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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON: -

CONSIDERATION OF THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILL NO. 6 OF 2023)

THE NATIONAL ASSEMBLY	
DATE:	23 AUG 2023 WEDNESDAY
TABLED BY:	Hon Eric Karemba, MP. Chairperson, Labour Committee
THE TABLE	Miriam Mado

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CHAIRPERSON'S FOREWORD

The Public Service Commission (Amendment) (National Assembly Bill No. 6 of 2023) sponsored by Hon. Benjamin Mwangi, MP is a Bill for an Act of Parliament to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The amendments are meant to increase the job vacancies available to Kenyan citizens below the age of sixty years. The Bill also intends to address the issue of an officer acting in a position for more than six months. The prescribed period of six months should be adequate for the organization to recruit and substantively fill the position.

The Bill was published on 10th March, 2023 and Read a first time in the House on 5th July, 2023. Pursuant to Standing Order 127 (1), the Bill was committed to the Departmental Committee on Labour for consideration and facilitation of public participation pursuant to Standing Order 127.

The Committee placed advertisements in the print media on 7th July, 2023 seeking public views on the Bill as required by Article 118 of the Constitution of Kenya and National Assembly Standing Order 127(3). The Committee received written memoranda from seven (7) stakeholders.

The Committee observed that on the Amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the enactment of this provision would result in unfair labour practices contrary to article 27 and 41(1) of the Constitution on the freedom from discrimination and right to fair labour practices. As well as, Section 5 of the Employment Act (No. 11 of 2007) that requires that an employer pay their employees equal remuneration for work of equal value.

On the retirement age whether to have them in the substantive act or regulations, the Committee observed that the role of the National Assembly is to enact legislation as per article 95 (3) of the Constitution and that no person or body, other than Parliament has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or legislation as per article 94 of the Constitution. Delegation of powers to make law is provided for under section 92 of the Public Service Commission Act, providing that the Commission may make regulations for the better carrying into effect the provisions of this Act. Section 92(2)(f) provides that the Commission may make regulations for guidelines on retirement. This provision does not preclude the role of the National Assembly to make law through legislation, by making a provision in the parent Act where the regulation making authority has done so.

The Committee recommends an amendment to section 34 (3A) of the bill be amended to provide that, the period an officer may work in an acting capacity is twelve months, such position be declared vacant after the elapsing of the stated period where such position is available for competitive filling and that an officer working in an acting capacity after the twelve month period is not entitled to an acting allowance.

The Committee also recommends that an amendment to section 80, be amended to provide for the age of retirement as sixty years; sixty five for persons with disability; and such age as may be determined by the Commission in consultation with the relevant agency or institution to retain an officer after attainment of the age of retirement where they possess rare knowledge, skills and competencies. The Commission shall determine and document the rare knowledge, skills or competencies. "rare knowledge, skills and competencies" includes knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. I wish to express appreciation to the Honorable Members of the Committee and the Committee Secretariat for their resilience and commitment to duty, which made the consideration of the Bill successful. May I also on behalf of the Committee thank and appreciate members of the public and stakeholders who submitted memoranda on the Bill. Indeed, their views informed the consideration of the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 137 (1) and 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023)

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR

PART I

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Labour of the 13th Parliament was constituted on 27th October, 2022 and is established under provisions of S.O 216. Standing Order No. 216(5) grants the Committee, amongst other functions to:
 - b) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - c) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - (ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - d) *study and review all legislation referred to it;*
 - e) *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - f) *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;*
 - g) *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);*
 - (fa) *examine treaties, agreements and conventions;*
 - h) *make reports and recommendations to the House as often as possible, including recommendation of propose legislation;*
 - i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j) *examine any questions raised by Members on a matter within its mandate.*
1. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to labour, human capital and remuneration, trade union relations, and public service.

1.2 Oversight

2. In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments, and Agencies (MDAs):
 - i. The State Department for Public Service and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) Kenya School of Government; and
 - b) Institute of Human Resource Management
 - ii. The State Department for Labour and Skills Development and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) National Industrial Training Authority (NITA);
 - b) National Productivity and Competitiveness Centre (NPCC);
 - c) Kenya National Labour Board and the Wages Council;
 - d) National Employment Authority (NEA);

- e) Migrant Workers Welfare Fund
 - f) Department of Labour Migration Management;
- iii. Public Service Commission;
- iv. Salaries and Remuneration Commission;

1.2 Committee Composition

8. The Committee was constituted by the House on 27th October 2022 and comprises the following Members of Parliament:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency
GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency
ODM Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency
ODM Party

Hon. George Aladwa Omwera, MP
Makadara Constituency
ODM Party

Hon. Amina Dika Abdullahi, MP
Tana River Constituency
KANU

Hon. Patrick Simiyu Barasa, MP
Cherangany Constituency
DAP-K Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency
UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County
UDA Party

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency
ANC Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency
Jubilee Party

Hon. Catherine Wambiliaga, MP
Bungoma County
FORD-K

Hon. Dorice Aburi Donya, MP
Kisii County
WDM-K

Hon. Mangale Munga Chiforomodo, MP
Lunga Lunga Constituency
UDM Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County
UDA Party

1.3 Committee Secretariat

4. The Committee has the following technical staff, representing the Office of the Clerk:

Ms. Rose M. Wanjohi
Senior Clerk Assistant /Head of Secretariat

Mr. Samuel Wanjiru
Clerk Assistant III

Ms. Fiona Githunguri
Legal Counsel II

Mr. Fredrick Muthengi
Deputy Director, PBO

Ms. Wambui Nyachae
Research Officer III

Mr. Timothy C. Tsungulah
Research Officer III

Ms. Zainab Wario
Serjeant-At-Arms II

Ms. Rehema Koech
Audio Officer III

Ms. Rinha Sainey
Media Relations Officer III

Mr. Alex Amwata
Hansard Officer III

PART II

2.0 CONSIDERATION OF THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2023)

2.1 Background Information

5. The principal objective of the Public Service Commission (Amendment) Bill, 2023 is to amend the Public Service Commission Act, 2017 to prescribe the mandatory age of sixty years in the Act. The amendments are meant to increase the job vacancies available to Kenyan citizens below the age of sixty years. These positions are sometimes held by persons beyond the age of sixty years on account that they possess rare knowledge, skills, and competencies for the time required in the service. The Public Service Commission and other appointing authorities should be keen on succession planning and take the necessary steps to ensure that they train other persons in the organizations to take these positions.
6. The Bill also intends to address the issue of an officer acting in a position for more than six months. The period of six months prescribed should provide adequate time for the organization to recruit and substantively fill the position. Failure to comply with this position will result in the officer not earning any acting allowance.

2.2 Analysis of the Bill

The Bill contains four (4) clauses for consideration

7. **Clause 1** of the Bill provides the short title.
8. **Clause 2** of the Bill provides for the amendment of section 34 of the Act to provide that any officer appointed in an acting capacity shall not be entitled to any acting allowances after the expiry of six months.
9. **Clause 3** of the Bill provides for the amendment of section 80 by prescribing the retirement age of sixty years in the Act as opposed to this age being prescribed in the regulations. It also deletes the provisions allowing the Public Service Commission or any other appointing authority from engaging a person who has attained the age of sixty years.
10. **Clause 4** of the Bill seeks to save the contracts of the officers currently engaged by the Public Service Commission or other appointing authority to be allowed to complete their contracts. It gives the Public Service Commission and other appointing authorities a grace period to train officers in the necessary skills required by the organization.
11. The Bill does not limit any fundamental rights and freedoms as provided under the Constitution
12. The Bill does not affect the functions of the County Governments and therefore not a Bill concerning counties for purposes of the Standing Orders
13. The enactment of the Bill shall not occasion additional expenditure of public funds.

2.3 Public participation in the review of the Bill

14. Article 118 (1) (b) of the Constitution provides as follows: -

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

15. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 7th July, 2023 invited the public to make representations on the proposed Bill as per annexure 2 of the report. The Committee received five (5) written submissions on the Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023).
16. In addition to the request for memoranda from the public, the following Stakeholders were requested to submit their views to the Committee:
 - i. Office of Attorney-General and Department of Justice
 - ii. State Department for Labour and Skills Development
 - iii. State Department for Public Service
 - iv. Public Service Commission
 - v. Law Society of Kenya
 - vi. Kenya Law Reform Commission
 - vii. Katiba Institute
17. The following stakeholders submitted their memoranda to the Committee: -
 - i. Hon. Benjamin Gathiru, M.P. - Sponsor of the Bill
 - ii. Ministry for Public Service, Gender and Affirmative Action (State Department for Public Service)
 - iii. Ministry of Labour and Social Protection (State Department for Labour and Skills Development)
 - iv. Public Service Commission
 - v. National Gender and Equality Commission
 - vi. Law Society of Kenya
 - vii. Michael Mwangi Kinonge

PART III

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 Submissions by Hon. Benjamin G. Mwangi M.P., Sponsor of the Bill

Hon. Benjamin Mwangi, M.P. and sponsor of the Bill, appeared before the Committee on 3rd August, 2023 and submitted as follows-

18. The Bill seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The amendment is meant to firm up its implementation in the public service and to increase the job vacancies available to Kenyan citizens below the age of sixty.
19. The job vacancies are sometimes held by persons beyond the age of sixty years on account that they possess rare knowledge, skills, and competencies for the required in the service. The Public Service Commission and other appointing authorities should be keen on succession planning to settle succession issues that are common in the public service through training other persons in the organization to take up these positions.
20. Further, the Bill further seeks to address the issue of an officer acting in a position for more than six months. The period of six months prescribed should provide adequate time for the organization to recruit and substantively fill the position. Failure to comply with this provision will result in the officer not earning any acting allowances.
21. In addition, the Bill seeks to save the contracts of the officers currently engaged by the Public Service Commission or other appointing authorities to be allowed to complete their contracts. It gives the Public Service Commission and other appointing authorities a grace period to train officers for the necessary skills.

3.2 Public Service Commission

The Public Service Commission in their oral and written presentations submitted as follows-

22. On the proposed amendment to Section 34 of the Act to provide for non-payment of acting allowance beyond six months the Commission submitted that whereas the objective of the proposed amendment is to ensure vacant positions are filled expeditiously, not all positions which officers are appointed to act are available for filling.
23. There are circumstances where substantive holders are lawfully authorized to be away for a period exceeding six months and therefore the post cannot be filled. This include; officers on secondment, leave of absence granted to a spouse of a Foreign Service officer who has been posted outside Kenya during the tour of service for the Foreign Service officer. Staff of universities also take sabbatical leave and various universities prescribe different periods for the sabbatical leave. Some have 9 months, some have one year. It will not be fair to have an officer perform duties in the higher office and not be compensated.
24. The Commission proposed that, instead of the proposed amendment, the following proviso should be introduced after 34(3) to read:

"Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment or on authorized leave which exceeds six months"

25. The Justification is that the primary objective of acting appointment is to ensure continuity of service delivery so that temporary or substantive vacation of a position for one reason or another does not impede or disrupt public service delivery.
26. Further, the objective of having officers working in an acting capacity is to ensure vacant positions are filled expeditiously, however, not all such positions are available for filling. These instances include, where substantive holders are lawfully away for a period exceeding six months. It would then be unfair to have an officer perform the duties of a higher office and not be compensated. The Commission proposed that such limitation should only apply to vacancies that are available for competitive filling.
27. On the proposed amendment to Section 80 of the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of 60 years, the Commission submitted that Regulation 70 of the Public Service Commission Regulations 2020 provides as follows:
 28. 70. (1) *Subject to the Constitution, section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be—*
 - (a) *sixty years;*
 - (b) *sixty-five years for persons with disability; and*
 - (c) *such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions. And*
 - 6) *Subject to section 80 (2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.*
 - (7) *In this regulation—*
 - (a) *“rare knowledge, skills and competencies” means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.*
29. The regulation above serves to address special circumstances that may be considered in exceptional cases. Some of these cases include where capacity in the public service is lacking or specific skills are required and not readily available; personal staff of specified state officers as determined from time to time; and succession management challenges due to intermittent recruitment freeze.
30. Article 234 (3) excludes an office of High Commissioner, Ambassador or other diplomatic or Consular representative of the Republic; from the mandate of the Public Service Commission.
31. Article 234 (4) of the Constitution provides that the Commission shall not appoint a person to hold or act in any office on the personal staff of the President or a retired President, except with the consent of the President or the retired President.
32. Regulation 27 of the PSC Regulations 2020 gives the Commission responsibility for appointment of Advisors to the President, Deputy President and Cabinet Secretaries. These Advisors are identified and recommended by the specified State Officer.
33. Putting the blanket age of sixty years will disadvantage persons with disability, lecturers and research scientists serving in public universities and research institutions.

34. Kenya's Vision 2030 and African Agenda 2063 both recognize the role played by science and scientific organizations in achieving developmental objectives. Subjecting lecturers and researchers to retirement at sixty years of age will have an impact on their role in manpower development and promotion of science and innovation and may result in them seeking greener pastures elsewhere resulting in brain drain from the country.
35. The scope of mandate of the Public Service Commission pursuant to Section 3 of the Public Service Commission Act 2017 applies to persons holding offices in the public service and excludes offices or positions subject to:
 - a. The Parliamentary Service Commission
 - b. The Judicial Service Commission
 - c. The Teachers Service Commission
 - d. The National Police Service Commission
 - e. An office in the service of a county except on hearing and determining appeals from county Governments' Public Service (234(2)(i))
36. Therefore, amendment of the Public Service Commission Act, 2017 will not stop these other Service Commissions from extending service beyond 60 years unless each of the enabling pieces of legislation of the various Commissions are similarly amended.
37. The Commission proposed that the Committee may consider retaining the retirement age in the Regulations (which are approved by Parliament through the Statutory Instruments Act 2013) rather than legislating it in the Act.
38. The Justification is that legislating in an Act will tie the hands of the executive for whom the Commission recruits and appoints in the event there is need to review the retirement age like it was done in 2009 when it was increased from 55 to 60.
39. The Commission further proposes that there is a need to enact the Public Service Management Act which will apply across the entire spectrum of the public service covering all Service Commissions and County Public Service Boards and County Assembly Service Boards just like the Public Finance Management Act applies to all public institutions.
40. The committee proposed that Section 34 of the Act be amended to provide for a further extension of the acting period to a further six (6) months after the expiry of the initial six months. After the expiry of the twelve months the position should be competitively filled or the acting official confirmed for appointment. This will only apply to positions available for filling. The Commission was agreeable with the proposal.

3.3 The State Department for Labour and Skills Development

The State Department for Labour and Skills Development in its written presentations submitted as follows-

41. Section 80 (1) of the Public Service Commission Act, 2017 (No. 10 of 2017) provides that where a public officer has attained the mandatory retirement age as may be prescribed in regulations-
 - (a) The public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and
 - (b) The Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.

42. Subsection (2) of section 80 to the Act, provides that despite subsection (1)(b) above, the Commission or other appointing authority may engage the public officer for service after the retirement age upon such terms of contract as may be agreed if-
- (a) The public officer possesses rare knowledge, skills and competencies for the time being required in the service;
 - (b) The retired officer is willing to be engaged on contract; and
 - (c) The retired officer's performance shall not in any way be impaired by age.
43. Clause 3 of the Public Service Commission (Amendment) Bill No. 6 of 2023 intends to amend section 80 of the Act-
- (a) In subsection (1), by deleting the words "as may be prescribed in the regulations" and substituting therefor the words "of sixty years"; and
 - (b) By deleting subsection (2), to statutorily cap the retirement age in Kenya to 60 years, as currently prevailing in the law and government policy among the East African Community member States with an exemption of Rwanda where the retirement age is 65 years for both male and female employees.
44. The statutory retirement age in general, can present several challenges and below are some common challenges associated with the statutory retirement age-
- a. Aging Workforce: The statutory retirement age often results in an aging workforce, as employees are required to retire at a specific age. This can lead to a loss of experienced and skilled workers, potentially creating a talent and knowledge gap in the labor market;
 - b. Financial Insecurity: Many individuals may not be financially prepared for retirement at the statutory age due to inadequate savings or pension provisions. This can result in financial insecurity for retirees who might struggle to meet their daily expenses and healthcare needs;
 - c. Youth Unemployment: The rigid retirement age can hinder job opportunities for the younger generation. With older employees staying in the workforce longer, it can limit job openings and hinder the entry of new graduates or young professionals into the job market;
 - d. Age Discrimination: Enforcing a strict retirement age can lead to age discrimination, as employees might face mandatory retirement even when they possess the skills and capability to continue working effectively. This can negatively impact individuals' self-worth and contribute to social exclusion;
 - e. Skill and Knowledge Loss: Mandatory retirement can result in a loss of valuable skills, knowledge, and experience within organizations. It takes time and resources to train new employees to replace experienced retirees, potentially impacting productivity and organizational efficiency; and
 - f. Workforce Planning Challenges: Organizations may face challenges in workforce planning and succession management due to the fixed retirement age. They need to anticipate retirements and ensure appropriate talent management strategies are in place to enable a smooth transition and continuity in operations.
45. While there isn't a specific statute that explicitly defines or codifies this right, it has been recognized and applied by Kenyan courts through its jurisprudence. Notably, the Kenyan courts have emphasized that public authorities have a duty to act fairly and not arbitrarily, particularly when they have given an expectation or promise to individuals or groups. This means that individuals may have a legitimate

expectation that public authorities will fulfill their promises, follow established procedures, and act reasonably in their dealings.

46. It is worth noting, however, that the application of the right to legitimate expectation in specific cases may vary depending on the facts and circumstances involved. Case law in Kenya regarding the right of legitimate expectation is significant because it helps shape and define how this principle is applied and protected by the courts in the country. While there may not be an explicit statutory recognition of the right of legitimate expectation, case law provides authoritative interpretations and guidance on this aspect of administrative law.

47. While there are numerous cases in Kenya's jurisprudence that touch upon the right to legitimate expectation, here are a few specific court cases that have addressed this right: -

- a. **Council of Civil Service Unions v. Minister for the Civil Service (1985)**: Although not a Kenyan case, it has been referred to by Kenyan courts. This case recognized the right of legitimate expectation as a principle of administrative law;
- b. **Republic v. Minister of State for Immigration & Registration of Persons & Another (Ex parte Anthony Maina Pius) (2012)**: In this case, the court emphasized the duty of public authorities to act fairly and in accordance with legitimate expectations created by their conduct or representations made to individuals;
- c. **Seth Panyako & 25 Others v. Samuel Arachi & 3 Others (2016)**: The court held that legitimate expectations can be formed based on past practices and established procedures, and that public authorities must act reasonably and fairly when dealing with such expectations.

48. In Kenyan law, the elements that constitute a legitimate expectation typically include:

- a. Representation or promise: There should be a clear and unequivocal representation, promise, or assurance made by a public authority, either explicitly or implicitly. This representation can be in the form of an explicit statement, an established practice, or a consistent course of conduct;
- b. Reasonable reliance: The individual or group must have reasonably relied upon the representation or promise made by the public authority. This reliance can be evidenced by actions taken, decisions made, or expectations formed based on the representation;
- c. Specificity and clarity: The representation or promise should be sufficiently specific and clear, leaving no room for ambiguity or misunderstanding;
- d. Legality and fairness: The expectation itself must be lawful and fair, meaning it does not contravene any legal requirements or principles of public interest; and
- e. Legitimate interest: The individual or group must have a legitimate interest in the matter at hand, such as a legal right, benefit, or legitimate concern that is subject to the actions or decisions of the public authority.

49. In Kenya law, legitimate expectations can arise in various situations. Here are some examples:

- a. Employment and promotions: If a public authority, such as a government department or agency, has established clear procedures and criteria for the promotion or appointment of employees, individuals who meet those criteria may have a legitimate expectation that the authority will follow those procedures fairly and promote or appoint them accordingly;

- b. Discretionary benefits and privileges: When public authorities exercise discretionary powers to grant benefits, exemptions, or privileges, individuals who meet the relevant criteria may have a legitimate expectation that they will be treated fairly, consistently, and in line with past practices or representations made by the authority;
 - c. Express representations: Legitimate expectations can arise from explicit representations, promises, or statements made by a public authority. These representations may be in writing or orally communicated to individuals or groups affected by the authority's actions or decisions;
 - d. Implied representations: Legitimate expectations can also be implied from the conduct, practices, or established procedures of a public authority. If individuals have consistently been treated in a certain way or if there is an established custom or practice, a legitimate expectation may arise based on that implied representation;
 - e. Past decisions or precedents: If a public authority has consistently made decisions or taken actions in a particular manner over time, individuals may have a legitimate expectation that future decisions or actions will be consistent with those past practices or precedents; and
 - f. Policies and guidelines: Public authorities often publish policies, guidelines, or procedures that outline how they intend to make decisions or conduct their affairs. Individuals who have relied upon such policies or guidelines may have a legitimate expectation that the authority will act in accordance with them.
50. The World over, the retirement age is moving from 60 to 65 years. The United Nations has raised the retirement age for staffers to 65 years old. The policy, approved by the General Assembly, has already taken effect for employees.
51. In Europe, the retirement age is 65 years and now being lobbied to 70 years due to lack of skilled workers and the hemorrhage of pensioners.
52. Whereas EAC member countries are struggling to finance their monthly wage bill for the working class, developed economies are convincing civil servants to extend their retirement age to 70 years in order for their governments to make savings in Pension Schemes and to harness the immense benefits of their selfless wealth of experience.
53. The proposal in the Bill to statutorily cap the retirement age in Kenya to 60 years is in tandem with the right of legitimate expectation among the entire workforce, and any attempt to lower the bar to 55, would offend the right to legitimate expectation which is a principle of administrative law derived from common law.
54. The ballooning retirement pensions and the escalating wage bill in Kenya are quite instructive.
55. In the circumstances and consistent with the best practice and further, in order to remove any inherent ambiguities, the Ministry of Labour and Social Protection has no objection in the proposal in the new Bill to codify into law, the retirement age in Kenya to 60 years as contained in Clause 3 of the Public Service Commission (Amendment) Bill No. 6 of 2023.

3.4 The State Department for Public Service

The State Department of Public Service in their written presentations, submitted as follows-

56. On amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the Ministry disagreed with the amendment given that not all positions filled in an acting capacity are available for filing.
57. The Ministry proposed an amendment be introduced after section 34(3) stating that;
"Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment, unpaid leave or sabbatical leave"
Further, the section to be amended further to include (3B) which shall read;
"the request for acting appointment shall be submitted to the appointing authority together with an indent declaring the position vacant for filling. The filling of the vacant position(s) shall be finalized within six months".
58. The justification for the proposed amendment is that inclusion of 3A & 3B in the Act will address timely filling of vacant position(s) substantively and succession management across the Public Service.
59. On amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to provide for the retirement age in the Public Service Commission Act, the Ministry disagreed with the proposed amendment and proposed that a subsection should be provided to justify the need of engaging a public officer on contract who has attained the age of retirement.
60. Further, section 80 to be amended to include the provisions of Regulation 70 (1) of the PSC Regulations on retirement on age grounds which provides for the mandatory retirement age in the public service as follows –
 - i. sixty years;
 - ii. sixty- five for persons with disability; and
 - iii. such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions, or equivalent institutions as determined by the Commission in consultation with such universities, research institutions, or equivalent institutions
61. The justification is that the proposed deletion of the words "as may be prescribed in the regulations" shall negate the provisions of retirement as provided for in PSC Regulation 70; other relevant laws and specific government policy, on mandatory retirement age for the following groups: -.persons with disability; and lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by the Commission in consultation with such universities, research institutions or equivalent institutions.
62. The proposed deletion of section 80 (2) may have been well-intentioned for the purposes of curbing the abuse of retention of officers beyond the mandatory retirement age. It may however be noted that section 80 (2) is a good safety net measure to cater for among others certain cadres with rare professional skills which take time to develop and impart to others. These cadres include the medical field, engineering, geology, aviation industry, energy, and petroleum.

3.5 The Law Society of Kenya

The Law Society of Kenya submitted as follows-

63. On amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the society disagreed with the proposal as the provisions are unconstitutional and contravenes other written law.
64. The justification is that the Act as is currently does not offend any constitutional provision, nor does it contravene any written law. However, the proposed amendment may offend the constitutional right to fair labour practices under Article 41. In this instance, equal remuneration for work of equal value is a fair labour practice. Currently, section 5 of the Employment Act, 2007 provides that an employer shall pay his employees equal remuneration for work of equal value which is to prevent discrimination in remuneration
65. The society proposed that if an acting officer is not confirmed to the office for reasons of attaining the age of 60, then the officer should be considered for hiring on a six months consultancy basis until a suitable replacement is found.
66. On amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to provide for the retirement age in the Public Service Commission Act, the society disagreed with the proposed amendment as it would entrench discrimination on account of age, offending Article 27 of the Constitution.

3.6 National Gender and Equality Commission

The National Gender and Equality Commission submitted as follows-

67. On amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to provide for the retirement age in the Public Service Commission Act, the Commission disagreed with the proposed amendment as the rationale of the regulations is to provide for more than one mandatory age for public officers depending on the status and institution. That this amendment would be discriminatory and prejudicial, entrenching only one mandatory category in the substantive Act.
68. The Commission proposed section 80 be amended by inserting subsection (3) as follows—
“(3) The Commission or authority shall be required to justify the reasons for lack of such rare knowledge or skills in the authority or among the other public officers.”
69. The justification is that section 92(f) of the Public Service Commission Act on delegated legislation confers powers to the Commission to make guidelines on retirement. Further the Public Service Commission Regulations, 2019 at regulation 70 provides as follows on retirement on age grounds;
70 (1) subject to the Constitution, section 80 of the Act, any other relevant written law or specific government policy, the mandatory age of retirement in the public service shall be—
 - a) sixty years;
 - b) sixty-five years for persons with disability and

- c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions

Regulation 70 (6) and (7) further provides as follows—

70 (6) Subject to section 80 (2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.

70 (7) In this regulation—

- a) “rare knowledge, skills, and competencies” means knowledge, skills, and competencies that are scarce, unique, and not readily available in the job market.; and
- b) “disability “means a permanent physical other impairment or condition that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities.

70. The National Policy on older persons and aging revised in 2014, paragraph 2 acknowledges that many older persons have skills, resources, and expertise, which could be tapped into and utilized for development. The policy object, provides that the state will put in place measures that ensure older persons continue to provide their expertise, talent, and experience, to family, community, and in the creation of employment.

3.7 Michael Mwangi Kinonge

- 71. Michael Mwangi, a retiree proposed that a retiree should;
 - i. have their file under the docket of the attorney general;
 - ii. linked with the Ombudsman;
 - iii. their services, and dues paid;
 - iv. have the handover process between the retiree and the occupant of the office facilitated.
- 72. Lastly, he proposed that the Ombudsman may act as a go between the Attorney General and the retiree.

PART IV

4.0 COMMITTEE OBSERVATIONS

73. The Committee while considering the Bill made the following observations-

- i. That the Amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the Committee noted that the enactment of this provision would result in unfair labour practices contrary to article 27 and 41(1) of the Constitution on the freedom from discrimination and right to fair labour practices. As well as, Section 5 of the Employment Act (No. 11 of 2007) that requires that an employer pay their employees equal remuneration for work of equal value.
- ii. That Article 24 (1) as read with Article 25 of the Constitution allows limitation of the rights guaranteed by Article 27, so long as the conditions set in Article 24 are satisfied. Article 24(1) provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law and only to the extent that such limitations are reasonable and justifiable. In this instance, the limitation of age does not amount to discrimination as it is justified under Employment law and practice. It also allows for continuity in the sector and the absorption of young professionals. Thus, reasonable and justifiable.
- iii. That the proposed amendment would align the Public Service Commission Act with the National Social Security Fund Act (No. 45 of 2013) provision on pensionable age, as defined in section 2 of the Act that, "*pensionable age*" means the age of sixty years.
- iv. That it is the role of the National Assembly to enact legislation as per article 95 (3) of the Constitution and that no person or body, other than Parliament has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or legislation as per article 94 of the Constitution. Delegation of powers to make law is provided for under section 92 of the Public Service Commission Act, providing that the Commission may make regulations for the better carrying into effect the provisions of this Act. Section 92(2)(f) provides that the Commission may make regulations for guidelines on retirement. This provision does not preclude the role of the National Assembly to make law through legislation, by making a provision in the parent Act where the regulation making authority has done so.
- v. There was no memoranda or proposed amendment received on the proposed insertion, after section 102, of the Public Service Commission Act (No. 10 of 2017). The Principal Act is amended by inserting the following new section immediately after section 102— "*102A. A public officer engaged for service by the Commission or other appointing authority after attaining the mandatory retirement age before the commencement of this Act shall serve for the remainder of the term of the contract*"
- vi. The submission of Michael Mwangi Kinonge was received by the National Assembly on the 27th of July, 2023 outside the time stipulated in the invitation to submit memoranda which gave a deadline of the 21st of July, 2023. It was noted that such delay has not come after consideration of the Bill by the Committee and may therefore be considered.

PART V

5.0 COMMITTEE RECOMMENDATIONS

74. The Committee, having considered the Bill and the stakeholder submissions, recommends THAT—

- i. clause 34 (3A) be amended to provide that, the period an officer may work in an acting capacity is twelve months, such position be declared vacant after the elapsing of the stated period where such position is available for competitive filling and that an officer working in an acting capacity after the twelve month period is not entitled to an acting allowance.
- ii. the amendment to section 80, be amended to provide for the age of retirement as—
 - (a) sixty years;
 - (b) sixty five for persons with disability; and
 - (c) such age as may be determined by the Commission in consultation with the relevant agency or institution to retain an officer after attainment of the age of retirement where they possess rare knowledge, skills and competencies. The Commission shall determine and document the rare knowledge, skills or competencies.

“rare knowledge, skills and competencies” includes knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

SIGNED.......... DATE 23/08/2023

HON. ERIC MUCHANGI KAREMBA, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR

Annexure 1:

Members' Report adoption list



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-SECOND SESSION -2023
DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Labour, have pursuant to Standing Orders 199 and 127, adopted this report on the Public Service Commission(Amendment) Bill, (National Assembly Bill No 6 of 2023) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date:

	NAMES	SIGNATURE
1.	Hon. Karemba Eric Muchangi Njiru, MP-Chair person	
2.	Hon. Muli Fabian Kyule, MP- Vice Chairperson	
3.	Hon. K'Oyoo James Onyango, M.P.	
4.	Hon. Kagesi Kivai Ernest Ogesi, M.P.	
5.	Hon. Kiti Richard Ken Chonga, M.P.	
6.	Hon. Lomwa Joseph Samal, M.P.	
7.	Hon. Omwera George Aladwa, M. P.	
8.	Hon. Wambilianga Catherine Nanjala, MP	
9.	Hon. Abdullahi Amina Dika, M.P.	
10.	Hon. Aburi Donya Dorice, M.P.	
11.	Hon. Barasa Patrick Simiyu , M.P.	
12.	Hon. Chiforomodo Mangale Munga, M.P.	
13.	Hon. Kihungi Peter Irungu, M. P.	
14.	Hon. Sankaire Leah Sopiato, M.P.	
15.	Hon. Siyoi Lillian Chebet, M.P.	

Annexure 2:

Minutes

MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON TUESDAY 22ND AUGUST 2023 IN THE COMMITTEE ROOM 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT PRECINCTS AT 12.00 PM

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. Kagesi Kivai Ernest Ogesi, M.P.
3. The Hon. Kiti Richard Ken Chonga, M.P.
4. The Hon. Wambilianga Catherine Nanjala, M.P.
5. The Hon. Abdullahi Amina Dika, M.P.
6. The Hon. Barasa Patrick Simiyu, M.P.
7. The Hon. Siyoi Lillian Chebet, M.P.

APOLOGIES

1. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
2. The Hon. K'Oyoo James Onyango, M.P.
3. The Hon. Lomwa Joseph Samal, M.P.
4. The Hon. Omwera George Aladwa, M.P.
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Chiforomodo Mangale Munga, M.P.
7. The Hon. Kihungi Peter Irungu, M.P.
8. The Hon. Sankaire Leah Sopiato, M.P.

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Ms. Fiona Githunguri - Legal Counsel II
4. Ms. Wambui Nyachae - Research Officer III
5. Mr. Timothy Chiko - Research Officer II
6. Ms. Rehema Koech - Audio Officer III
7. Ms. Zainabu Wario - Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business;
 - i. The Public Service Commission (Amendment) Bill No.6 of 2023
 - ii. The Employment (Amendment) Act, 2022 (Senate Bill No. 11 of 2022)
 - iii. Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23
6. Consideration of additional submissions and the Report on the Public Service Commission (Amendment) Bill No. 6 of 2023
7. Consideration of pending business before the Committee
8. Any Other Business.
9. Adjournment.

MIN. NO.424 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at ten minutes to twelve o'clock and said the Prayer. Thereafter self-introductions were made.

MIN.NO.425 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda item was deferred.

MIN.NO.426 NA/LABOUR/2023: MATTERS ARISING.

There were no matters arising.

MIN.NO.427 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

- a) The Public Service Commission (Amendment) Bill, No.6 of 2023 by Hon. Benjamin Mwangi, MP 2023 seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Bill also intends to address the issue of an officer acting in a position for more than six months.

Status

Bill advertised seeking public memoranda on 7th July 2023 for 14 days ending 21st July 2023. The Committee met with the sponsor on 3rd August 2023. The Committee has received submissions from various stakeholders.

- b) The Employment (Amendment) Senates Bill No. 11 of 2022. The Bill, sponsored by Sen. Samson Cherarkey, seeks to provide for the right to disconnect in the digital age. This Bill seeks to address increased employee burnout. Digital connectivity has also been noted to be slowly eroding leisure time for employees hence affecting their work life balance. This Bill therefore seeks to strike a balance between work and private life to allow digital technology to have a positive effect on workers' quality of life supported by employers. The bill was read a first time on 17th August 2023.

Status: Awaiting advertisement for public participation.

- c) Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23. The committee met with the MDAs and independent Commissions on 9th and 10th August.

MIN. NO. 428 NA/LABOUR/2023: CONSIDERATION OF ADDITIONAL SUBMISSIONS AND THE REPORT ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL NO. 6 OF 2023

Ms. Fiona Wanjiru, Legal Counsel, appraised the Committee on the Public Service Commission (Amendment) Bill No. 6 Of 2023. The principal object of this Bill is to amend the Public Service Commission Act (No. 10 of 2017) to address the issues brought about by an officer working in an acting capacity for a period of longer than six months, and to provide for a mandatory retirement age, of sixty years in the Act.

Further, the Committee was briefed on the additional submissions from the Ministry of Labour and Social Protection. In its written submissions, the Ministry submitted that;

On the proposed amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to prescribe the mandatory age of sixty years in the Act, the Ministry agreed with the proposal to codify the retirement age in Kenya at 60 years.

Justification

This would be in line with legitimate expectation in the workforce of a prescribed retirement age, it would help manage the ballooning retirement pensions and escalating wage bill in Kenya, it is consistent with best practice and would remove any inherent ambiguities.

Committee observation

The Committee made the following observation, THAT;

1. The Amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, Committee noted that the enactment of this provision would result to unfair labour practices contrary to article 27 and 41(1) of the Constitution on the freedom from discrimination and right to fair labour practices. As well as, Section 5 of the Employment Act (No. 11 of 2007) that requires that an employer pay their employees equal remuneration for work of equal value.
2. Article 24 (1) as read with Article 25 of the Constitution allows limitation of the rights guaranteed by Article 27, so long as the conditions set in Article 24 are satisfied. Article 24(1) provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law and only to the extent that such limitations are reasonable and justifiable. In this instance, the limitation of age does not amount to discrimination as it is justified under Employment law and practice. It also allows for continuity in the sector and the absorption of young professionals. Thus, reasonable and justifiable.
3. The proposed amendment would align the Public Service Commission Act with the National Social Security Fund Act (No. 45 of 2013) provision on pensionable age, as defined in section 2 of the Act that, *"pensionable age" means the age of sixty years.*
4. It is the role of the National Assembly to enact legislation as per article 95 (3) of the Constitution and that no person or body, other than Parliament has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or legislation as per article 94 of the Constitution. Delegation of powers to make law is provided for under section 92 of the Public Service Commission Act, providing that the Commission may make regulations for the better carrying into effect the provisions of this Act. Section 92(2)(f) provides that the Commission may make regulations for guidelines on retirement. This provision does not preclude the role of the National Assembly to make law through legislation, by making a provision in the parent Act where the regulation making authority has done so.
5. There was no memoranda or proposed amendment received on the proposed insertion, after section 102, of the Public Service Commission Act (No. 10 of 2017). The Principal Act is amended by inserting the following new section immediately after section 102— *"102A. A public officer engaged for service by the Commission or other appointing authority after attaining the mandatory retirement age before the commencement of this Act shall serve for the remainder of the term of the contract"*
6. There is a need to retain the retirement of 65 year for persons living with disability. The Constitution requires government agencies to engage in affirmative action for individuals with disabilities.
7. For officers in the Public Service with rare knowledge, skills and competencies, the retirement age may be determined by the Commission in consultation with the relevant agency or institution. The Commission shall determine and document the rare knowledge, skills or competencies to warrant retention of the officers upon attainment of the retirement age.

Committee Recommendation

Having considered the additional submissions, the committee recommends THAT;

1. The amendment to section 34 (3A) be amended to provide that, the period an officer may work in an acting capacity is twelve months, such position be declared vacant after the elapsing of the stated period where such position is available for competitive filling and that an officer working in an acting capacity after the twelve month period is not entitled to an acting allowance.
2. The amendment to section 80, be amended to provide for the age of retirement as–
 - (a) sixty years;
 - (b) sixty five for persons with disability; and
 - (c) such age as may be determined by the Commission in consultation with the relevant agency or institution to retain an officer after attainment of the age of retirement where they possess rare knowledge, skills and competencies. The Commission shall determine and document the rare knowledge, skills or competencies.

“rare knowledge, skills and competencies” includes knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

The Report on the consideration of the Public Service Commission (Amendment) Bill 2023 was unanimously adopted as proposed by Hon. Catherine Wambiliaga, MP and seconded by Hon. Patrick Barasa, MP.

MIN. NO. 429 NA/LABOUR/2023: ANY OTHER BUSINESS

1. On the proposed study visit to the Republic of Tanzania scheduled for 3rd to 10th August 2023, the Clerk was tasked to share the information in the Committee WhatsApp platform for members to declare their interest to travel.
2. The Committee was briefed on the receipt of letters from the Ministry of Investments, Trade and Industry and the Ministry of Public Service, Gender and Affirmative Action requesting for more time for the Ministries to propose further amendments to The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022) to facilitate the onboarding of the private sector.

The Bill, sponsored by Hon. Naisula Lesuuda, MP, was adopted by the Committee on 13th June 2023 and the report tabled in the house on 22nd June 2023.

The Committee agreed to schedule a meeting with the two stakeholders to receive their submissions while awaiting the feedback from the sponsor of the Bill on the proposed additional amendments.

MIN. NO. 430 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at nine minutes past two o'clock. The next meeting will be held on notice.

SIGNED..... DATE

(CHAIRPERSON)

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON WEDNESDAY 9TH AUGUST 2023 IN KONGAMANO 'A' CONFERENCE ROOM, TAMARIND TREE HOTEL, NAIROBI COUNTY AT 3.00 PM

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
3. The Hon. Kiti Richard Ken Chonga, M.P.
4. The Hon. Wambilianga Catherine Nanjala, M.P.
5. The Hon. Abdullahi Amina Dika, M.P.
6. The Hon. Chiforomodo Mangale Munga, M.P.
7. The Hon. Kihungi Peter Irungu, M.P.
8. The Hon. Sankaire Leah Sopiato, M.P.
9. The Hon. Siyoi Lillian Chebet, M.P.

APOLOGIES

1. The Hon. K'Oyoo James Onyango, M.P
2. The Hon. Kagesi Kivai Ernest Ogesi, M.P.
3. The Hon. Lomwa Joseph Samal, M.P.
4. The Hon. Omwera George Aladwa, M.P
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Barasa Patrick Simiyu, M.P.

IN ATTENDANCE

Public Service Commission

1. CPA Charity Kisotu, CBS - Vice chairperson, Public Service Commission
2. Dr. Joyce K. Nyabuti, MBS - Commissioner
3. Dr. Simon Rotich - Commission Secretary/CEO
4. Mr. Maina Njoroge - Director, Finance, Planning and Resource Mobilization
5. Mr. Musa Cherogony - Deputy Director, Legal Services

Salaries & Remuneration Commission

1. Mr. John Kennedy Monyoncho - Commissioner, representing the Chairperson
2. Sen. Isaac Melly - Commissioner
3. Ms. Nelly P. Ashubwe - Commissioner
4. Ms. Ann Gitau, MBS - Commission Secretary/CEO, SRC
5. Ms. Mary C Konuche - Head of Finance

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Mr. Fredrick Muthengi - Deputy Director PBO
4. Ms. Fiona Wanjiru - Legal Counsel III
5. Mr. Timothy Chiko - Research Officer III
6. Mr. Alex Amwata - Hansard Officer III
7. Ms. Wambui Nyachae - Research Officer III
8. Ms. Rehema Koech - Audio Officer III
9. Ms. Rinha Sainey - Media Relations Officer III
10. Ms. Zainabu Wario - Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries.

3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business;
 - i. The Public Service Commission (Amendment) Bill No.6 of 2023
 - ii. Employment (Amendment) Legislative Proposal, 2022.
 - iii. Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23
6. Meeting on the Status of Budget Implementation FY 2022/23 with
 - i. Public Service Commission
 - ii. Salaries and Remuneration Commission
7. Submissions on the Public Service Commission (Amendment) Bill, (NA Bill No. 6 of 2023) by the Public Service Commission
8. Any Other Business.
9. Adjournment.

MIN. NO.400 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at three o'clock. This was followed by a prayer by Hon. Kihungi Peter Irungu, M.P. Self- introductions were made.

MIN.NO.401 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda item was deferred

MIN.NO.402 NA/LABOUR/2023: MATTERS ARSISING.

There were no matters arising.

MIN.NO.403 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

1. Employment (Amendment) Legislative Proposal ,2022 by Hon. Didmus Wekesa Barasa, M.P which seeks to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another. It seeks to provide clarity on the modalities of transfer in good faith and in a fair, meritorious and rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of the employees.

Status

Received comments from the Attorney General (seeking comments from the affected agencies) and Kenya Law Reform Commission. The Committee met with the sponsor of the proposal, Hon. Didmus Barasa, MP. The Report was adopted for forwarding to the Office of Hon Speaker.

2. The Public Service Commission (Amendment) Bill, No.6 of 2023 by Hon. Benjamin Mwangi, MP 2023 seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Bill also intends to address the issue of an officer acting in a position for more than six months.

Status

Bill advertised seeking public memoranda on 7th July 2023 for 14 days ending 21st July 2023. The Committee met with the sponsor on 3rd August 2023. The Committee has received submissions from various stakeholders.

3. Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23. The committee is meeting with the MDAs and independent Commissions on 9th and 10th August.

MIN. NO. 404 NA/LABOUR/2023: MEETING ON THE STATUS OF BUDGET IMPLEMENTATION FY 2022/23 WITH THE PUBLIC SERVICE COMMISSION

CPA Charity Kisotu, Vice chairperson, Public Service Commission accompanied by Dr. Joyce K. Nyabuti, Commissioner; Dr. Simon Rotich, Commission Secretary/CEO; Mr. Maina Njoroge, Director, Finance, Planning and Resource Mobilization and Mr. Musa Cherogony, Deputy Director, Legal Services appeared before the Committee and submitted as follows;

Mr. Maina Njoroge, Director, Finance, Planning and Resource Mobilization, submitted as follows on the requested information;

The Commission's total actual revenue for the 2022/23 financial year was Kshs. 2,364,924,566 broken down as follows: Recurrent exchequer issues of Kshs. 2,344,945,471.95 and Kshs. 19,979,094 for Development. In addition, the Commission raised Kshs. 14,687,445.65 in Appropriation-In-Aid (AIA) during the year largely from the competency assessment exams.

During the period under review, the Commission engaged various development partners to explore areas of collaboration, technical and financial support. Under the World Bank-supported Program to strengthen Governance for Enabling Service Delivery and Public Investment in Kenya (GESDeK 1), which is coordinated by the Public Finance Management Reforms (PFMR) Secretariat, the Commission was allocated Kshs. 18 million.

In addition, Mozilla Corporation is supporting the Commission in the development of a new website among other partnership initiatives. This exercise will be completed and commissioned during the first quarter of 2023/24 financial year.

The Konza Technopolis Development Authority donated two (2) Idea Hubs for Video Conferencing Solutions and fifty (50) Desktop computers for the Commission's ICT training Centre as part of the Jitume Program.

With the support of the Commonwealth Fund for Technical Cooperation (CFTC), the Commission benefitted from a Leadership Development Training Programme for the Commission Board.

During the period, the Commission held several engagement meetings with the World Bank. Arising from this engagement, the Commission will be one of the state agencies that will play a key role in the following programs supported by the Bank.

a) Kenya Urban Support Program II

The State Department of Urban and Housing will be coordinating the program. The program aims at supporting the municipalities in some selected Counties.

b) Kenya County Governance and Performance Program (CGPP)

This is being coordinated by the State Department of Devolution, and it is to be implemented by the county governments and some capacity building by select national level agencies, including the PSC.

c) The Governance for Enabling Service Delivery and Public Investment in Kenya II (GESDeK II)

This is coordinated by the PFMR Secretariat and supports national level PFM and Public Sector Management Reforms at the national level.

In implementation of the above programmes, the Commission will play a key role in supporting devolution in Kenya, specifically in areas of governance, supporting establishment of municipalities, and other HR-related matters.

a. Actual expenditure by Vote and Program

The Commission's efficiency in utilization of allocated funds has been high over the years and stands at 97 per cent during the period under review. The Commission utilized Kshs. 2.40 billion from an allocation of Kshs. 2.48 billion with an unspent balance of Ksh. 76.57 million as summarized in Table 1 here below: -

Budget Item	Printed Estimates	Supplementary Estimates	Approved Estimates	Actual Expenditure	Balance	Absorption Rate
1. Gross Recurrent	2,555.84	-103.38	2,452.46	2,379.61	72.85	96%
A-I-A	-1.00	-17.00	-18.00	-14.69	-3.31	82%
Net Recurrent	2,554.84	-120.38	2,434.46	2,364.92	69.54	97%
Compensation to Employees (PE):	1,868.06	-51.28	1,816.79	1,807.14	9.64	99%
PSC Secretariat (Including Pension & Gratuity)	868.06	26.60	894.66	894.09	0.58	100%
PSIP (Interns stipend)	1,000.00	-77.88	922.12	913.06	9.06	99%
Non-Discretionary Expenditure (a+b+c+d+e+f):	197.94	-18.55	179.39	172.99	6.40	96%
a) Utilities (Electricity & Water)	11.15	0.00	11.15	9.76	1.39	88%
b) Communication (Telephone, Airtime, Leased Lines & Courier)	37.75	-3.55	34.20	32.48	1.72	95%
c) Rent (Bruce House)	10.15	0.00	10.15	9.64	0.51	95%
d) Insurance (Medical & GPA)	84.59	27.00	111.59	108.92	2.67	98%
e) Contracted Guards & Cleaning Services	10.30	0.00	10.30	10.19	0.11	99%
f) Car Loan and Mortgage	44.00	-42.00	2.00	2.00	-	100%
Other Recurrent (Core Mandate Programmes)	489.84	-33.55	456.29	401.68	54.61	88%
2. Gross Development	26.30	0.00	26.30	19.9	6.32	76%
Total Recurrent and Development	2,582.14	-103.38	2,478.76	2,399.59	79.17	97%

Table 1 FY 2022/23 Expenditure Analysis (Ksh. Millions)

The actual expenditure of Kshs. 1,807.14 million on Personnel Emoluments accounts for 76 per cent of the Commission's recurrent expenditure while Kshs. 401.68 million was utilized on the core mandate programmes.

The Commission's planned activities for the FY 2022/23 were carried out through the following four (4) budget programs:

- 1) General Administration, Planning, and Support Services,
- 2) Human Resource Management and Development,
- 3) Governance and National Values, and
- 4) Performance and Productivity Management.

The Commission's actual expenditure by Programmes and Sub-Programmes is shown in Table 2 here below: -

Name of the Programme & Sub-Programme	Approved Budget 2022/23	Actual Expenditure 2022/23	Absorption Rate
SP 1.1: Administration	860.09	829.23	96%
SP 1.2: Board Management Services	45.72	44.86	98%
Total Expenditure of Programme 1	905.82	874.09	96%
SP 2.1: Establishment and Management Consultancy Services	53.35	52.84	99%
SP 2.2: Human Resource Management	194.58	176.61	91%
SP 2.3: Human Resource Development	1,108.60	1,090.86	98%
Total Expenditure of Programme 2	1,356.53	1,320.32	97%
SP 3.1: Compliance and Quality Assurance	96.11	94.41	98%
SP 3.2: Ethics, Governance and National Values	43.70	41.13	94%
Total Expenditure of Programme 3	139.82	135.54	97%
SP 4.1: Performance & Productivity Mgt	50.30	49.66	99%
Total Expenditure of Programme 4	50.30	49.66	99%
Total Recurrent Vote	2,452.46	2,379.61	97%
Development Vote	26.30	19.98	76%
Total Expenditure Vote	2,478.76	2,399.59	97%
AIA	-18.00	-14.69	82%

Table 2 Actual Expenditure by Programmes and Sub-Programmes (Kshs Millions)

1. Non-financial performance

The Commission's Annual Work Plan for FY 2022/23 derived its activities and targeted outputs from the Strategic Plan 2019-24. The allocated funds were applied to activities (planned targets) as outlined in Table 3 here below.

Budget Programme	Total Planned Targets			
		Fully Achieved	Ongoing	Not Implemented
P1: General Administration, Planning and Support Services	160	83	39	38
P2: Human Resource Management and Development	47	27	8	12
P3: Governance and National Values	21	10	6	5
P4: Performance and Productivity Management	7	3	3	1
Total	235	123	56	56
Percentage	100	52.3	23.8	23.8

Table 3 A summary of the performance status as at 30th June 2023.

The Committee was informed that the analysis of targets performance implemented for the period under review, shows that out of the 235 planned targets for implementation, a total of 179 planned targets were implemented at different levels. However, 56 targets were not implemented due to various reasons. Out of the 235 targets planned for implementation, 123 (52.4%) were attained as per the set target (fully implemented), 56 (23.8%) were on-going while 56 (23.8%) targets were not achieved as projected.

The underperformance on some of the planned targets for the period was largely attributed to delay in exchequer releases and implementation of austerity measures as directed by the National Treasury, which resulted to non-implementation and postponement of the majority of targets. In addition, the Commission was involved in many key assignments as requested by the new government, of which

had not been factored in the Annual work plan. It is important to mention that the Commission played a key role in the transition and organization of the new government.

However, targets which were not accomplished in the financial year have been prioritized in the FY 2023/24 Annual Work Plan.

2. Key Achievements under each Budget Programme

The Committee was further briefed on key achievements in the various programmes as annexed to the minutes;

3. Project information

During the year, the Commission was allocated Kshs. 26.3m for Development Vote. An amount of Kshs. 19,979,094 was utilized to complete the on-going construction project of additional offices on the 5th floor (roof top) of the existing old office block. This project was completed and handed over to the Commission during the period under review.

4. Information on re-allocations, pending payments and any liabilities incurred

The Commission does not have any pending payments with an age of over ninety days. However, at the close of FY 2022/23 on 30th June 2023, the Commission had pending bills amounting to Kshs. 34,190,959.95 due to lack of exchequer provision.

Committee observations.

The Committee made the following observations and recommendations;

1. The disparity between the absorption rate and the performance. The rate of achievement of the set targets was not commensurate with the resources absorbed. The Committee was informed that the underperformance was occasioned by lack of exchequer release and budget re-alignments that resulted to budgets cuts on non-core areas such as training and capacity building. Further, a bulk of the resources are utilised in the Public Service Internship Programme (PSIP).
2. The unclear role of the Commission in the recruitment of TVET trainers. The Committee was informed that the commission renders technical support services to the TVETs Boards. The Commission builds capacity of the Boards to conduct recruitment of the trainers.
3. The key achievements submitted by the Commission had no corresponding resources utilized.
4. Further, the committee noted with concern the pending bills totalling Kshs. 34,190,959.95 Pending payment to suppliers and contractors adversely affects their businesses in terms of liquidity. The Commission assured the Committee that the pending bills will be prioritised as the first charge in FY 2023/24.
5. The Commission needs to streamline performance in the public service through performance management. Performance management should be institutionalized in the MDAs to create and sustain improved performance in the public service.

Recommendation

The Commission was tasked to submit a detailed listing of key achievement and outputs against set targets and the resources utilized.

MIN. NO. 405 NA/LABOUR/2023: SUBMISSIONS ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, (NA BILL NO. 6 OF 2023) BY PUBLIC SERVICE COMMISSION

Mr. Musa Cherogony, Deputy Director, Legal Services, Public Service Commission submitted as follows;

Proposed Section 34

On the proposed amendment to Section 34 of the Act to provide for non-payment of acting allowance beyond six months the Commission submitted that whereas the objective of the proposed amendment is to ensure vacant positions are filled expeditiously, not all positions which officers are appointed to act are available for filling.

There are circumstances where substantive holders are lawfully authorized to be away for a period exceeding six months and therefore the post cannot be filled. This include; officers on secondment, leave of absence granted to a spouse of a foreign service officer who has been posted outside Kenya during the tour of service for the foreign service officer. Staff of universities also take sabbatical leave and various universities prescribe different periods for the sabbatical leave. Some have 9 months some have one year. It will not be fair to have an officer perform duties in the higher office and not be compensated.

The Commission proposed that, instead of the proposed amendment, the following proviso should be introduced after 34(3) to read:

"Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment or on authorized leave which exceeds six months"

Justification

The primary objective of acting appointment is to ensure continuity of service delivery so that temporary or substantive vacation of a position for one reason or another does not impede or disrupt public service delivery.

Proposed Section 80

On the proposed amendment to Section 80 of the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of 60 years, the Commission submitted that Regulation 70 of the Public Service Commission Regulations 2020 provides as follows:

70. (1) Subject to the Constitution, section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be—

(a) sixty years;

(b) sixty-five years for persons with disability; and

(c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.

And

(6) Subject to section 80 (2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.

(7) In this regulation—

(a) "rare knowledge, skills and competencies" means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

The regulation above serves to address special circumstances that may be considered in exceptional cases. Some of these cases include where capacity in the public service is lacking or specific skills are required and not readily available; personal staff of specified state officers as determined from time to time; and succession management challenges due to intermittent recruitment freeze.

Further, the Commission submitted that;

Article 234 (3) excludes an office of High Commissioner, Ambassador or other diplomatic or Consular representative of the Republic; from the mandate of Public Service Commission.

Article 234 (4) of the Constitution provides that the Commission shall not appoint a person to hold or act in any office on the personal staff of the President or a retired President, except with the consent of the President or the retired President.

Regulation 27 of the PSC Regulations 2020 gives the Commission responsibility for appointment of Advisors to the President, Deputy President and Cabinet Secretaries. These Advisors are identified and recommended by the specified State Officer.

Putting the blanket age of sixty years will disadvantage persons with disability, lecturers and research scientists serving in public universities and research institutions.

Kenya's Vision 2030 and African Agenda 2063 both recognize the role played by science and scientific organizations in achieving developmental objectives. Subjecting lecturers and researchers to retirement at sixty years of age will have an impact on their role in manpower development and promotion of science and innovation and may result in them seeking greener pastures elsewhere resulting in brain drain from the country.

The scope of mandate of the Public Service Commission pursuant to Section 3 of the Public Service Commission Act 2017 applies to persons holding offices in the public service and excludes offices or positions subject to:

- i) The Parliamentary Service Commission
- ii) The Judicial Service Commission
- iii) The Teachers Service Commission
- iv) The National Police Service Commission
- v) An office in the service of a county except on hearing and determining appeals from county Governments' Public Service (234(2)(i))

Therefore, amendment of the Public Service Commission Act, 2017 will not stop these other Service Commissions from extending service beyond 60 years unless each of the enabling pieces of legislation of the various Commissions are similarly amended.

The Commission proposed that the Committee may consider retaining the retirement age in the Regulations (which are approved by Parliament through the Statutory Instruments Act 2013) rather than legislating it in the Act.

Justification

Legislating in an Act will tie the hands of the executive for whom the Commission recruits and appoints in the event there is need to review the retirement age like it was done in 2009 when it was increased from 55 to 60.

The Commission further proposes that there is need to enact the Public Service Management Act which will apply across the entire spectrum of the public service covering all Service Commissions and County Public Service Boards and County Assembly Service Boards just like the Public Finance Management Act applies to all public institutions.

Committee observation.

The committee proposed that Section 34 of the Act be amended to provide for a further extension of the acting period to a further six (6) months after the expiry of the initial six months. After the expiry of the twelve months the position should be competitively filled or the acting official confirmed for appointment. This will only apply to positions available for filling.

The Commission was agreeable with the proposal.

Committee recommendation

The Committee directed the Commission to fast track the drafting and committal to Parliament of the Public Service Human Resources management Bill which is to create common norms and standards in the Public Service.

MIN. NO. 406 NA/LABOUR/2023: MEETING ON THE STATUS OF BUDGET IMPLEMENTATION FY 2022/23 WITH SALARIES AND REMUNERATION COMMISSION.

Mr. John Kennedy Monyoncho, Commissioner, Salaries and Remuneration Commission (SRC) representing the Chairperson; Ms. Ann Gitau, MBS, Commission Secretary/CEO, SRC; Sen. Isaac Melly, Commissioner; Ms. Nelly P Ashubwe, Commissioner and Ms. Mary C Konuche, Head of Finance appeared before the Committee and submitted as follows;

Ms. Ann Gitau, MBS, Commission Secretary/CEO, SRC submitted that;

1. On the Financial performance by Vote and program.

The Commission's Vote is R-2081 Salaries and Remuneration Commission which has one programme which is Remuneration and Benefits management.

2. Actual Revenue Receipts (Exchequer issues, Donor and Appropriation in Aid)

The actual receipts were as tabulated below;

Description	Printed Estimates	Revised Estimates	Actual Receipt
Exchequer Issues	612,500,000	504,921,203	502,338,023
Other Receipts	-	-	-
Appropriations ~in~Aid	-	-	-
Grants from Development Partners	-	-	-
Total	612,500,000	504,921,203	502,338,023

Table 4 Actual Revenue Receipts (Exchequer issues, Donor and Appropriation in Aid)

3. Actual Expenditure by Vote (R 2081) and Program (Salaries and Remuneration Management)

The Commission does not have a development budget. The actual expenditure by vote and programme were as follows;

Description	Gross Estimates	Revised Net Estimates	Cumulative Expenditure	Absorption Rate
Compensation to Employees	304,400,000	275,748,000	275,445,312	99.89%
Use of goods and services	193,625,000	196,464,596	192,433,744	97.95%
Capital expenditure	114,475,000	32,708,607	30,625,189	93.63%
Total	612,500,000	504,921,203	498,504,245	98.73%

Table 5 Actual Expenditure by Vote (R 2081)

4. Non-financial performance

The committee was further briefed on actual outputs achieved relative to the set targets in the 2022/23 programme-based budget as summarised and annexed to the minutes

5. Project information

The Commission does not have any capital projects.

6. Information on reallocations, pending payments and liabilities.

a) Reallocations

The Commission sought and received authority from the National Treasury for reallocation of funds as tabulated below.

No.	Date	Reallocation		Amount	Remarks
		From	To		
1.	15/11/2022	2210200 (Communication, Supplies and Services-Telephone)	(1,500,000)	4,000,000	Approved by the National Treasury on 15/12/2022 vide letter Ref: RES 2081/22/01/A' (9)
		2210300 Domestic Travel and Subsistence	(2,000,000)		
		2211300 (Other operating expenses-Education and Library Services)	(500,000)		
		Total	(4,000,00)	4,000,000	

Table 6 Re-allocation of funds

No.	Date	Reallocation				Remarks
		From	Amount	TO	Amount	
2.	20/04/2023	2211300 (Other operating expenses)	(915,510)	2210200 (Communication, Supplies and Services-Courier services)	300,000	Approved by the National Treasury on 03/05/2023 vide letter Ref: RES 2081/22/01/'A' (22)
		3111100 (Purchase of specialized plant, Equipment and Machinery)	(8,824,743)	2210300 (Domestic Travel and Subsistence)	3,120,572	
				2210500 (Printing, Advertising and Information Supplies)	300,000	
				2210800 (Hospitality Supplies and Services-Conferences)	3,611,127	
				2220210 (Maintenance of Computers, Software and Networks)	2,408,554	
		Total	(9,740,253)		9,740,253	

Table 7 Re-allocation of funds

7. Pending payments

As at the close of the financial year, Commission did not have pending payments that were over ninety (90) days.

Committee Observation

The Committee queried on the compliance rate of the advices issued by the Commission through the gazette circulars. The Commission decried inadequate resources to track the implementation of advices issued. Follow up to establish the status of implementation is pegged on resources and therefore there is a need to facilitate the Commission to effectively perform its mandate.

MIN. NO. 407 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 408 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at twelve minutes past six o'clock. The next meeting will be held on notice.

SIGNED.....

A handwritten signature in black ink, appearing to be 'J. F. S.', written over a dotted line.

DATE.....

23/08/2023

(CHAIRPERSON)

MINUTES OF THE 52ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON WEDNESDAY 9TH AUGUST 2023 IN KONGAMANO 'A' CONFERENCE ROOM, TAMARIND TREE HOTEL, NAIROBI COUNTY AT 9.00 AM

PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. Karemba Eric Muchangi Njiru, M.P. | - | Chairperson |
| 2. The Hon. Muli Fabian Kyule, M.P. | - | Vice Chairperson |
| 3. The Hon. Kiti Richard Ken Chonga, M.P. | | |
| 4. The Hon. Wambilianga Catherine Nanjala, M.P. | | |
| 5. The Hon. Abdullahi Amina Dika, M.P. | | |
| 6. The Hon. Chiforomodo Mangale Munga, M.P. | | |
| 7. The Hon. Kihungi Peter Irungu, M.P. | | |
| 8. The Hon. Sankaire Leah Sopiato, M.P. | | |
| 9. The Hon. Siyoi Lillian Chebet, M.P. | | |

APOLOGIES

1. The Hon. K'Oyoo James Onyango, M.P
2. The Hon. Kagesi Kivai Ernest Ogesi, M.P.
3. The Hon. Lomwa Joseph Samal, M.P.
4. The Hon. Omwera George Aladwa, M.P
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Barasa Patrick Simiyu, M.P.

COMMITTEE SECRETARIAT

- | | | |
|--------------------------|---|-----------------------------|
| 1. Ms. Rose M. Wanjohi | - | Senior Clerk Assistant |
| 2. Mr. Samuel Wanjiru | - | Clerk Assistant III |
| 3. Mr. Fredrick Muthengi | - | Deputy Director PBO |
| 4. Ms. Fiona Wanjiru | - | Legal Counsel III |
| 5. Mr. Timothy Chiko | - | Research Officer III |
| 6. Mr. Alex Amwata | - | Hansard Officer III |
| 7. Ms. Wambui Nyachae | - | Research Officer III |
| 8. Ms. Rehema Koech | - | Audio Officer III |
| 9. Ms. Rinha Sainey | - | Media Relations Officer III |
| 10. Ms. Zainabu Wario | - | Serjeant at Arms |

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business;
 - i. The Public Service Commission (Amendment) Bill No.6 of 2023
 - ii. Employment (Amendment) Legislative Proposal, 2022.
 - iii. Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23
6. Consideration of the Draft report on the proposed Employment (Amendment) Bill, 2022
7. Consideration of the Draft report on the Public Service Commission (Amendment) Bill No 6 of 2023
8. Meeting on the Status of Budget Implementation FY 2022/23 with
 - i. State Department for Public Service
9. Submissions on the Public Service Commission (Amendment) Bill, (NA Bill No. 6 of 2023) by the Public Service Commission
10. Any Other Business.

11. Adjournment.

MIN. NO.391 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at twenty-two minutes to ten o'clock and thereafter said the Prayer. Self-introductions were made.

MIN.NO.392 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Minutes of the 47th Sitting were confirmed as being a true reflection of the proceedings of the meeting as proposed by The Hon. Muli Fabian Kyule, M.P and seconded by The Hon. Abdullahi Amina Dika, M.P.

Minutes of the 48th Sitting were confirmed as being a true reflection of the proceedings of the meeting as proposed by The Hon. Kiti Richard Ken Chonga, M.P and seconded by The Hon. Chiforomodo Mangale Munga, M.P.

Minutes of the 49th Sitting were confirmed as being a true reflection of the proceedings of the meeting as proposed by The Hon. Kiti Richard Ken Chonga, M.P and seconded by The Hon. Abdullahi Amina Dika, M.P.

Minutes of the 50th Sitting were confirmed as being a true reflection of the proceedings of the meeting as proposed by The Hon. Chiforomodo Mangale Munga, M.P. and seconded by The Hon. Kiti Richard Ken Chonga, M.P.

Minutes of the 51st Sitting were confirmed as being a true reflection of the proceedings of the meeting as proposed by The Hon. Muli Fabian Kyule, M.P and seconded by The Hon. Kiti Richard Ken Chonga, M.P.

MIN.NO.393 NA/LABOUR/2023: MATTERS ARISING.

There were no matters arising.

MIN.NO.394 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

1. Employment (Amendment) Legislative Proposal ,2022 by Hon. Didmus Wekesa Barasa, M.P which seeks to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another. It seeks to provide clarity on the modalities of transfer in good faith and in a fair, meritorious and rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of the employees.

Status

Received comments from the Attorney General (who was seeking comments from the affected agency) and Kenya Law Reform Commission. The Committee met with the sponsor of the proposal, Hon. Didmus Barasa, MP

2. The Public Service Commission (Amendment) Bill, No.6 of 2023 by Hon. Benjamin Mwangi, MP seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Bill also intends to address the issue of an officer acting in a position for more than six months.

Status

Bill advertised seeking public memoranda on 7th July 2023 for 14 days which ended on 21st July 2023. The Committee met with the sponsor of the bill on 3rd August 2023. It has received submissions from various stakeholders.

3. Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23. The committee is to meet with the MDAs and independent Commissions on 9th and 10th August.

MIN. NO. 395 NA/LABOUR/2023: CONSIDERATION OF THE DRAFT REPORT ON THE PROPOSED EMPLOYMENT (AMENDMENT) BILL 2022 (LEGISLATIVE PROPOSAL) BY HON. DIDMUS BARASA, MP

Ms. Fiona Wanjiru, Legal Counsel, guided the Committee through the draft report on the proposed Employment (Amendment) Bill, 2022. The Committee observed and proposed as follows;

Proposed section 15A (1)

That Section 15A (1) providing for the definition of the word 'transfer' be redrafted to specify that 'transfer' relates to a change of the geographical location of an employee's station of work.

Justification

The definition as originally drafted leaves room for multiple interpretation as is the case of mergers or acquisitions, an employee's place of work may equally be moved from one place to another.

Committee recommendation

The Committee agreed

Proposed section 15A (4)(a)

That Section 15A (4)(a) of the proposed bill requiring that an employee who is to be transferred be given a six months' notice in writing of the intended transfer or pay of one months' wage or salary in lieu of notice, be deleted.

Justification

The deletion of paragraph (a) is necessary to align the provisions on change in terms of a contract of service as provided for in section 10(5) of the Act and Article 41(1) of the Constitution of Kenya, 2010, that every person has a right to fair labour practices.

The transfer should be affected by the employer in consultation with the employee and contract revised to reflect the change.

Committee recommendation

The Committee agreed

Proposed section 15A (4)(e)

Section 15A (4)(e) which proposes that the consent of the employee is required before effecting the transfer be deleted.

Justification

An employer is free to allocate or organize work as it deems prudent to achieve optimum results, and that as per article 41 (1), every person has a right to fair labour practices and as held in the matter of Henry Ochido v NGO Co-ordination Board [2015] eKLR, at the minimum, prior consultations before a transfer are required to enable an employee organize themselves.

In addition, cross-border practice (Europe), change in employee's place of work is considered a change in the employee's working conditions and therefore can be decided upon by management where the new place of work is located within the same geographical sector, but where the new place of work is not located within the same geographical sector, the change will be considered an amendment to the employment agreement and therefore, would require the employee's formal consent.

The transfer of employees from one location to another can be an effective tool to optimize performance at the workplace. However, if used arbitrarily and without due regard for the employees' welfare, it can negatively affect employees' performance. In addition, in undertaking the consultations with the employee, all relevant factors must be taken into account including family obligations. (Republic vs Deputy General of National Police Service & 2 others ex-parte PC Stephen Mathenge (2015))

Committee recommendation

The Committee agreed.

Having considered the submissions from the sponsor of the legislative proposal and the stakeholders the Committee **unanimously** adopted the Draft Report on the Proposed Employment (Amendment Bill), 2022 and recommended its publishing as proposed by Hon. Wambilianga Catherine Nanjala, M.P. and seconded by Hon. Muli Fabian Kyule, M.P.

MIN. NO. 396 NA/LABOUR/2023: CONSIDERATION OF THE DRAFT REPORT ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, NO 6 OF 2023 BY HON. BENJAMIN G. MWANGI, MP.

Ms. Fiona Wanjiru, Legal Counsel, guided the Committee through the draft report on the Public Service Commission (Amendment) Bill No. 6 of 2023. The Committee observed and proposed as follows;

Proposed Section 34

On the proposed amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to provide that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the committee noted that the amendment may offend the constitutional right to fair labour practices under Article 41. Equal remuneration for work of equal value, is a fair labour practise.

Currently section 5 of the Employment Act, 2007 provides that an employer shall pay his employees equal remuneration for work of equal value in order to prevent discrimination in remuneration.

Committee recommendation

The committee proposed that Section 34 of the Act be amended to provide for confirmation of appointment of the officer acting after the expiry of the six months or competitive filling of the position.

Proposed section 80

The proposed amendment to Section 80 of the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of 60 years,

Justification

Article 24 (1) as read with Article 25 of the Constitution allows limitation of the rights guaranteed by Article 27, so long as the conditions set in Article 24 are satisfied. Article 24(1) provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law and only to the

extent that such limitations are reasonable and justifiable. In this instance, the limitation of age does not amount to discrimination as it is justified under Employment law and practice. It also allows for continuity in the sector and the absorption of young professionals. Thus, reasonable and justifiable.

The proposed amendment would also align the National Social Security Fund Act (No. 45 of 2013) provision on the age of retirement provided for in section 2 of the Act. "*pensionable age*" means the age of sixty years.

Committee recommendation

The Committee agreed with the amendment.

The Draft Report on the Public Service Commission (Amendment) Bill No. 6 of 2023 was unanimously adopted having been proposed by Hon. Wambilianga Catherine Nanjala, M.P and seconded by Hon. Muli Fabian Kyule, M.P.

MIN. NO. 397 NA/LABOUR/2023: MEETING ON THE STATUS OF BUDGET IMPLEMENTATION FY 2022/23 WITH STATE DEPARTMENT FOR PUBLIC SERVICE

The Chairperson informed the committee of the receipt of a letter from Mr. Amos N. Gathecha, Principal Secretary, State Department for Public Service, requesting the Committee to reschedule the meeting with the Ministry to another date due to a scheduled official foreign engagement.

Mr. Fredrick Muthengi, Deputy Director, Parliamentary Budget Office, briefed the Committee on the submissions from the State Department for Public Service on the status of budget implementation for the FY 2022/23 as follows;

1. Financial performance by Vote and Programme

a. Actual revenue receipts

The State Department had an approved allocation of KSh. 10.00 billion composed of KSh. 9.73 billion under recurrent and KSh. 0.27 billion under development. The major source of funds under recurrent were the exchequer and local AIA mostly for the Kenya School of Government while development financing was from the exchequer and a grant from JICA.

The State Department had exchequer requested of KSh. 7.99 billion for both recurrent and development budget. However only KSh. 7.55 billion was received by the end of the financial year. This represented a 95% financing of the approved budget. The unspent budget became part of the pending bills for the state Department.

Further, the State Department expected to raise KSh. 1.91 billion from sale of good and services under the recurrent budget mainly through the Kenya School of Government. By the close of the financial year, the State Department had collected KSh. 1.61 billion or 84% of the targeted revenue. The target was not met due to austerity measures during the financial year that targeted training allocation in all MDAs.

In total, the State Department spent 92% of the total allocation as indicated in tables below.

Source of Funding	Gross Estimates FY 2022/23 (KSh.)	Cumulative Expenditure (KSh.)	Remarks/ absorption
Current Expenditure			
Exchequer	7,812,021,730	7,459,992,852	95%

Appropriations In Aid	1,915,170,000	1,610,068,802	84%
Total Current Expenditure	9,727,191,730	9,006,140,388	93%
Development Expenditure			
Exchequer	174,087,150	97,525,000	56%
Appropriations In Aid-Grant	100,100,000	98,878,843	99%
Total Development Expenditure	274,187,150	196,403,843	72%
Total Expenditure	10,001,378,880	9,202,544,231	92%

Table 1 Budget implementation status by source of funding

b. Actual expenditure by vote and programme

The State Department for Public Service has two programmes and nine sub programmes that fall under this esteemed Departmental Committee on Labour. Table 2 below provides actual expenditure per programme and sub programme for the financial year 2022/23.

Programme/ Sub- Programme	Gross Estimates FY	Cumulative Expenditure	Absorption
	FY2022/23	FY2022/23	FY2022/23
PROGRAMME 1: Public Service Transformation			
SP1.1: Human Resource Management	5,741,995,469	5,691,240,645	99%
SP1.2: Human Resource Development	2,570,365,319	2,261,460,074	88%
SP1.3: Management Consultancy Services	117,657,867	116,904,702	99%
SP1.4: Huduma Kenya	927,399,732	599,716,924	65%
SP1.5: Performance Management	71,201,238	57,134,592	80%
SP1.6: Public Service Reforms	88,334,172	56,131,662	64%
Sub-Total	9,516,953,797	8,782,588,599	92%
PROGRAMME 2: General Administration, Planning and Support Services			
SP3.1: Human Resources and Support Services	428,108,828	364,384,164	85%
SP3.2: Financial Management Services	51,963,650	51,315,148	99%
SP3.3: Information Communications Services	4,352,605	4,256,320	98%
Sub-Total	484,425,083	419,955,632	87%
GRAND TOTAL	10,001,378,880	9,202,544,231	92%

Table 2 Actual expenditure by vote and programme

c. Actual Expenditure by Economic Classification

In addition, the State Department spent 94% of the compensation to employees due to the component of AIA that was not collected as envisaged. Expenditure under use of goods and services was 65% as a result of lack exchequer to finance the various commitment at the end of the financial year. Table 3 below provides more information on recurrent and development expenditures by economic classification.

Expenditure by Economic Classification	Gross Estimates FY 2022/23 (KSh.)	Cumulative Expenditure (KSh.)	Remarks/ absorption
Current Expenditure			
Compensation to Employees	865,386,000	810,293,766	94%
Employer Contributions to National Social and Health Insurance Scheme	5,400,000,000	5,400,000,000	100%
Use of Goods and Services	1,040,846,761	671,358,169	65%
Social Benefits	96,814,796	68,657,775	71%
Current Transfers	2,275,225,173	2,021,459,104	89%
Acquisition of Non-Financial Assets	48,919,000	34,371,574	70%
Total Current Expenditure	9,727,191,730	9,006,140,388	93%
Development Expenditure			
Use of Goods and Services	101,150,000	98,878,843	98%
Capital Transfers to Government Agencies	130,540,750	80,025,000	61%

Acquisition of Non-Financial Assets	42,496,400	17,500,000	41%
Total Development Expenditure	274,187,150	196,403,843	72%
Total Expenditure	10,001,378,880	9,202,544,231	92%

Table 3 Expenditure Status by Economic Classification

2. Non-Financial Performance

The State Department achieved several targets in the FY 2022/2023 under the following divisions as outline in the detailed summary which is annexed to the minutes.

- i) Human Resource Management Policy
- ii) Human Resource Development
- iii) Public Sector Reforms and Transformation
- iv) Management Consultancy Services
- v) Huduma Kenya Programme

3. Projects Information

The meeting was informed that the State Department for Public Service has seven (7) projects as presented in the table below.

Project Code and Project Title	Financing		Actual Cumulative Exp. up to 30th June 2022	Approved budget 2022/23	Actual Expenditure 2022/23	Outstanding Project Cost as at 30th June 2023	Project Completion % as at 30th June 2023
	Estimated project cost	Source of fund					
KSh. Million							
Implementation of Huduma Service Delivery Channels	25,030.00	GOK (Exchequer)	8,329.03	33.10	17.50	16,683.47	33%
Completion of Tuition complex at KSG Matuga	745.00	GOK (Exchequer)	101.80	24.40	15.00	628.20	16%
Completion of hostels 112 bed capacity single rooms at KSG-Embu	1,200.00	GOK (Exchequer)	144.17	32.50	45.00	1,010.83	16%
Completion of tuition complex at KSG-Baringo	623.50	GOK (Exchequer)	128.00	73.60	20.00	475.50	24%
Japanese Grants for Human Resource Development Scholarships (JDS)	497.40	Donor	100.10	100.10	98.87	298.43	40%
Upgrading of GHRIS	560.00	GOK (Exchequer)	30.00	6.37	-	530.00	5%
TOTAL	28,655.90		8,833.10	270.07	196.37	19,626.43	32%

Table 4 Project status as at 31st June 2023-Ksh. in Millions

The State Department has projects with a total cost of KSh. 28.6 billion comprising of KSh. 28.2 billion from the Government of Kenya and KSh. 0.4 billion of Development Partner's support.

4. Information on Reallocation, Pending Bills and Liabilities

- i) Information on Re-allocation

The State Department requested for reallocation during the FY 2022/23 that were approved in the two supplementary estimates that were done during the financial year.

- ii) Pending bills with an age of ninety days

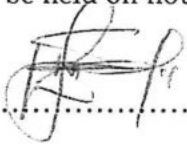
The State Department has a pending bill of KSh. 1.76 billion composed of KSh. 1.63 billion under recurrent in the FY 2022/23, KSh. 19.84 million under Development in the same period. The total amount has KSh. 111.53 million historical pending bills. The pending bills include KSh. 1.28 billion for the civil servants enhanced medical scheme that was declared as a pending bill in 2021/22. This was subsequently paid as a first charge in the FY 2022/23. The deficit created by charging the pending bill did not get budget allocation during the financial year. The bills also include KSh. 77.76 million for Jubilee Health Insurance meant for the senior civil servant medical scheme. The Jubilee insurance pending bill is as a result of lack of budgetary provision of KSh. 35.00 million and lack of exchequer of KSh. 42.76 million.

MIN. NO. 398 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 399 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at eighteen minutes past one o'clock. The next meeting will be held on notice.

SIGNED.......... DATE 23/08/2023
(CHAIRPERSON)

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON THURSDAY 4TH AUGUST 2023 IN THE COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT PRECINCTS AT 12.00PM

PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. Karemba Eric Muchangi Njiru, M.P. | - | Chairperson |
| 2. The Hon. Muli Fabian Kyule, M.P. | - | Vice Chairperson |
| 3. The Hon. K'Oyoo James Onyango, M.P. | | |
| 4. The Hon. Kiti Richard Ken Chonga, M.P. | | |
| 5. The Hon. Wambilianga Catherine Nanjala, M.P. | | |
| 6. The Hon. Barasa Patrick Simiyu, M.P. | | |
| 7. The Hon. Chiforomodo Mangale Munga, M.P. | | |

APOLOGIES

1. The Hon. Kagesi Kivai Ernest Ogesi, M.P.
2. The Hon. Lomwa Joseph Samal, M.P.
3. The Hon. Omwera George Aladwa, M.P.
4. The Hon. Abdullahi Amina Dika, M.P.
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Kihungi Peter Irungu, M.P.
7. The Hon. Sankaire Leah Sopiato, M.P.
8. The Hon. Siyoi Lillian Chebet, M.P.

IN ATTENDANCE

1. The Hon. Benjamin G. Mwangi, M.P.

COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Rose M. Wanjohi | - | Senior Clerk Assistant |
| 2. Mr. Samuel Wanjiru | - | Clerk Assistant III |
| 3. Ms. Wambui Nyachae | - | Research Officer III |
| 4. Mr. Timothy Chiko | - | Research Officer III |
| 5. Ms. Rehema Koech | - | Audio Officer III |
| 6. Ms. Fiona Githunguri | - | Legal Officer II |
| 7. Mr. Alex Amwata | - | Hansard Officer III |
| 8. Ms. Zainabu Wario | - | Serjeant at Arms |
| 9. Ms. Rinha Sainey | - | Media Relations Officer III |

AGENDA

1. Preliminaries.
2. Confirmation of Minutes.
3. Matters Arising;
4. Pending Business;
 - i. The Public Service Commission (Amendment) Bill No.6 of 2023
 - ii. Employment (Amendment) Legislative Proposal, 2023.
 - iii. Meeting with MDAs under the purview of the Committee on the status of Budget implementation FY 2022/23
5. Briefing by the Legal Counsel on the Public Service Commission (Amendment) Bill No. 6 of 2023.
6. Meeting with Hon Benjamin G Mwangi, MP (Sponsor) and the Public Service Commission on the Public Service Commission (Amendment) Bill No 6 2023.
7. Any Other Business.
8. Adjournment.

MIN. NO.362 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at forty five minutes past twelve o'clock. This was followed by a prayer by The Hon. Kiti Richard Ken Chonga, M.P.

MIN.NO.363 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This agenda was deferred

MIN.NO.364 NA/LABOUR/2023: MATTERS ARISING.

There were no matters arising.

MIN.NO.365 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

- i. Employment (Amendment) Legislative Proposal, 2022 by Hon. Didmus Wekesa Barasa, M.P which seeks to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another. It seeks to provide clarity on the modalities of transfer in good faith and in a fair, meritorious and rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of the employees.

Status

Received comments from the Attorney General (seeking affected persons) and Kenya Law Reform Commission. Met with the sponsor of the proposal, Hon. Didmus Barasa, MP

- ii. The Public Service Commission (Amendment) Bill, No.6 by Hon. Didmus Benjamin Mwangi, MP 2023 seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Bill also intends to address the issue of an officer acting in a position for more than six months.

Status

Bill advertised seeking public memoranda on 7th July 2023 for 14 days ending 21st July 2023. The Committee met with the sponsor on 3rd August 2023

MIN. NO. 366 NA/LABOUR/2023: MEETING WITH HON. BENJAMIN G. MWANGI, MP (SPONSOR) AND THE PUBLIC SERVICE COMMISSION ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL NO. 6 2023

Hon. Benjamin Mwangi, MP appeared before the committee and submitted as follows;

The Bill seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The amendment is meant to firm up its implementation in the public service and to increase the job vacancies available to Kenya citizens below the age of sixty.

The job vacancies are sometimes held by person beyond the age of sixty years on account that they possess rare knowledge, skills and competencies for the required in the service. The Public Service Commission and other appointing authorities should be keen on succession planning to settle succession issues that are common in the public service through training other persons in the organization to take up these positions.

Further, the Bill further seeks to address the issue of an officer acting in a position for more than six months. The period of six months prescribed should provide adequate time for the organization to

recruit and substantively fill the position. Failure to comply with this provision will result in the officer not earning any acting allowances.

In addition, the Bill seeks to save the contracts of the officers currently engaged by the Public Service Commission or other appointing authority to be allowed to complete their contracts. It gives the Public Service Commission and other appointing authority a grace period to training officers for the necessary skills.

**MIN. NO. 367 NA/LABOUR/2023: BRIEFING BY THE LEGAL COUNSEL ON THE
PUBLIC SERVICE COMMISSION (AMENDMENT)
BILL NO. 6 OF 2023.**

Ms. Fiona Githunguri, Legal Officer, briefed the Committees on the written submissions from the stakeholders as follows;

a. Submissions from the Law Society of Kenya

On amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the society disagreed with the proposal as the provisions are unconstitutional and contravenes other written law.

Justification

The Act as is currently does not offend any constitutional provision, nor does it contravene any written law. However, the proposed amendment may offend the constitutional right to fair labour practices under Article 41. In this instance equal remuneration for work of equal value, is a fair labour practise.

Currently section 5 of the Employment Act, 2007 provides that an employer shall pay his employees equal remuneration for work of equal value which is to prevent discrimination in remuneration

The society proposed that if an acting officer is not confirmed to the office for reasons of attaining the age of 60, then the officer should be considered for hiring on a six months consultancy basis until a suitable replacement is found.

On amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to provide for the retirement age in the Public Service Commission Act, the society disagreed with the proposed amendment as it would entrench discrimination on account of age, offending Article 27 of the Constitution.

b. Submissions from the Public Service Commission

On amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the commission disagreed with the proposal as the provisions are unconstitutional and contravenes other written law. The Commission disagreed with the proposed amendment as not all positions filled in an acting capacity are available for filing.

Justification

The objective of having officers working in an acting capacity is to ensure vacant positions are filled expeditiously, however, not all such positions are available for filling. These instances include, where substantive holders are lawfully away for a period exceeding six months. It would then be unfair to have an officer perform the duties of a higher office and not be compensated.

The Commission proposed that such limitation should only apply to vacancies which are available for competitive filling.

c. Submissions from the Ministry of Public Service, Gender and Affirmative Action
(State Department for Public Service)

On amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, the Ministry disagreed with the amendment given that not all positions filled in an acting capacity are available for filling.

The Ministry proposed an amendment be introduced after section 34(3) stating that;

"Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment, unpaid leave or sabbatical leave"

Further, the section to be amended further to include (3B) which shall read;

"the request for acting appointment shall be submitted to the appointing authority together with an indent declaring the position vacant for filling. The filling of the vacant position(s) shall be finalized within six months".

Justification

Inclusion of 3A & 3B in the Act will address timely filling of vacant position(s) substantively and succession management across the Public Service.

On amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to provide for the retirement age in the Public Service Commission Act, the Ministry disagreed with the proposed amendment and proposed that a subsection should be provided to justify the need of engaging a public officer on contract who has attained the age of retirement.

Further, section 80 to be amended to include the provisions of Regulation 70 (1) of the PSC Regulations on retirement on age grounds which provides for the mandatory retirement age in the public service as follows –

- i. sixty years;
- ii. sixty- five for persons with disability; and
- iii. such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by the Commission in consultation with such universities, research institutions or equivalent institutions

Justification

The proposed deletion of the words "as may be prescribed in the regulations" shall negate the provisions of retirement as provided for in PSC Regulation 70; other relevant laws and specific government policy, on mandatory retirement age for the following groups: -persons with disability; and lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by the Commission in consultation with such universities, research institutions or equivalent institutions

The proposed deletion of section 80 (2) may have been well intentioned for purposes of curbing the abuse of retention of officers beyond the mandatory retirement age. It may however be noted that section 80 (2) is a good safety net measure to cater for among others certain cadres with rare professional skills which take time to develop and impart to others. These cadres include the medical field, engineering, geology, aviation industry, energy and petroleum.

d. Submissions from the National Gender and Equality Commission

On amendment of section 80 of the Public Service Commission Act (No. 10 of 2017) to provide for the retirement age in the Public Service Commission Act, the Commission disagreed with the proposed amendment as the rationale of the regulations is to provide for more than one mandatory age for public officers depending on the status and institution. That this amendment would be discriminatory and prejudicial, entrenching only one mandatory category in the substantive Act.

The Commission proposed section 80 be amended by inserting subsection (3) as follows—

“(3) The Commission or authority shall be required to justify the reasons for lack of such rare knowledge or skills in the authority or among the other public officers.”

Justification

That section 92(f) of the Public Service Commission Act on delegated legislation confers powers to the Commission to make guidelines on retirement.

Further the Public Service Commission Regulations, 2019 at regulation 70 provides as follows on retirement on age grounds;

1. subject to the Constitution, section 80 of the Act, any other relevant written law or specific government policy, the mandatory age of retirement in the public service shall be—
 - a) sixty years;
 - b) sixty-five years for persons with disability and
 - c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions

Regulation 70 (6) and (7) further provides as follows—

(6) Subject to section 80 (2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.

(7) In this regulation—

- a) “rare knowledge, skills and competencies” means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.; and
- b) “disability” means a permanent physical other impairment or condition that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities.

The National Policy on older persons and ageing revised in 2014, paragraph 2 acknowledges that many older persons have skills, resources and expertise, which could be tapped into and utilized for development. The policy object, provides that the state will put in place measures that ensure older persons continue to provide their expertise, talent and experience, to family, community and in the creation of employment.

e. Submissions from Michael Mwangi Kinonge

Michael Mwangi Kinonge, a retiree proposed that a retiree should;

- i. have their file under the docket of the attorney general;
- ii. linked with the Ombudsman;
- iii. their services, and dues paid;
- iv. have the and over process between the retiree and the occupant of the office facilitated;
- v. lastly the Ombudsman may act as a go between the Attorney General and the retiree.

Committee observations

The Committee made the following observations;

1. On the Amendment of section 34 of the Public Service Commission Act (No. 10 of 2017) to require that an officer working in an acting capacity will not be entitled to an acting allowance after six months, Committee noted that the enactment of this provision would result to unfair labour practices contrary to article 27 and 41(1) of the Constitution on the freedom from discrimination and right to fair labour practices. As well as section 5 of the Employment Act (No. 11 of 2007) that requires that an employer pay their employees equal remuneration for work of equal value.

The Committee recommends that an amendment may therefore be introduced in section (3A) by inserting the words "*unless such position is available for competitive appointment.*" and that "*Upon the expiry of six months, an officer appointed under subsection (3) shall not be entitled to any acting allowances where such position is available for competitive appointment.*"

2. Article 24 (1) as read with Article 25 of the Constitution allows limitation of the rights guaranteed by Article 27, so long as the conditions set in Article 24 are satisfied. Article 24(1) provides that a right or fundamental freedom in the Bill of rights shall not be limited except by law and only to the extent that such limitations are reasonable and justifiable. In this instance, the limitation of age does not amount to discrimination as it is justified under Employment law and practice. It also allows for continuity in the sector and absorption of young professionals. Thus, reasonable and justifiable.
3. The proposed amendment would align the National Social Security Fund Act (No. 45 of 2013) provision on age of retirement provided for in section 2 of the Act. "*pensionable age*" means the age of sixty years.
4. The role of the National Assembly to enact legislation as per article 95 (3) of the Constitution and that no person or body, other than Parliament has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or legislation as per article 94 of the Constitution. Delegation of powers to make law is provided under section 92 of the Public Service Commission Act, providing that the Commission may make regulations for the better carrying into effect the provisions of this Act. Section 92(2)(f) provides that the Commission may make regulations for guidelines on retirement. This provision does not preclude the role of the National Assembly to make law through legislation and thus the provision of the age of retirement as is proposed in this Bill.
5. The submission of Michael Mwangi Kinonge was received by the National Assembly on the 27th of July, 2023 outside the time stipulated in the invitation to submit memoranda which gave a deadline of the 21st of July, 2023. It was noted that such delay have not come after consideration of the Bill by the Committee and may therefore be considered.

MIN. NO. 368 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 369 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at thirty five minutes past one o'clock. The next meeting will be held on notice.

SIGNED..... DATE 23/08/2023
(CHAIRPERSON)

Annexure 3:

**Newspaper advertisement inviting the public to
submit memoranda on the Bill**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2023);
2. THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 5 OF 2023);
3. THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2023); AND
4. THE CROPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 8 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023); the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023); the Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023); and the Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023) were read a First Time on Wednesday, 5th July 2022 and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023)** is a Bill sponsored by the Hon. Ruweida Mohamed Obo, MP which seeks to amend the Wildlife Conservation and Management Act No. 47 of 2013 to include sharks, stone fish, whales and sting rays among the wildlife species in respect of which compensation as a result of death and injury may be paid. This will ensure that persons who live along water bodies are entitled to payment of compensation as a result of death and injury from the specified wildlife species.
2. **The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023)** is a Bill sponsored by the Hon. Makali Mulu, MP which seeks to amend the Parliamentary Pensions Act, Cap. 196 to bring it into conformity with the provisions of the Constitution of Kenya 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring Cap. 196 into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament.
3. **The Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023)** is a Bill sponsored by the Hon. Benjamin G. Mwangi, MP which seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The amendments are meant to increase job vacancies to Kenyans below the age of sixty years. The Bill also seeks to address the issue of an officer acting in a position for more than six months.
4. **The Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023)** is a Bill sponsored by the Hon. Tandaza Kassim Sawa, MP which seeks to amend the First Schedule to the Crops Act No. 16 of 2013 to include *Achiote* as a scheduled crop.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023)	Tourism and Wildlife
2. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023)	Finance and National Planning
3. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023)	Labour
4. The Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023)	Agriculture and Livestock

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before Friday, 21st July 2022 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

7th July 2022

"For the Welfare of Society and the Just Government of the People"



REPUBLIC OF KENYA
TANA RIVER COUNTY GOVERNMENT
OFFICE OF THE
COUNTY PUBLIC SERVICE BOARD

P.O. BOX 181-70101, HOLA, Email: trcpsb@gmail.com, Tel: 0705458888

VACANCY ANNOUNCEMENT

The County Government of Tana River pursuant to Section 59(1), (b) and 66 of the County Government Act 2012, Section 6(1) of the Tana River County Investment and Development Corporation Act 2016 as read together with article 235 of the Constitution of Kenya 2010; wishes to recruit competent and qualified persons to fill the following vacant positions:

VACANCY NUMBER	TITLE	NO. OF VACANT POSITIONS
V/NO. 049/2023	CHAIRPERSON	1 POST
V/NO. 050/2023	VICE CHAIRPERSON	1 POST
V/NO. 051/2023	BOARD MEMBER	4 POSTS
V/NO. 052/2023	MANAGING DIRECTOR	1 POST

How to apply

Qualified and interested candidates for the position of Chairperson, Vice Chairperson and Member should download and duly fill a job application form provided on our website: www.tanariver.go.ke/vacancies attach and submit their applications with updated CV, a copy of National Identity Card, copies of academic and professional certificates, names and contacts of three (3) referees, and other relevant testimonials to:

The County Executive Committee Member
Finance and Economic Planning
County Government of Tana River
P.O. Box 23 - 70101
HOLA

AND

For the Position of Managing Director visit our portal: www.jobs.tanarivercpsb.go.ke for online job application and submission. Also upload applications with updated CV, copy of National Identity Card, copies of academic and professional certificates, names and contacts of three (3) referees, and other relevant testimonials to:

The Board Secretary / C.E.O.
Tana River County Public Service Board
P.O. Box 181 - 70101
HOLA

Applications should be received on or before 14th July 2022 by 5:00pm

Kindly note that only shortlisted and successful candidates will be contacted. Any form of canvassing will lead to automatic disqualification.

Tana River County Public Service Board is a credible government institution and therefore all its recruitments are devoid of any payments. You are hereby advised not to entertain fraudsters purporting to be employees of the Board promising to assist you have your appointment letter processed at a fee.

The County Government of Tana River is an Equal Opportunity Employer; Women, the Marginalized and Persons with Disabilities (PWDs) are encouraged to apply.

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KENYA'S BOLD NEWSPAPER
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Open Weekdays
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CAREER OPPORTUNITIES

Ukulima DT Sacco Society Limited is a licensed Deposit Taking Sacco in Kenya with its Headquarters in Nairobi and branches in Nairobi, Kisumu, Mombasa, Eldoret, Embu, Nakuru, Kisii & Kakamega. The Society aspires to be a world-class preferred financial partner and is committed to transforming lives through resource mobilization and the provision of innovative financial solutions. The Society invites interested persons to apply for the positions listed below:

1. LEGAL OFFICER UC 4 - 1 POSITION
2. SECRETARY II- UC 6 - 1 POSITION

Details of key requirements for these positions are available at our website: www.ukulimasacco.coop. Applications with a detailed CV indicating current position, qualifications, work experience, scanned copies of certificates, testimonials, and National Identity card with day telephone contacts and names and contacts of at least three (3) referees should be sent to recruitment@ukulimasacco.coop and hard copies sent to the following address and which must be received no later than 21st July 2023

The Chief Executive Officer
Ukulima Sacco Society Limited
P.O. Box 44071-00100 NAIROBI

Only shortlisted candidates shall be contacted

Ukulima Sacco is an Equal Opportunity Employer (EOE) and committed to diversity and gender equality. Please note that Ukulima DT Sacco does not charge any fee at any stage of the recruitment process. (Application, Interview meeting, Processing, or any other fees).



CHRISTIAN AID KENYA
P.O BOX 13864 - 00800
NAIROBI

Christian Aid Kenya invites interested and eligible suppliers to apply for pre-qualification indicating the category of goods and services as they wish to supply. Existing suppliers who wish to be retained must also re-apply and submit information requested in the prequalification document.

TENDER NAME: PREQUALIFICATION OF SUPPLIERS FOR SUPPLY OF GOODS & SERVICES FOR THE YEARS 2023 - 2028

ITEM NO.	REFERENCE	ITEM DESCRIPTION
1	CA-1/2023	Provision for security, safety & First Aid training
2	CA-2/2023	Provision of Security Alarm System, Monitoring and Response Service for Premises in Nairobi
3	CA-3/2023	Supply and Delivery of General Office Stationeries
4	CA-4/2023	Provision of Air Ticketing & Other Travel Agency Services
5	CA-5/2023	Provision of hotel accommodation & Conference facilities in the following locations: - Nairobi, Nakuru, Kiambu, Turkana, Muranga, Machakos, Narok, Makeni, Meru, Kajiado, Nyeri, Kitui, Nyandarua, Kirinyaga, Embu, Baringo, Laikipia, Tharaka Nithi, Marsabit, Lodwar, Samburu, Kisumu, Kakamega & Bomet, Wajir, Kilifi, Garissa, Moyale
6	CA-6/2023	Provision of Catering Services in Nairobi
7	CA-7/2023	Provision of Office Cleaning Services in Nairobi
8	CA-8/2023	Provision of Transport - Car Hire/Driver Hire
9	CA-9/2023	Provision of bulk photocopying and binding services in Nairobi
10	CA-10/2023	Provision of Service Maintenance for Local Area Network, Electrical Power, PABX System, Air Conditioner, Power Backup and Door Access Systems
11	1/2023	Provision of Pest Control & Fumigation Services in Nairobi
12	12/2023	Provision of Photography and/or Videography Services
13	13/2023	Provision of Creative Design & Production of Materials such as branded stationery, folders, banners, general branding and printing services like printing of letterheads etc.
14	CA-14/2023	Provision of Fire Equipment Maintenance Services
15	CA-15/2023	Provision of Courier Services Countrywide
16	CA-16/2023	Provision of Legal Services
17	CA-17/2023	Provision of Asset Tagging Services
18	CA-18/2023	Supply of IT Equipment and Accessories
19	CA-19/2023	Supply of First Aid Kits and pharmaceutical services
20	CA-20/2023	Provision of Project Audit Services
21	CA-21/2023	Vehicle Servicing/Garage Services in the following locations: Nairobi, Nakuru, Kiambu, Turkana, Muranga, Machakos, Narok, Makeni, Meru, Kajiado, Nyeri, Kitui, Nyandarua, Kirinyaga, Embu, Baringo, Laikipia, Tharaka Nithi, Marsabit, Lodwar, Samburu, Kisumu, Kakamega & Bomet, Wajir, Kilifi, Garissa, Moyale
22	CA-22/2023	Provision of Insurance Services: medical, personal accident, WIPA, Vehicle Insurance, Business shield
23	CA-23/2023	Supply and Delivery of General Office Supplies
24	CA-24/2023	Provision of Car Wash Services
25	CA-25/2023	Provision of Taxi Hailing Services
26	CA-26/2023	Provision of Payroll System
27	CA-27/2023	Provision of Mineral Water Supply
28	CA-28/2023	Provision of Plant Maintenance (Landscaping services)
29	CA-29/2023	Provision of Team Building Services
30	CA-30/2023	Provision of Computer and Printer Repairs and Servicing
31	CA-31/2023	Supply of Furniture and Office Equipment
32	CA-32/2023	Annual Audit services
33	CA-33/2023	Provision of vehicle fuel in the following locations Nairobi, Nakuru, Kiambu, Turkana, Muranga, Machakos, Narok, Makeni, Meru, Kajiado, Nyeri, Kitui, Nyandarua, Kirinyaga, Embu, Baringo, Laikipia, Tharaka Nithi, Marsabit, Lodwar, Samburu, Kisumu, Kakamega & Bomet, Wajir, Kilifi, Garissa, Moyale
34	CA-34/2023	Provision of Architectural services/office partition
35	CA-35/2023	Provision of office repair services: plumbing, electrical related repairs
36	CA-36/2023	Provision of vehicle repair/mechanic services
37	CA-37/2023	Provision of vehicle accessories (e.g. fire extinguishers, tires, first aid kits for vehicle, etc)
38	CA-38/2023	Provision of Laptop repairs and Servicing (by an authorized dealer)

Interested candidates shall obtain pre-qualification documents from this link: <https://caid.org/ke/kenya-vendor>. Complete pre-qualification documents should be sent before 21st July 2023 at 5.00pm, to kenyavendors@christian-aid.org. The email subject must comprise of reference number and item description for every application. Only the short-listed suppliers will be contacted. Women, Youth & PWDs are encouraged to apply.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT - SECOND SESSION

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2023);
2. THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 5 OF 2023);
3. THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2023); AND
4. THE CROPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 8 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023); the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023); the Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023); and the Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023) were read a First Time on Wednesday, 5th July 2023 and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. The Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023) is a Bill sponsored by the Hon. Ruwaida Mohamed Obo, MP which seeks to amend the Wildlife Conservation and Management Act No. 47 of 2013 to include sharks, stone fish, whales and sting rays among the wildlife species in respect of which compensation as a result of death and injury may be paid. This will ensure that persons who live along water bodies are entitled to payment of compensation as a result of death and injury from the specified wildlife species.
2. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023) is a Bill sponsored by the Hon. Makali Mulu, MP which seeks to amend the Parliamentary Pensions Act, Cap. 196 to bring it into conformity with the provisions of the Constitution of Kenya 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring Cap. 196 into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament.
3. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023) is a Bill sponsored by the Hon. Benjamin G. Mwangi, MP which seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The amendments are meant to increase job vacancies to Kenyans below the age of sixty years. The Bill also seeks to address the issue of an officer acting in a position for more than six months.
4. The Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023) is a Bill sponsored by the Hon. Tandaza Kassim Sawa, MP which seeks to amend the First Schedule to the Crops Act No. 16 of 2013 to include *Achiote* as a scheduled crop.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023)	Tourism and Wildlife
2. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023)	Finance and National Planning
3. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023)	Labour
4. The Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023)	Agriculture and Livestock

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke to be received on or before Friday, 21st July 2023 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

7th July 2023

"For the Welfare of Society and the just Government of the People"

Annexure 4:

Written submissions from stakeholders

REPUBLIC OF KENYA



PUBLIC SERVICE COMMISSION

**MEMORANDUM OF THE PUBLIC SERVICE
COMMISSION**

ON

**THE PUBLIC SERVICE COMMISSION (AMENDMENT)
BILL, 2023**

**DURING THE MEETING WITH THE NATIONAL
ASSEMBLY DEPARTMENTAL COMMITTEE ON
LABOUR**

9TH AUGUST, 2023

Public Service Commission
P.O. Box 30095, 00100,
Nairobi, Kenya, Harambee
Telephone: +254 (020)
2223901-5,
2227471-5
+254 (020) 2214791
+254-724-253807,
+254-735-800282

Website:
publicservice.go.ke
publicservice.go.ke
Facebook page:
Public Service Commission
@PSCKenya

A. Introduction

Hon Chairman and Hon Members of the National Assembly Departmental Committee on Labour, the Secretariat, Ladies and Gentlemen, we wish at the onset to convey greetings from the Public Service Commission.

B. Invitation

The Clerk of the National Assembly through Letters No. NA/DDC/JLAC/2023/068 and 072 of 27th July and 7th August, 2023 respectively, invited the Commission to make submissions on the Public Service Commission (Amendment) Bill, 2023.

C. Submission

Hon Chairman the Commission, having reviewed the Bill notes that it seeks to amend two sections of the Public Service Commission Act. Section 34 of the Act which deals with acting appointments and section 80 on retirement.

The Commission's submissions on the two clauses are as follows:

- (1) Regarding nonpayment of acting allowance beyond six months the Commission makes its observations and recommendations as follows:**

D. Proposed amendment

Insertion of a new section 34(3A) to read

“Upon expiry of six months an officer appointed under section 3 shall not be entitled to any allowances”

E. Observations

Whereas the objective of the proposed amendment is to ensure vacant positions are filled expeditiously, not all positions which officers are appointed to act are available for filling.

There are circumstances where substantive holders are lawfully authorized to be away for a period exceeding six months and therefore the post cannot be filled.

Leave of absence may be granted to a spouse of a foreign service officer who has been posted outside Kenya during the tour of service for the foreign service officer.

When the substantive holder has been granted leave by virtue of having been appointed to serve in international organizations. In this instance the period the officer is usually allowed to be away is three years.

Staff of universities also take sabbatical leave and various universities prescribe different periods for the sabbatical leave. Some have 9 months some have one year.

It will not be fair to have an officer perform duties in the higher office and not be compensated.

F. Recommendations

The limitation to have an officer act for 6 months should apply to vacancies which are available for competitive filling.

The Commission therefore proposes that, instead of the proposed amendment, the following proviso should be introduced after 34(3) to read:

Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment or on authorized leave which exceeds six months.

NOTE: The primary objective of acting appointment is to ensure continuity of service delivery so that temporary or substantive vacation of a position for one reason or another does not impede or disrupt public service delivery.

(2) Proposed Amendment to Section 80 of the Public Service Commission Act, 2017

- a. Section 80 of the Principal Act is amended by deleting the words “as may be prescribed in the regulations” and substituting therefore the words “of sixty years”
- b. By deleting subsection (2)

Observations

- (3) Hon Chairman Regulation 70 of the Public Service Commission Regulations 2020 provides as follows:

70. (1) *Subject to the Constitution, section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be—*

(a) sixty years;

(b) sixty-five years for persons with disability; and

(c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.

And

(6) Subject to section 80 (2) of the Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.

(7) In this regulation—

(a) “rare knowledge, skills and competencies” means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

- (4) The regulation above serves to address special circumstances that may be considered in exceptional cases. Some of these cases include where capacity in the public service is lacking or specific skills are required and not readily available; personal staff of specified state officers as determined from time to time; and succession management challenges due to intermittent recruitment freeze.

The committee may also wish to note that when the above is invoked, the officer is retired at 60 years and then given a specified contract for a specified period. Some of these rare or specific skills include among others;

- Space science
- Blue economy (marine engineers, coxswains)
- Pilot

- Aircraft accident investigators
- Artists
- Officers with extensive experience

(5) As at 30th June 2023, there were 75,031 employees in the civil service (Ministries/State Departments). Out of these 405 are aged 60 years and above broken down as summarized in the table below.

Description	#officers	Percentage
Total Number of Officers in the Civil Service	75,031	
Number of Officers Aged 60 years and above	405	0.540
Broken down as follows		
Persons Living With Disabilities (60 years and Above)	286	0.381
Ambassadors / High Commissioners (60 years and Above)	31	0.041
Principal Secretaries (60 years and above)	4	0.005
Advisors (60 years and above)	20	0.027
Other public officers on Local Contracts (60 years and above)	64	0.085

Hon Chairperson, the Committee may wish to note the following

- Article 234 (3) excludes an office of High Commissioner, Ambassador or other diplomatic or Consular representative of the Republic; from the mandate of Public Service Commission.
 - Article 234 (4) of the Constitution provides that the Commission shall not appoint a person to hold or act in any office on the personal staff of the President or a retired President, except with the consent of the President or the retired President.
 - Regulation 27 of the PSC Regulations 2020 gives the Commission responsibility for appointment of Advisors to the President, Deputy President and Cabinet Secretaries. These Advisors are identified and recommended by the specified State Officer.
 - The retirement age for persons with disability is prescribed at 65 years
- (6) The Committee may wish to note that whereas the Act does not provide the specific age, the regulations provide the age of sixty years, sixty-five years for persons with disability and also a retirement age for lecturers and research scientists to be determined by the Commission in consultation with the Universities and research institutions in the public service.

- (7) The Commission submission is that putting the blanket age of sixty years will disadvantage persons with disability, lecturers and research scientists serving in public universities and research institutions.
- (8) Kenya's Vision 2030 and African Agenda 2063 both recognize the role played by science and scientific organizations in achieving developmental objectives. Subjecting lecturers and researchers to retirement at sixty years of age will have an impact on their role in manpower development and promotion of science and innovation and may result in them seeking greener pastures elsewhere resulting in brain drain from the country.

G. Constitutional and Legislative limitations

Hon Chairman, Section 3 of the Public Service Commission Act 2017 provides as follows:

Scope and Application

"Subject to Articles 155(3)(a), 158(3), 234(2)(a), 234(3) and 252(1) of the Constitution and section 28 of the Kenya Defence Forces Act (No. 25 of 2012), this Act shall apply to all public bodies and persons holding office in the public service."

The scope of Public Service Commission mandate therefore applies to persons holding offices in the public service and excludes offices or positions subject to:

- i) The Parliamentary Service Commission
- ii) The Judicial Service Commission
- iii) The Teachers Service Commission
- iv) The National Police Service Commission
- v) An office in the service of a county except on hearing and determining appeals from county Governments' Public Service (234(2)(i))

Therefore, amendment of the Public Service Commission Act, 2017 will not stop these other Service Commissions from extending service beyond 60 years unless each of the enabling pieces of legislation of the various Commissions are similarly amended.

H. Recommendations

1. Hon Chairman the Commission proposes that Parliament may consider retaining the retirement age in the Regulations (which are approved by Parliament through the Statutory Instruments Act 2013) rather than legislating it in the Act. Legislating in an Act will tie the hands of the executive for whom the Commission recruits and appoints in the event there is need to review the retirement age like it was done in 2009 when it was increased from 55 to 60.
2. The Commission further proposes that there is need to enact the Public Service Management Act which will apply across the entire spectrum of the public service covering all Service Commissions and County Public Service Boards and County Assembly Service Boards just like the Public Finance Management Act applies to all public institutions.

Hon Chairman, the Public Service Commission in consultation with the Departmental Committee on Administration and National Security in the 12th Parliament developed a draft Public Service Management Bill but the term of Parliament lapsed before it was enacted. The committee may in its wisdom wish to revive the draft bill and have it enacted.

I. Conclusion

Hon chairman, the Commission wishes to thank the Committee for granting us an opportunity to provide comments on the proposed amendments to an Act which the Commission uses on the discharge of its mandate.

Dated this 8th day of August, 2023



Signed.....

**AMB. ANTHONY M. MUCHIRI, CBS
CHAIRPERSON
PUBLIC SERVICE COMMISSION**



PUBLIC SERVICE COMMISSION

Ref: PSC/LEG/019/14/158 Vol. VI (35)

25th July, 2023

The Clerk of the National Assembly
National Assembly
Parliament Buildings
Parliament Road
NAIROBI

THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL 2023

This has reference to your letter Ref: NA/DDC/LABOUR/2023/058 dated 14th July 2023 on the above subject.

The Commission's views on the proposed amendments are attached herewith.

Dr. Simon K. Rotich, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION

Attch.

Page 1 of 1

SECTION	PROPOSED AMENDMENT	ISSUE	RECOMMENDATION
34	<p>Insertion of a new section 34(3A) to read</p> <p>"Upon expiry of six months an officer appointed under section 3 shall not be entitled to any allowances"</p>	<p>Whereas the objective of the proposed amendment is to ensure vacant positions are filled expeditiously, not all positions which officers are appointed to act are available for filling.</p> <p>There are circumstances where substantive holders are lawfully authorized to be away for a period exceeding six months and therefore the post cannot be filled.</p> <p>These instances include</p> <p>When the substantive holder of the office is on secondment whose minimum period is not prescribed but can be granted for an initial period three years which is renewable.</p> <p>If the substantive holder of the office is a spouse of an officers appointed to serve in a foreign mission on tour of duty has been granted unpaid leave</p>	<p>The limitation to have an officer act for 6 months should apply to vacancies which are available for competitive filling.</p> <p>The Commission therefore proposes that, instead of the proposed amendment, the following proviso should be introduced after 34(3) to read:</p> <p>Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment, unpaid leave, or sabbatical leave.</p>

		<p>which usually is for a maximum non-renewable period of one (1) year or</p> <p>When the substantive holder has been granted leave by virtue of having been appointed appointed to serve in international organizations. In this instance the period the officer is usually allowed to be away is three years.</p> <p>Staff of universities also take sabbatical leave and various universities prescribe different periods for the sabbatical leave. Some have 9 months some have one year.</p> <p>It will not be fair to have an officer perform duties in the higher office and not be compensated.</p>	
80			



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
OFFICE OF THE CABINET SECRETARY**

Telephone: +254 (0) 2729800/2727980-4
Fax: +254 (0) 2726222/2734417
Email: cs@labour.go.ke

Social Security House, Bishops Road
P.O. Box 40326 - 00100
Nairobi
KENYA

When replying please quote

ML/LD/LAB/274

14th August, 2023.

Mr. Samuel Njoroge,
Clerk of the National Assembly,
Parliament Buildings,
P.O. Box 41842 – 00100
NAIROBI.

Dear *Mr. Samuel,*

**RE: STAKEHOLDERS SUBMISSIONS ON THE PUBLIC SERVICE
COMMISSION (AMENDMENT) BILL NO. 6 OF 2023 TO THE
DEPARTMENT COMMITTEE ON LABOUR**

Reference is made to your letter reference No. NA/DDC/LABOUR/2023/058 of 14th July, 2023 requiring the submission of written memoranda with respect to the Public Service Commission (Amendment) Bill No. 6 of 2023, sponsored by Hon. Benjamin G. Mwangi, MP, to the Departmental Committee on

Labour, a committee established pursuant to Standing Order 216 of the National Assembly.

The following is the Ministry's position on the above Private Member's Bill by Hon. Benjamin G. Mwangi, MP, Embakasi Central as serialized below:-

A. BACKGROUND

1. Section 80 (1) of the Public Service Commission Act, 2017 (No. 10 of 2017) provides that where a public officer has attained the mandatory retirement age as may be prescribed in regulations-

- (a) The public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and

- (b) The Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.

2. Subsection (2) of section 80 to the Act, provides that despite subsection (1)(b) above, the Commission or other appointing authority may engage the public officer for service after the retirement age upon such terms of contract as may be agreed if-

- (a) The public officer possesses rare knowledge, skills and competencies for the time being required in the service;

(b) The retired officer is willing to be engaged on contract;
and

(c) The retired officer's performance shall not in any way be
impaired by age.

3. Clause 3 of the Public Service Commission (Amendment) Bill
No. 6 of 2023 intends to amend section 80 of the Act-

(a) In subsection (1), by deleting the words "as may
be prescribed in the regulations" and substituting
therefor the words "of sixty years"; and

(b) By deleting subsection (2),

to statutorily cap the retirement age in Kenya to 60 years, as
currently prevailing in the law and government policy among the
East African Community member States.

4. Significantly, the following is the retirement age in other
Countries in the East African Community-

(a) Uganda: 60 years for both male and female
employees in public service;

(b) Tanzania: 60 years for both male and female
employees in public service;

(c) Rwanda: 65 years for both male and female
Employees; and

(d) Burundi: 60 years for both male and female employees.

5. It's worth noting that retirement age policies and their associated challenges vary across different African countries due to cultural, economic, and legal factors. These challenges highlight the need for flexible retirement policies, increased financial preparation for retirement, and measures to address age discrimination and promote intergenerational cooperation and collaboration in the workplace.

6. Retirement age vary across countries and regions worldwide and retirement age policies are subject to change and may differ based on various factors like the country's laws, social security systems, and economic conditions. Here are a few examples:

(a) South Africa: The retirement age in South Africa is currently set at 60 for women and 65 for men, though there are discussions to increase it to 65 for both genders;

(b) Nigeria: The retirement age in Nigeria is 60 for public servants, while the private sector typically follows a standard retirement age of 65;

(c) Kenya: The retirement age in Kenya is 60 for public servants, while the private sector generally follows a retirement age of 60-65;

- (d) United States: The retirement age for Social Security benefits in the U.S is gradually increasing from 66 to 67, depending on the individual's birth year;
- (e) United Kingdom: In the UK, the state pension age has progressively increased, reaching 66 for both men and women in 2020, and it will continue to rise further in the future;
- (f) Germany: The retirement age in Germany is currently 67 for those born after 1964, but individuals can take early retirement benefits starting from the age of 63, with a reduction in the pension amount; and
- (g) Australia: The retirement age has been increased to 67 in July, 2023.

7. The statutory retirement age in general, can present several challenges and below are some common challenges associated with the statutory retirement age-

- (a) Aging Workforce: The statutory retirement age often results in an aging workforce, as employees are required to retire at a specific age. This can lead to a loss of experienced and skilled workers,

potentially creating a talent and knowledge gap in the labor market;

(b) Financial Insecurity: Many individuals may not be financially prepared for retirement at the statutory age due to inadequate savings or pension provisions. This can result in financial insecurity for retirees who might struggle to meet their daily expenses and healthcare needs;

(c) Youth Unemployment: The rigid retirement age can hinder job opportunities for the younger generation. With older employees staying in the workforce longer, it can limit job openings and hinder the entry of new graduates or young professionals into the job market;

(d) Age Discrimination: Enforcing a strict retirement age can lead to age discrimination, as employees might face mandatory retirement even when they possess the skills and capability to continue working effectively. This can negatively impact individuals' self-worth and contribute to social exclusion;

(e) Skill and Knowledge Loss: Mandatory retirement can result in a loss of valuable skills, knowledge, and experience within organizations. It takes time and resources to train new employees to replace

experienced retirees, potentially impacting productivity and organizational efficiency; and

(f) **Workforce Planning Challenges:** Organizations may face challenges in workforce planning and succession management due to the fixed retirement age. They need to anticipate retirements and ensure appropriate talent management strategies are in place to enable a smooth transition and continuity in operations.

8. It's worth noting that retirement age policies and their associated challenges can vary across different African countries due to cultural, economic, and legal factors. These challenges highlight the need for flexible retirement policies, increased financial preparation for retirement, and measures to address age discrimination and promote intergenerational cooperation and collaboration in the workplace.

B. SALIENT ISSUES AND CASE LAW

9. While there isn't a specific statute that explicitly defines or codifies this right, it has been recognized and applied by Kenyan courts through its jurisprudence. Notably, the Kenyan courts have emphasized that public authorities have a duty to act fairly and not arbitrarily, particularly when they have given an expectation or promise to individuals or groups. This means that individuals may have a legitimate

expectation that public authorities will fulfill their promises, follow established procedures, and act reasonably in their dealings.

10. It is worth noting, however, that the application of the right to legitimate expectation in specific cases may vary depending on the facts and circumstances involved. Case law in Kenya regarding the right of legitimate expectation is significant because it helps shape and define how this principle is applied and protected by the courts in the country. While there may not be an explicit statutory recognition of the right of legitimate expectation, case law provides authoritative interpretations and guidance on this aspect of administrative law.
11. By examining and analyzing previous court decisions, individuals, legal practitioners, and public authorities can understand the circumstances and conditions under which the right of legitimate expectation may arise and be enforced in Kenya.
12. Case law provides clarity on the rights and expectations individuals can have from public authorities, ensuring fairness, transparency, and accountability in administrative decision-making.
14. Additionally, case law creates precedents that establish legal principles and guidelines. This enables consistency and predictability in the application of the right of

legitimate expectation across different cases, promoting the rule of law and protecting individuals' rights in their dealings with government authorities in Kenya.

15. While there are numerous cases in Kenya's jurisprudence that touch upon the right to legitimate expectation, here are a few specific court cases that have addressed this right:-

(a) **Council of Civil Service Unions v. Minister for the Civil Service (1985)**: Although not a Kenyan case, it has been referred to by Kenyan courts. This case recognized the right of legitimate expectation as a principle of administrative law;

(b) **Republic v. Minister of State for Immigration & Registration of Persons & Another (Ex parte Anthony Maina Pius) (2012)**: In this case, the court emphasized the duty of public authorities to act fairly and in accordance with legitimate expectations created by their conduct or representations made to individuals;

(c) **Seth Panyako & 25 Others v. Samuel Arachi & 3 Others (2016)**: The court held that legitimate expectations can be formed based on past practices and established procedures, and that public authorities must act reasonably and fairly when dealing with such expectations;

- (d) **County Government of Nandi & Another –v- Dr. Wanjala Samson (2019):** This case emphasized that public authorities have a duty to act in accordance with legitimate expectations and that a failure to do so can be subject to legal challenge;
- (e) **Anisomerous Investments Limited v. Kenya National Highways Authority & 3 Others (2014) (eKLR)** - The court held that legitimate expectations can be formed through representations made by public authorities, and failure to act in accordance with such expectations can be challenged;
- (f) **Kenya Planters Cooperative Union Limited v. Republic & 3 Others (2014) (eKLR)** - In this case, the court emphasized that individuals or organizations dealing with public authorities have the right to legitimate expectations, and those expectations must be taken into account when making decisions affecting their rights; and
- (g) **East African Portland Cement Company Limited v. National Environment Management Authority & 5 Others (2018) (eKLR)** - The court recognized the right of legitimate expectation and held that public authorities must act fairly and consistently in accordance with legitimate expectations created by their past conduct or representations.

16. In Kenyan law, the concept of legitimate expectation recognizes individuals' entitlement to expect that public authorities will act in a certain way or carry out their functions in accordance with certain established practices, procedures, or representations. It is based on the principle of fairness and requires public authorities to act reasonably and consistently with their past conduct or promises made to individuals or groups.

17. Legitimate expectation can arise from various sources, such as explicit representations, established practices, or even implied understandings between individuals and public authorities. When a legitimate expectation is formed, it gives rise to a protected interest and individuals can reasonably expect the public authority to fulfill its obligations or commitments in accordance with that expectation.

18. While there is no specific statutory definition of legitimate expectation in Kenyan law, it has been recognized and applied by the courts through their jurisprudence, drawing from common law principles and constitutional protections of administrative fairness and due process.

19. In Kenyan law, the elements that constitute a legitimate expectation typically include:

- (a) Representation or promise: There should be a clear and unequivocal representation, promise, or assurance made by a public authority, either explicitly or implicitly.

This representation can be in the form of an explicit statement, an established practice, or a consistent course of conduct;

(b) Reasonable reliance: The individual or group must have reasonably relied upon the representation or promise made by the public authority. This reliance can be evidenced by actions taken, decisions made, or expectations formed based on the representation;

(c) Specificity and clarity: The representation or promise should be sufficiently specific and clear, leaving no room for ambiguity or misunderstanding;

(d) Legality and fairness: The expectation itself must be lawful and fair, meaning it does not contravene any legal requirements or principles of public interest; and

(e) Legitimate interest: The individual or group must have a legitimate interest in the matter at hand, such as a legal right, benefit, or legitimate concern that is subject to the actions or decisions of the public authority.

20. In Kenya law, legitimate expectation can arise in various situations. Here are some examples:

(a) Employment and promotions: If a public authority, such as a government department or agency, has established

clear procedures and criteria for the promotion or appointment of employees, individuals who meet those criteria may have a legitimate expectation that the authority will follow those procedures fairly and promote or appoint them accordingly;

(b) Discretionary benefits and privileges: When public authorities exercise discretionary powers to grant benefits, exemptions, or privileges, individuals who meet the relevant criteria may have a legitimate expectation that they will be treated fairly, consistently, and in line with past practices or representations made by the authority;

(c) Express representations: Legitimate expectations can arise from explicit representations, promises, or statements made by a public authority. These representations may be in writing or orally communicated to individuals or groups affected by the authority's actions or decisions;

(d) Implied representations: Legitimate expectations can also be implied from the conduct, practices, or established procedures of a public authority. If individuals have consistently been treated in a certain way or if there is an established custom or practice, a legitimate expectation may arise based on that implied representation;

(e) Past decisions or precedents: If a public authority has consistently made decisions or taken actions in a

particular manner over time, individuals may have a legitimate expectation that future decisions or actions will be consistent with those past practices or precedents; and

- (f) Policies and guidelines: Public authorities often publish policies, guidelines, or procedures that outline how they intend to make decisions or conduct their affairs. Individuals who have relied upon such policies or guidelines may have a legitimate expectation that the authority will act in accordance with them.

21. In Kenyan law, the criteria for establishing a legitimate expectation typically involve the following factors:

- (a) Clear and unambiguous representation: There must be a clear and unambiguous representation, promise, or statement made by a public authority. This can be in the form of an explicit statement, established practice, or consistent conduct that creates a reasonable expectation;
- (b) Reliance: The individual or group must have reasonably relied upon the representation or promise made by the public authority. This reliance can be demonstrated by actions taken, decisions made, or expectations formed based on the representation;

(c) Reasonableness: The expectation must be reasonable in the specific circumstances. This means that the expectation itself should not go against any legal requirement, public interest, or established policy;

(d) Consistency: The public authority should be consistent in its application of relevant policies, practices, or representations. In other words, the authority should not act in a manner that contradicts or goes against its past conduct or representations without good reason; and

(e) Legitimacy and fairness: The expectation should be based on a legitimate interest or right. It should not be arbitrary or unlawful. It should also be fair and just in accordance with established legal principles.

22. However, there may be certain limitations or exceptions to the criteria for legitimate expectations in Kenyan law. While the specific limitations and exceptions can vary depending on the circumstances and context of each case, here are some general considerations:

(a) Public interest: Legitimate expectations may be subject to limitations if they conflict with overriding public interest, national security, or the broader public welfare. In such cases, the public authority may have the discretion to depart from the legitimate expectation if substantial reasons justify it;

- (b) Change in circumstances: If there is a significant change in circumstances or a valid reason that justifies a departure from the legitimate expectation, the public authority may not be bound by the expectation. For instance, if there is a change in law or policy that necessitates a departure from past practices or representations, the legitimate expectation may not apply;
- (c) Legal requirements: Legitimate expectations should not contravene any explicit statutory requirements or legal restrictions. If the expectation conflicts with statutory provisions, the law will prevail over the legitimate expectation;
- (d) Unlawful or unreasonable expectations: Legitimate expectations cannot be based on unlawful or unreasonable demands or expectations. Individuals cannot claim a legitimate expectation for something that is illegal, unreasonable, or contrary to the public interest; and
- (e) Express disclaimer or reservation of rights: Public authorities may expressly disclaim or reserve their rights to depart from established practices or representations. In such cases, a legitimate expectation may be limited or negated.

23. The limitations or exceptions to the criteria for legitimate expectations in Kenyan law play a crucial role in balancing individuals' legitimate expectations with broader legal principles and public interest considerations. They provide a framework to ensure that legitimate expectations are applied in a manner that is reasonable, lawful, and aligned with the broader objectives of the legal system.

C. CONCLUSION

24. The World over, the retirement age is moving from 60 to 65 years. The United Nations has raised the retirement age for staffers to 65 years old. The policy, approved by the General Assembly, has already taken effect for employees.

25. In Europe, retirement age is 65 years and now being lobbied to 70 years due to lack of skilled workers and the hemorrhage of pensioners.

26. Whereas EAC member countries are struggling to finance their monthly wage bill for the working class, developed economies are convincing civil servants to extend their retirement age to 70 years in order for their governments to make savings in Pension Schemes and to harness the immense benefits of their selfless wealth of experience.

27. The proposal in the Bill to statutorily cap the retirement age in Kenya to 60 years is in tandem with the right of legitimate expectation among the entire workforce, and any attempt to lower the bar to 55, would offend the right to legitimate expectation which is a principle of administrative law derived from common law.

28. The ballooning retirement pensions and the escalating wage bill in Kenya are quite instructive.

29. In the circumstances and consistent with the best practice and further, in order to remove any inherent ambiguities, the Ministry of Labour and Social Protection has no objection in the proposal in the new Bill to codify into law, the retirement age in Kenya to 60 years as contained in Clause 3 of the Public Service Commission (Amendment) Bill No. 6 of 2023.

Yours Sincerely,



Hon. Florence Bore,

CABINET SECRETARY.

Copy to: 1. **Mr. Geoffrey E. KAITUKO,**
Principal Secretary,
State Department for Labour & Skills Development,
NAIROBI.

2. **Hon. Justin B.N. Muturi, EGH.,**
Attorney General,
Office of the Attorney General & Department of Justice,
Sheria House, Harambee Avenue,
NAIROBI.

② Rose Wanyonyi
Deal
AD 23



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REPUBLIC OF KENYA
MINISTRY OF PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION
STATE DEPARTMENT FOR PUBLIC SERVICE
Office of the Principal Secretary

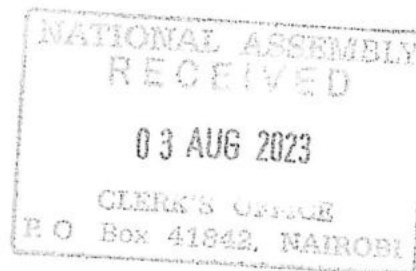
www.psyg.go.ke
Telephone: Nairobi 2227411
Fax: 243620
When Replying Please quote

P.O. Box 30050-00100
NAIROBI

Ref. No. MPSG&AA.5

2nd August, 2023

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



Dear Clerk,

**REVIEW OF THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILL NO.6 2023) BY THE DEPARTMENTAL COMMITTEE
ON LABOUR**

Reference is made to your letter Ref. No. NA/DDC/LABOUR/2023/062 dated 24th July, 2023 on the above subject.

In the letter under reference, you requested for the Ministry's written submission on the Public Service Commission (Amendment) Bill 2023, sponsored by Hon. Benjamin Mwangi MP, as part of public participation.

The purpose of this letter therefore, is to submit the proposed amendments to the Public Service Commission (Amendment) Bill No. 6 of 2023 for consideration.

Yours

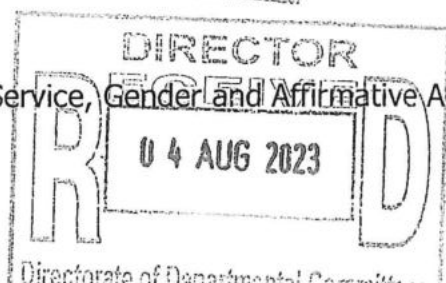
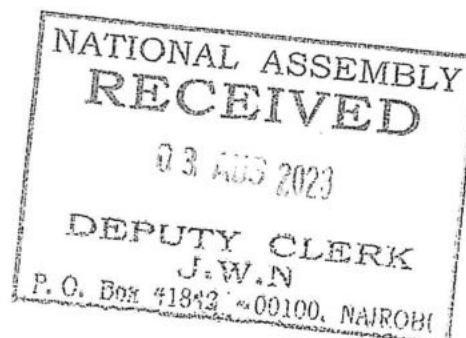
Sincerely,
[Signature]

Amos N. Gathecha, EBS, 'ndc' (K)
PRINCIPAL SECRETARY

Encl.

Copy:

Hon. Aisha Jumwa Katana
Cabinet Secretary, Ministry of Public Service, Gender and Affirmative Action
NAIROBI



SUBMISSION ON THE PUBLIC SERVICE COMMISSION (AMMENDMENT) BILL NO. 6 OF 2023

Section No.	Specific Clause	Proposed Amendments	Justification
34	"(3A) Upon the expiry of six months an officer appointed under subsection (3) shall not be entitled to any acting allowances"	The section to be amended further to include (3B) which shall read "the request for acting appointment shall be submitted to the appointing authority together with an indent declaring the position vacant for filling. The filling of the vacant position(s) shall be finalized within six months".	Inclusion of 3A & 3B in the Act will address timely filling of vacant position(s) substantively and succession management across the Public Service.
80	(a) in subsection (1), by deleting the words "as may be prescribed in the regulations" and substituting therefore the words of "sixty years" and	Section 80 to be amended to include the provisions of Regulation 70 (1) of the PSC Regulations on retirement on age grounds which provides for the mandatory retirement age in the public service as follows – i. Sixty years; ii. Sixty- five for Persons with disability; and iii. Such age as may be determined by the Commission for Lecturers and research scientists serving in public universities research institutions or equivalent institutions as determined by the Commission in consultation with such universities, research institutions or equivalent institutions	The proposed deletion of the words "as may be prescribed in the regulations" shall negate the provisions of retirement as provided for in PSC Regulation 70; other relevant laws and specific government policy, on mandatory retirement age for the following groups:- i. Persons with disability; and ii. Lecturers and research scientists serving in public universities research institutions or equivalent institutions as determined by the Commission in consultation with such universities, research institutions or equivalent institutions
	(b) by deleting subsection (2)	Consider retention of Section 80 (2).	The proposed deletion of section 80 (2) may have been well intentioned for purposes of curbing the abuse of retention of officers beyond the mandatory retirement age. It may however be noted that section 80 (2) is a good safety net measure to cater for among others certain cadres with rare professional skills which take time to develop and impart to others. These cadres include the medical field, engineering, geology,

Section No.	Specific Clause	Proposed Amendments	Justification
			aviation industry, energy and petroleum.



LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
Gitanga Road
P.O. Box 72219-00200
NAIROBI
Tel. 387 4664
0720 904983

MEMORANDUM

ON

THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2023

JULY, 2023

Eric Theuri, President Law Society of Kenya
Lavington, opp Valley Arcade,
Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: lskpresidenttheuri@gmail.com/president@lsk.or.ke
Website: www.lsk.or.ke

THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2023

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith MonyOdhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, KabataMwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amany, NjokiMboce, OchiengGor
- **Up-country Representatives**, Byron Menezes, LindahKiome, Michael Wabwile, Vincent Githaiga
- **Coast Representative**, RizikiEmukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes the following submissions on the Public Service Commission (Amendment) Bill, 2023.

SPECIFIC COMMENTS ON THE PUBLIC SERVICE COMMISSION (AMENDMENT)
BILL, 2023

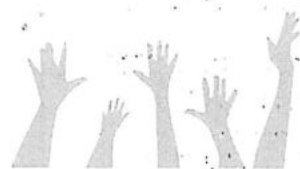
Provision of the bill	Issue	Proposal
Clause 2- Amendment of section 34 by introducing new subsection 3A	<p>Acting officer not entitled to allowances after six months. We find no rational in this proposed amendment.</p> <p>The Act as it is currently does not offend any constitutional provision, nor does it contravene any written law.</p> <p>However, the proposed amendment may offend the constitutional right to fair labour practices under Article 41. One of them is equal remuneration for work of equal value. The amendment will further entrench discrimination on account of age offending article 27 of the constitution.</p> <p>Currently section 5 of the employment Act 2007 in order to prevent discrimination in remuneration provides that an employer shall pay his employees equal remuneration for work of equal value.</p>	<p>We propose that if an acting officer is not confirmed to the office for reasons of attaining the age of 60, then the officer should be considered for hiring on a six months consultancy basis until a suitable replacement is found.</p>

In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours **faithfully**,



Eric Theuri
President Law Society of Kenya



National Gender and Equality Commission

1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi
P.O Box 27512-00506 Nairobi, Kenya

Landline: +254(020) 3213100

Mobile: +254(020) 375100

Toll Free :0800 720187

www.ngeckkenya.org

Email:info@ngeckkenya.org

When replying please quote.

Ref: No:.....NGEC/CS/NAS/005/VOL.III (109)

20th July 2023

Samuel Njoroge

Clerk of the National Assembly

Clerk's Chambers

Parliament Building

P.O. BOX 41842-00100

NAIROBI

Dear Mr. Njoroge,

**SUBMISSION OF COMMENTS: THE PUBLIC SERVICE COMMISSION
(AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 6 OF 2023).**

Reference is made to your call for submission of memoranda on the Public Service Commission (Amendment), Bill (National Assembly Bill No 6 of 2023).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting gender equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, 'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions.'

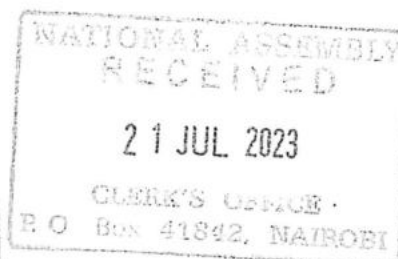
In line with its mandate, the Commission submits the attached memorandum analyzing the proposed amendments and making proposals where necessary.

Yours sincerely,

Betty Sungura, MBS

COMMISSION SECRETARY/CEO

Encl.



"Gender Equality and Non-Discrimination"



MEMORANDUM ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2023

Submitted to: cna@parliament.go.ke

S/ NO	SECTION SOUGHT TO BE AMENDED	PROVISION IN THE BILL	PROPOSAL	JUSTIFICATION
1.	<p>Section 80. Retirement on the basis of age</p> <p>(1) Where a public officer has attained the mandatory retirement age as may be prescribed in regulations—</p> <p>(a) the public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and</p> <p>(b) the Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.</p>	<p>Clause 3</p> <p>Section 80 of the principal Act is amended —</p> <p>(a) in subsection (1), by deleting the words "as may be prescribed in the regulations" and substituting therefor the words "of sixty years"; and (b) by deleting subsection (2).</p>	<p>The Commission makes proposals as follows:-</p> <ol style="list-style-type: none"> 1. Retain section 80(1) of the Act 2. Amend Section 80 further by inserting an additional subsection 3 as follows:- (3) The Commission or authority shall be required to justify the reasons for lack of such rare knowledge or skills in the Authority or among the other public officers. 	<p>The Commission objects to the amendment of Section 80 of the Act as proposed in Clause 3 based on the following reasons.</p> <p>Section 92 (f) of the Public Service Commission Act on delegated legislation confers the power to the Commission to make guidelines on retirement.</p> <p>Subsequent to that, the Public Service Commission Regulations, 2019, Regulation 70 provides as follows-;</p> <p>Retirement on age grounds;</p> <p>(1) Subject to the Constitution, section 80 of the Act, any other relevant written law or a <i>specific government policy</i>, the mandatory retirement age in the public service shall be—</p> <p>(a) sixty years;</p> <p>(b) sixty-five years for persons with disability; and</p>

<p>(2) Despite subsection (1)(b), the Commission or other appointing authority may engage the public officer for service after the retirement upon such terms of contract as may be agreed if –</p> <p>(a) the public officer possesses rare knowledge, skills and competencies for the time being required in the service;</p> <p>(b) the retired officer is willing to be engaged on contract; and</p> <p>(c) the retired public officer's performance shall not in any way be impaired by age</p>			<p>(c) such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.</p> <p><i>The Rationale is that the regulations provide for more than one mandatory age for public officers depending on status and institutions and it will be discriminatory and prejudicial to entrench only one mandatory category in the substantive Act.</i></p> <p><i>On a different issue, the Commission would like the Public Service Commission to give the grounds for prescribing the mandatory age in the Regulations and not in the Act.</i></p> <p>Regulation 70 (6) and (7) further provide as follows:-</p> <p>(6) Subject to section 80(2) of the principal Act, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competencies that the officer possesses.</p> <p>(7) In this regulation—</p>
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				<p>(a) "rare knowledge, skills and competencies" means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.; and</p> <p>The National Policy on Older Persons and Ageing revised in 2014 in paragraph 2 acknowledges that many older persons have skills resources and expertise, which could be tapped and utilized for development. The policy object provides that the state will put in place measures that ensure Older Persons continue to provide their expertise, talents, experience, and abilities to their families, and community by accessing and creating employment</p> <p>The Commission is however cognizant of the perceived notion of the systematic and systemic abuse of Section 80(2) of the Act sought to be deleted without any replacement and would propose to the proposer of the Bill to consider providing for an additional subsection that would justify the need of engaging a public officer on contract who has attained the age of retirement.</p> <p>A case in point is where a retired officer has acquired rare skills in their course of employment and these skills can be useful in another organization seeking to engage them on contract.</p>
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				<p>If the engagement on contract sought is in the same authority then the Commission or authority should be able to justify the reason as to why the retiring officer is the only one with the rare skills and why there has been no plan of succession</p>
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D/DC

Please deal

28/07/23

THE REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

MEMORANDUM IN THE MATTER OF CONSIDERATION BY NATIONAL ASSEMBLY OF ARTICLE 118(B) OF THE CONSTITUTION REGARDING THE PUBLIC SERVICE COMMISSION (AMMENDMENT) BILL NO. 6 OF 2023 SPONSERED BY HON. MAKALI MULU, M.P:-

- I. I (Michael Mwangi Kinonge) am a Kenyan and a retiree in Thika Constituency.
- II. That despite my support for the amendment of the above bill by Hon. Makali Mulu, M.P; it will not be comprehensive without the following being put into consideration:-
 - (a) The retiree should be honored by transferring his/her PF file to be under the Docket of the Attorney General.
 - (b) The retiree should be linked with OMBUDSMAN and their services.
 - (c) The retiree should not in the circumstances of left behind unpaid due, confront a new occupant to resolve claim issues such as the case of 20 years of Retired Teachers, now coming to an end.
 - (d) By adapting the above, the New Occupant and the Retiring should be in harmony.
 - (e) Ombudsman shall be a go between the Attorney General and the Retiree.

III. Finally, I beg to support the Bill's Amendments of the PUBLIC SERVICE COMMISSION

WITH MY SUGGESTIONS INCLUSIVE. THUS, WITHOUT THE SUGGESTIONS, THE BILL

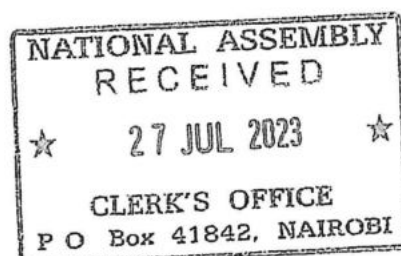
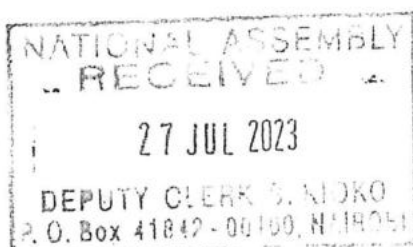
CAN BE LIKENED WITH AN ARM WITHOUT A HAND.

DATED 27TH JULY 2023

Rose wanjohi / samuel wanjira
pls facilitate

SIGN:

COMPILED BY	TO BE SERVED UPON
MICHAEL MWANGI KINONGE, P.O BOX 5008-1002, THIKA	THE CLERK, NATIONAL ASSEMBLY, P.O BOX 41842-00100 NAIROBI

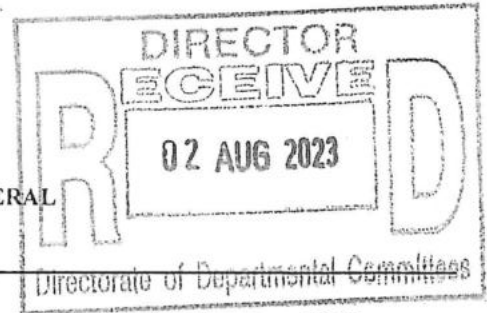


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REPUBLIC OF KENYA

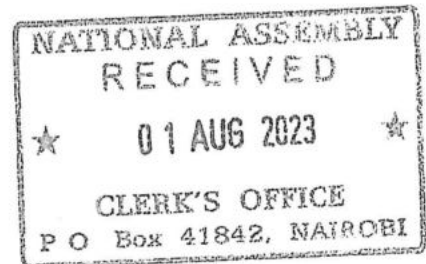
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



Our Ref. AG/LDD/498/1/11
Your Ref. NA/DDC/LABOUR/2023/058

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

Rose Wanjohi
ps feasibility
wa w n
2/8/23



RE: STAKEHOLDERS SUBMISSIONS ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 6 OF 2023) TO THE DEPARTMENTAL COMMITTEE ON LABOUR

This has reference to your letter dated the 14th July, 2023 under Ref. NA/DDC/LABOUR/2023/058, which was received in this Office on the 18th July, 2023, and our letter of the 26th July, 2023, regarding the invitation to present written submissions on the Public Service Commission (Amendment) Bill, 2023 (National Assembly Bill No. 6 of 2023) sponsored by Hon. Benjamin Mwangi, MP.

We sought the policy guidance of the Ministry of Labour and Social Protection which is responsible for the policy contained in the Bill, and the Public Service Commission whose mandate is prescribed in Article 234 of the Constitution to include that the Commission shall ensure that the public service is efficient and effective; shall develop human resources in the public service; and shall review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service.

The Commission proposes that an amendment be made to the proposed subsection (3A) of section 34 of the Public Service Commission Act, 2017, by adding a proviso thereto to address circumstances where the substantive holder of an officer is on secondment, has been granted unpaid leave, has been granted leave to serve in an international organisation, or is on sabbatical leave. A copy of the Commission's letter and proposal are annexed hereto. In our considered view, the Commission's

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E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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proposals do not raise substantial constitutional or statutory issues and may be included in the proposed Bill.

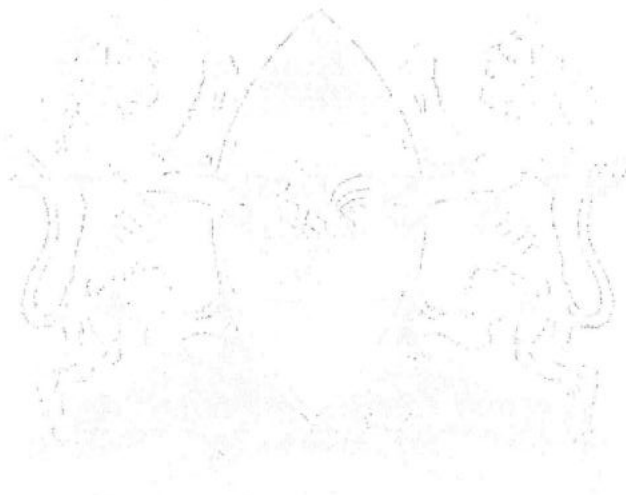


Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

Hon. Shadrack J. Mose
Solicitor-General

Ms. L.M. Murila
Chief State Counsel





23

PUBLIC SERVICE COMMISSION

PSC/LEG/019/14/158 /VI. (38)

28th July, 2023

The Hon. Attorney General
Office of the Attorney General &
Department of Justice
Sheria House, Harambee Avenue
NAIROBI.

ATTENTION: **SAMSON DAVIS MAUNDU**
PRINCIPAL PARLIAMENTARY COUNSEL

**STAKEHOLDERS SUBMISSIONS ON THE PUBLIC SERVICE COMMISSION
(AMENDMENT) BILL, 2023
NATIONAL ASSEMBLY BILL NO. 6 OF 2023. TO THE DEPARTMENTAL
COMMITTEE ON LABOUR**

We acknowledge receipt of your letter Re. AG/LDD/498/1/11 on the above subject.

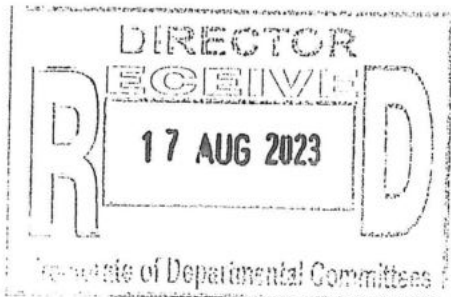
The Commission's views on the proposed amendment are contained in the attached matrix, which has already been forwarded to the National Assembly Departmental Committee on Labour.

Dr. Simon K. Rotich, C
Secretary/CEO
Public Service Commis:

Attch.

SECTION	PROPOSED AMENDMENT	ISSUE	RECOMMENDATION
34	<p>Insertion of a new section 34(3A) to read</p> <p>"Upon expiry of six months an officer appointed under section 3 shall not be entitled to any allowances"</p>	<p>Whereas the objective of the proposed amendment is to ensure vacant positions are filled expeditiously, not all positions which officers are appointed to act are available for filling.</p> <p>There are circumstances where substantive holders are lawfully authorized to be away for a period exceeding six months and therefore the post cannot be filled.</p> <p>These instances include</p> <p>When the substantive holder of the office is on secondment whose minimum period is not prescribed but can be granted for an initial period three years which is renewable.</p> <p>If the substantive holder of the office is a spouse of an officers appointed to serve in a foreign mission on tour of duty has been granted unpaid leave</p>	<p>The limitation to have an officer act for 6 months should apply to vacancies which are available for competitive filling.</p> <p>The Commission therefore proposes that, instead of the proposed amendment, the following proviso should be introduced after 34(3) to read:</p> <p>Provided that an officer may be appointed to act beyond the six months period if the substantive holder of the office is on secondment, unpaid leave, or sabbatical leave.</p>

		<p>which usually is for a maximum non-renewable period of one (1) year or</p> <p>When the substantive holder has been granted leave by virtue of having been appointed appointed to serve in international organizations. In this instance the period the officer is usually allowed to be away is three years.</p> <p>Staff of universities also take sabbatical leave and various universities prescribe different periods for the sabbatical leave. Some have 9 months some have one year.</p> <p>It will not be fair to have an officer perform duties in the higher office and not be compensated.</p>	
80			



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

DD-11-2
16/08

Our Ref. AG/LDD/498/1/11
Your Ref. NA/DDC/LABOUR/2023/058

16th August, 2023

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

Rose Wangari
filed
17/8

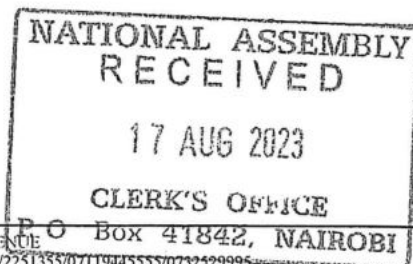
**RE: STAKEHOLDERS SUBMISSIONS ON THE PUBLIC SERVICE COMMISSION
(AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 6 OF 2023)
TO THE DEPARTMENTAL COMMITTEE ON LABOUR**

This has reference to your letter dated the 14th July, 2023 under Ref. NA/DDC/LABOUR/2023/058, which was received in this Office on the 18th July, 2023, and our letters of the 26th July, 2023, and 1st August, 2023, regarding the invitation to present written submissions on the Public Service Commission (Amendment) Bill, 2023 (National Assembly Bill No. 6 of 2023) sponsored by Hon. Benjamin Mwangi, MP.

We sought the policy guidance of the Ministry of Labour and Social Protection which is responsible for the policy contained in the Bill, and the Public Service Commission whose mandate is prescribed in Article 234 of the Constitution.

In this regard, we are in receipt of a letter from the Ministry in which it states that it has no objection to the proposals contained in clause 3 of the Bill. A copy is attached hereto for your consideration and further necessary action.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL



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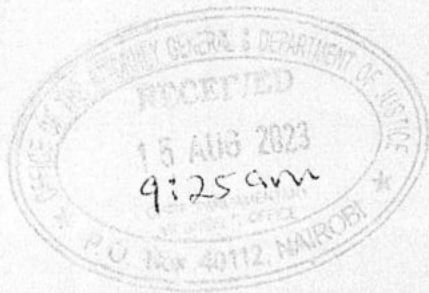
DEPARTMENT OF JUSTICE
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**MINISTRY OF LABOUR AND SOCIAL PROTECTION
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When replying please quote

ML/LD/LAB/274

14th August, 2023.

Mr. Samuel Njoroge,
Clerk of the National Assembly
Parliament Buildings,
P.O. Box 41842 – 00100
NAIROBI.

Dear

**RE: STAKEHOLDERS SUBMISSIONS ON THE PUBLIC SERVICE
COMMISSION (AMENDMENT) BILL NO. 6 OF 2023 TO THE
DEPARTMENT COMMITTEE ON LABOUR**

Reference is made to your letter reference No. NA/DDC/LABOUR/2023/058 of 14th July, 2023 requiring the submission of written memoranda with respect to the Public Service Commission (Amendment) Bill No. 6 of 2023, sponsored by Hon. Benjamin G. Mwangi, MP, to the Departmental Committee on

Labour, a committee established pursuant to Standing Order 216 of the National Assembly.

The following is the Ministry's position on the above Private Member's Bill by Hon. Benjamin G. Mwangi, MP, Embakasi Central as serialized below:-

A. BACKGROUND

1. Section 80 (1) of the Public Service Commission Act, 2017 (No. 10 of 2017) provides that where a public officer has attained the mandatory retirement age as may be prescribed in regulations-

- (a) The public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and

- (b) The Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.

2. Subsection (2) of section 80 to the Act, provides that despite subsection (1)(b) above, the Commission or other appointing authority may engage the public officer for service after the retirement age upon such terms of contract as may be agreed if-

- (a) The public officer possesses rare knowledge, skills and competencies for the time being required in the service;

(b) The retired officer is willing to be engaged on contract;
and

(c) The retired officer's performance shall not in any way be
impaired by age.

3. Clause 3 of the Public Service Commission (Amendment) Bill
No. 6 of 2023 intends to amend section 80 of the Act-

(a) In subsection (1), by deleting the words "as may
be prescribed in the regulations" and substituting
therefor the words "of sixty years"; and

(b) By deleting subsection (2),

to statutorily cap the retirement age in Kenya to 60 years, as
currently prevailing in the law and government policy among the
East African Community member States.

4. Significantly, the following is the retirement age in other
Countries in the East African Community-

(a) Uganda: 60 years for both male and female
employees in public service;

(b) Tanzania: 60 years for both male and female
employees in public service;

(c) Rwanda: 65 years for both male and female
Employees; and

(d) Burundi: 60 years for both male and female employees.

5. It's worth noting that retirement age policies and their associated challenges vary across different African countries due to cultural, economic, and legal factors. These challenges highlight the need for flexible retirement policies, increased financial preparation for retirement, and measures to address age discrimination and promote intergenerational cooperation and collaboration in the workplace.

6. Retirement age vary across countries and regions worldwide and retirement age policies are subject to change and may differ based on various factors like the country's laws, social security systems, and economic conditions. Here are a few examples:

(a) South Africa: The retirement age in South Africa is currently set at 60 for women and 65 for men, though there are discussions to increase it to 65 for both genders;

(b) Nigeria: The retirement age in Nigeria is 60 for public servants, while the private sector typically follows a standard retirement age of 65;

(c) Kenya: The retirement age in Kenya is 60 for public servants, while the private sector generally follows a retirement age of 60-65:

- (d) United States: The retirement age for Social Security benefits in the U.S is gradually increasing from 66 to 67, depending on the individual's birth year;
- (e) United Kingdom: In the UK, the state pension age has progressively increased, reaching 66 for both men and women in 2020, and it will continue to rise further in the future;
- (f) Germany: The retirement age in Germany is currently 67 for those born after 1964, but individuals can take early retirement benefits starting from the age of 63, with a reduction in the pension amount; and
- (g) Australia: The retirement age has been increased to 67 in July, 2023.

7. The statutory retirement age in general, can present several challenges and below are some common challenges associated with the statutory retirement age-

- (a) Aging Workforce: The statutory retirement age often results in an aging workforce, as employees are required to retire at a specific age. This can lead to a loss of experienced and skilled workers,

potentially creating a talent and knowledge gap in the labor market;

(b) Financial Insecurity: Many individuals may not be financially prepared for retirement at the statutory age due to inadequate savings or pension provisions. This can result in financial insecurity for retirees who might struggle to meet their daily expenses and healthcare needs;

(c) Youth Unemployment: The rigid retirement age can hinder job opportunities for the younger generation. With older employees staying in the workforce longer, it can limit job openings and hinder the entry of new graduates or young professionals into the job market;

(d) Age Discrimination: Enforcing a strict retirement age can lead to age discrimination, as employees might face mandatory retirement even when they possess the skills and capability to continue working effectively. This can negatively impact individuals' self-worth and contribute to social exclusion;

(e) Skill and Knowledge Loss: Mandatory retirement can result in a loss of valuable skills, knowledge, and experience within organizations. It takes time and resources to train new employees to replace

experienced retirees, potentially impacting productivity and organizational efficiency; and

- (f) **Workforce Planning Challenges:** Organizations may face challenges in workforce planning and succession management due to the fixed retirement age. They need to anticipate retirements and ensure appropriate talent management strategies are in place to enable a smooth transition and continuity in operations.

- 8. It's worth noting that retirement age policies and their associated challenges can vary across different African countries due to cultural, economic, and legal factors. These challenges highlight the need for flexible retirement policies, increased financial preparation for retirement, and measures to address age discrimination and promote intergenerational cooperation and collaboration in the workplace.

B. SALIENT ISSUES AND CASE LAW

- 9. While there isn't a specific statute that explicitly defines or codifies this right, it has been recognized and applied by Kenyan courts through its jurisprudence. Notably, the Kenyan courts have emphasized that public authorities have a duty to act fairly and not arbitrarily, particularly when they have given an expectation or promise to individuals or groups. This means that individuals may have a legitimate

expectation that public authorities will fulfill their promises, follow established procedures, and act reasonably in their dealings.

10. It is worth noting, however, that the application of the right to legitimate expectation in specific cases may vary depending on the facts and circumstances involved. Case law in Kenya regarding the right of legitimate expectation is significant because it helps shape and define how this principle is applied and protected by the courts in the country. While there may not be an explicit statutory recognition of the right of legitimate expectation, case law provides authoritative interpretations and guidance on this aspect of administrative law.
11. By examining and analyzing previous court decisions, individuals, legal practitioners, and public authorities can understand the circumstances and conditions under which the right of legitimate expectation may arise and be enforced in Kenya.
12. Case law provides clarity on the rights and expectations individuals can have from public authorities, ensuring fairness, transparency, and accountability in administrative decision-making.
14. Additionally, case law creates precedents that establish legal principles and guidelines. This enables consistency and predictability in the application of the right of

legitimate expectation across different cases, promoting the rule of law and protecting individuals' rights in their dealings with government authorities in Kenya.

15. While there are numerous cases in Kenya's jurisprudence that touch upon the right to legitimate expectation, here are a few specific court cases that have addressed this right:-

(a) **Council of Civil Service Unions v. Minister for the Civil Service (1985):**

Although not a Kenyan case, it has been referred to by Kenyan courts. This case recognized the right of legitimate expectation as a principle of administrative law;

(b) **Republic v. Minister of State for Immigration & Registration of Persons & Another (Ex parte Anthony Maina Pius) (2012):**

In this case, the court emphasized the duty of public authorities to act fairly and in accordance with legitimate expectations created by their conduct or representations made to individuals;

(c) **Seth Panyako & 25 Others v. Samuel Arachi & 3 Others (2016):**

The court held that legitimate expectations can be formed based on past practices and established procedures, and that public authorities must act reasonably and fairly when dealing with such expectations;

- (d) **County Government of Nandi & Another -v- Dr. Wanjala Samson (2019):** This case emphasized that public authorities have a duty to act in accordance with legitimate expectations and that a failure to do so can be subject to legal challenge;
- (e) **Anisomerous Investments Limited v. Kenya National Highways Authority & 3 Others (2014) (eKLR)** - The court held that legitimate expectations can be formed through representations made by public authorities, and failure to act in accordance with such expectations can be challenged;
- (f) **Kenya Planters Cooperative Union Limited v. Republic & 3 Others (2014) (eKLR)** - In this case, the court emphasized that individuals or organizations dealing with public authorities have the right to legitimate expectations, and those expectations must be taken into account when making decisions affecting their rights; and
- (g) **East African Portland Cement Company Limited v. National Environment Management Authority & 5 Others (2018) (eKLR)** - The court recognized the right of legitimate expectation and held that public authorities must act fairly and consistently in accordance with legitimate expectations created by their past conduct or representations.

16. In Kenyan law, the concept of legitimate expectation recognizes individuals' entitlement to expect that public authorities will act in a certain way or carry out their functions in accordance with certain established practices, procedures, or representations. It is based on the principle of fairness and requires public authorities to act reasonably and consistently with their past conduct or promises made to individuals or groups.

17. Legitimate expectation can arise from various sources, such as explicit representations, established practices, or even implied understandings between individuals and public authorities. When a legitimate expectation is formed, it gives rise to a protected interest and individuals can reasonably expect the public authority to fulfill its obligations or commitments in accordance with that expectation.

18. While there is no specific statutory definition of legitimate expectation in Kenyan law, it has been recognized and applied by the courts through their jurisprudence, drawing from common law principles and constitutional protections of administrative fairness and due process.

19. In Kenyan law, the elements that constitute a legitimate expectation typically include:

- (a) Representation or promise: There should be a clear and unequivocal representation, promise, or assurance made by a public authority, either explicitly or implicitly.

This representation can be in the form of an explicit statement, an established practice, or a consistent course of conduct;

- (b) Reasonable reliance: The individual or group must have reasonably relied upon the representation or promise made by the public authority. This reliance can be evidenced by actions taken, decisions made, or expectations formed based on the representation;
- (c) Specificity and clarity: The representation or promise should be sufficiently specific and clear, leaving no room for ambiguity or misunderstanding;
- (d) Legality and fairness: The expectation itself must be lawful and fair, meaning it does not contravene any legal requirements or principles of public interest; and
- (e) Legitimate interest: The individual or group must have a legitimate interest in the matter at hand, such as a legal right, benefit, or legitimate concern that is subject to the actions or decisions of the public authority.

20. In Kenya law, legitimate expectation can arise in various situations. Here are some examples:

- (a) Employment and promotions: If a public authority, such as a government department or agency, has established

clear procedures and criteria for the promotion or appointment of employees, individuals who meet those criteria may have a legitimate expectation that the authority will follow those procedures fairly and promote or appoint them accordingly;

(b) Discretionary benefits and privileges: When public authorities exercise discretionary powers to grant benefits, exemptions, or privileges, individuals who meet the relevant criteria may have a legitimate expectation that they will be treated fairly, consistently, and in line with past practices or representations made by the authority;

(c) Express representations: Legitimate expectations can arise from explicit representations, promises, or statements made by a public authority. These representations may be in writing or orally communicated to individuals or groups affected by the authority's actions or decisions;

(d) Implied representations: Legitimate expectations can also be implied from the conduct, practices, or established procedures of a public authority. If individuals have consistently been treated in a certain way or if there is an established custom or practice, a legitimate expectation may arise based on that implied representation;

(e) Past decisions or precedents: If a public authority has consistently made decisions or taken actions in a

particular manner over time, individuals may have a legitimate expectation that future decisions or actions will be consistent with those past practices or precedents; and

- (f) Policies and guidelines: Public authorities often publish policies, guidelines, or procedures that outline how they intend to make decisions or conduct their affairs. Individuals who have relied upon such policies or guidelines may have a legitimate expectation that the authority will act in accordance with them.

21. In Kenyan law, the criteria for establishing a legitimate expectation typically involve the following factors:

- (a) Clear and unambiguous representation: There must be a clear and unambiguous representation, promise, or statement made by a public authority. This can be in the form of an explicit statement, established practice, or consistent conduct that creates a reasonable expectation;
- (b) Reliance: The individual or group must have reasonably relied upon the representation or promise made by the public authority. This reliance can be demonstrated by actions taken, decisions made, or expectations formed based on the representation;

- (c) Reasonableness: The expectation must be reasonable in the specific circumstances. This means that the expectation itself should not go against any legal requirement, public interest, or established policy;
- (d) Consistency: The public authority should be consistent in its application of relevant policies, practices, or representations. In other words, the authority should not act in a manner that contradicts or goes against its past conduct or representations without good reason; and
- (e) Legitimacy and fairness: The expectation should be based on a legitimate interest or right. It should not be arbitrary or unlawful. It should also be fair and just in accordance with established legal principles.

22. However, there may be certain limitations or exceptions to the criteria for legitimate expectations in Kenyan law. While the specific limitations and exceptions can vary depending on the circumstances and context of each case, here are some general considerations:

- (a) Public interest: Legitimate expectations may be subject to limitations if they conflict with overriding public interest, national security, or the broader public welfare. In such cases, the public authority may have the discretion to depart from the legitimate expectation if substantial reasons justify it;

- (b) Change in circumstances: If there is a significant change in circumstances or a valid reason that justifies a departure from the legitimate expectation, the public authority may not be bound by the expectation. For instance, if there is a change in law or policy that necessitates a departure from past practices or representations, the legitimate expectation may not apply;
- (c) Legal requirements: Legitimate expectations should not contravene any explicit statutory requirements or legal restrictions. If the expectation conflicts with statutory provisions, the law will prevail over the legitimate expectation;
- (d) Unlawful or unreasonable expectations: Legitimate expectations cannot be based on unlawful or unreasonable demands or expectations. Individuals cannot claim a legitimate expectation for something that is illegal, unreasonable, or contrary to the public interest; and
- (e) Express disclaimer or reservation of rights: Public authorities may expressly disclaim or reserve their rights to depart from established practices or representations. In such cases, a legitimate expectation may be limited or negated.

23. The limitations or exceptions to the criteria for legitimate expectations in Kenyan law play a crucial role in balancing individuals' legitimate expectations with broader legal principles and public interest considerations. They provide a framework to ensure that legitimate expectations are applied in a manner that is reasonable, lawful, and aligned with the broader objectives of the legal system.

C. CONCLUSION

24. The World over, the retirement age is moving from 60 to 65 years. The United Nations has raised the retirement age for staffers to 65 years old. The policy, approved by the General Assembly, has already taken effect for employees.

25. In Europe, retirement age is 65 years and now being lobbied to 70 years due to lack of skilled workers and the hemorrhage of pensioners.

26. Whereas EAC member countries are struggling to finance their monthly wage bill for the working class, developed economies are convincing civil servants to extend their retirement age to 70 years in order for their governments to make savings in Pension Schemes and to harness the immense benefits of their selfless wealth of experience.

27. The proposal in the Bill to statutorily cap the retirement age in Kenya to 60 years is in tandem with the right of legitimate expectation among the entire workforce, and any attempt to lower the bar to 55, would offend the right to legitimate expectation which is a principle of administrative law derived from common law.

28. The ballooning retirement pensions and the escalating wage bill in Kenya are quite instructive.

29. In the circumstances and consistent with the best practice and further, in order to remove any inherent ambiguities, the Ministry of Labour and Social Protection has no objection in the proposal in the new Bill to codify into law, the retirement age in Kenya to 60 years as contained in Clause 3 of the Public Service Commission (Amendment) Bill No. 6 of 2023.

Yours

Hon. Florence Bore,
CABINET SECRETARY.

Copy to: 1. **Mr. Geoffrey E. KAITUKO,**
Principal Secretary,
State Department for Labour & Skills Development,
NAIROBI.

2. **Hon. Justin B.N. Muturi, EGH.,**
Attorney General,
Office of the Attorney General & Department of Justice,
Sheria House, Harambee Avenue,
NAIROBI.

