INN HOTEL, MACHAKOS AT 10.00. A.M

PRESENT

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

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

1.	Mr. Samuel Kalama	Principal Clerk Assistant 1
2.	Ms. Roselyne Ndegi	Senior Serjeant-at-Arms 1
3.	Ms. Miriam Modo	Clerk Assistant I
4.	Ms. Anne Shibuko	Clerk Assistant I
5.	Ms. Patricia Gichane	Legal Counsel II
6.	Mr. Isaac Nabiswa	Legal Counsel II
7.	Ms. Abdinasir Moge Yussuf	Fiscal Analyst II
8.	Mr. Willis Obiero	Clerk Assistant III
9.	Mr. Martin Sigei	Research Officer III
10.	Ms. Nancy Akinyi	Research Officer III
11.	Mr. Calvin Karungo	Media Relations Officer III
12.	Ms. Felistus Muiya	Protocol Officer
13.	Mr. Cosmas Akhonya	Audio Officer

MIN./PPETC/2024/ 202: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. and proceedings began with prayers by Hon. Joshua Kandie, M.P.

MIN./PPETC/2024/203: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Report on Public Petition No. 7 of 2023 on Gazettement of Rachuonyo North as a Hardship Area**
6. **Consideration of Report on Public Petition No. 57 of 2023 on Gazettement of Nyatike West, Nyatike North and Nyatike South Sub-Counties as hardship areas**
7. **Consideration of Report on Public Petition No. 70 of 2023 on Hardship allowance and affirmative action for teachers in Chonyi, Sub-County**
8. **Consideration of Report on Public Petition No. 71 of 2023 on Gazettement of Chepalungu Sub-County as hardship areas**
9. Any Other Business
10. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Bidu Mohamed, M.P. and seconded by Hon. Caleb Mutiso Mule, M.P.

MIN./PPETC/2024/204: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/205: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 7 OF 2023 REGARDING GAZETTEMENT OF RACHUONYO NORTH AS A HARDSHIP AREA

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

i. The Ministry of Public Service, Performance & Delivery Management had constituted an Inter-Agency Technical Committee to address disparities regarding hardship areas across the public service to promote fairness and ensure parity and equal treatment among public servants.

ii. The Kenya National Bureau of Statistics (KNBS) had identified and weighted seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index.

iii. Rachuonyo North Sub-County has high levels of poverty, poor infrastructure, low access to clean water, low connectivity to electricity, inadequate teacher staffing and has prevalence of human-wildlife conflict among others.

iv. Rachuonyo North Sub-County is not classified as a hardship area yet the neighbouring sub-counties sharing common demographics with it are receiving hardship allowances.

The Committee made the following recommendations:

Prayer: Classify and Gazette Rachuonyo North Sub-County as a hardship area and award hardship allowance to teachers and other civil servants.

i. The Committee recommends that the Ministry of Public Service, Performance & Delivery Management fast-tracks the review of relevant policies with a view to designate all regions meeting the set-out criteria as hardship areas; and submit the report to the National Assembly within three (3) months upon tabling of this report.

ii. The Committee further recommends that the Ministry of Public Service, Performance & Delivery Management reviews the categorization and gazettement of hardship areas every ten years.

iii. Pursuant to the provisions of Standing Order 208A(c), the Committee recommends that the findings arising from the consideration of this Petition be debated by the House.

MIN./PPETC/2024/206 **CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 57 OF 2023 REGARDING GAZETTEMENT OF NYATIKE WEST, NYATIKE NORTH AND NYATIKE SOUTH SUB-COUNTIES AS HARDSHIP AREAS**

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

i. The Ministry of Public Service, Performance & Delivery Management had constituted an Inter-Agency Technical Committee to address disparities

regarding hardship areas across the public service and promote fairness, and ensure parity of treatment among public servants.

ii. The Kenya National Bureau of Statistics (KNBS) had identified and weighted seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index.

iii. Nyatike West, Nyatike North and Nyatike South Sub-counties are not classified as hardship areas to enable teachers and other civil servants to receive hardship allowances.

iv. Civil servants posted to the Nyatike Constituency are unwilling to report to their workstations in the area. As a result, schools are severely understaffed, and the few available teachers are demotivated due to non-payment of hardship allowance.

v. Teachers in the neighbouring sub-counties experiencing the same climatic and economic conditions are receiving hardship allowances for instance, Suba North, Suba South, Kuria East and Kuria West.

The Committee made the following recommendations:

Prayer: Classify and gazette Nyatike West, Nyatike North and Nyatike South Sub-Counties as hardship areas and award hardship allowance to teachers and other civil servants

i. The Ministry of Public Service, Performance & Delivery Management through the Inter-Agency Technical Committee fast-tracks the review of relevant policies with a view to designating all regions meeting the set-out criteria as hardship areas.

ii. The Committee also recommends that the Ministry of Public Service, Performance & Delivery Management establish a framework for periodic review of hardship areas across the country.

MIN./PPETC/2024/207: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 70 OF 2023 REGARDING HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR TEACHERS IN CHONYI, SUB-COUNTY

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

i. The Ministry of Public Service, Performance & Delivery Management had constituted an Inter-Agency Technical Committee to address disparities regarding hardship areas across the public service and promote fairness, ensure parity of treatment among public servants.

ii. The Kenya National Bureau of Statistics (KNBS) has identified and weighted seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index.

iii. Chonyi Sub County is not among of the forty-four (44) designated as hardship areas based on the CBA between TSC and the Union.

iv. Chonyi Sub County has various challenges that warrant its inclusion as a hardship area including poor access to medical services, housing, food, and other essential social amenities which are only available in Kilifi Town.

The Committee made the following recommendations:

i. The Ministry of Public Service, Performance & Delivery Management fast-tracks the review of relevant policies with a view to designate all regions meeting the set-out criteria as hardship areas; and submit the report to the National Assembly within three (3) months upon tabling of this report.

ii. The Ministry of Public Service, Performance & Delivery Management reviews the categorization and gazettement of hardship areas every ten years.

iii. Pursuant to the provisions of Standing Order 208A(c), the findings arising from the consideration of this Petition be debated by the House.

MIN./PPETC/2024/208: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 71 OF 2023 REGARDING GAZETTEMENT OF CHEPALUNGU SUB-COUNTY AS HARDSHIP AREAS

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

i. The Ministry of Public Service, Performance & Delivery Management had constituted an Inter-Agency Technical Committee to address disparities regarding hardship areas across the public service and promote fairness, ensure parity of treatment among public servants.

ii. The Kenya National Bureau of Statistics (KNBS) had identified and weighted seven (7) parameters to guide the determination and re-categorization of hardship areas including food, water, transport and communication services, social services, climate and terrain, security and poverty index.

iii. Chepalungu Constituency in Bomet County is not part of the sixteen (16) designated hardship areas while the Judiciary had twenty-one (21) areas designated as hardship based on location of the law courts.

iv. Chepalungu Sub County has various challenges that would warrants its inclusion as a hardship area including unavailability and inaccessibility of water, and harsh climatic conditions and terrain, inadequate health facilities,

v. Chepalungu Constituency borders Narok West and Emurua Dikkir constituencies and share the same climatic conditions yet the two constituencies were gazetted hardship areas.

The Committee made the following recommendations:

In response to the prayer that the Committee recommends to the relevant Ministry/Agencies to Gazette Chepalungu Sub County, as a hardship area, the Committee recommends that—

i. The Ministry of Public Service, Performance & Delivery Management fast-tracks the review of relevant policies with a view to designate all regions meeting the set-out criteria as hardship areas; and submit the report to the National Assembly within three (3) months upon tabling of this report.

ii. The Ministry of Public Service, Performance & Delivery Management reviews the categorization and gazettement of hardship areas every ten years.

iii. Pursuant to the provisions of Standing Order 208A(c), the findings arising from the consideration of this Petition be debated by the House.

MIN./PPETC/2024/209: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting will be held on Wednesday, 22nd May 2024 at 02:00 p.m.

Sign: .....

(CHAIRPERSON)

Date.....05-06-2024.....