

NAIROBI CITY COUNTY GOVERNMENT



NAIROBI CITY COUNTY ASSEMBLY

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**THE FIRST REPORT OF THE SECTORAL COMMITTEE ON  
JUSTICE AND LEGAL AFFAIRS  
ON  
THE INDUCTION WORKSHOP HELD FROM 30<sup>TH</sup> NOVEMBER  
TO 3<sup>RD</sup> DECEMBER 2017 AT SAWELO LODGE HOTEL**

The Clerk's Chambers  
Nairobi City County Assembly  
City Hall Buildings

December, 2017

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NAIROBI CITY COUNTY ASSEMBLY

COUNTY FISCAL STRATEGY PAPER – FY 2017/2018



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## 1.0 Preface

The Sectoral Committee on Justice and Legal Affairs Committee for the Second Assembly was established on 5<sup>th</sup> October 2017 in the floor of the House pursuant to provisions of Standing Order 203.

The Committee's mandate pursuant to the provision of Standing Order 203 –Third Schedule is, amongst others, to investigate, inquire into and report on all matters relating to; *“Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights; city inspectorate and enforcement.”*

The Committee exercise its oversight mandate over the Office of the County Attorney, Legal Affairs Department, Security, Compliance and Disaster Management, City Inspectorate, Office of the Governor –Administration of the County Executive.

## 2.0 Background

At its meeting held on Tuesday, 14<sup>th</sup> November 2017, the Committee while meeting for the first time to elect the Chairperson and Vice-Chairperson, resolved to go for a 2 days induction retreat to Naivasha, Sawela Lodge from 30<sup>th</sup> November to 3<sup>rd</sup> December, 2017.

The objective of the retreat was to amongst other things, make the Committee Members;-

- i. Appreciate and understand the role and place of Committees in the Assembly;
- ii. Appreciate the role and mandate of the Sectoral Committee on Justice and Legal Affairs;
- iii. Appreciate and understand the role of the Committee Chairperson and the structures of the Committee;
- iv. Appreciate practice and procedure in Committees;
- v. Deliberate on the previous Committee achievement and pending work if any.

## 3.0 Committee Members

The Committee on Justice and Legal Affairs comprises of the following Members;

- i. Hon. Jayendra Malde, MCA – Chairperson.
- ii. Hon. Moses Ogeto Nyangaresi, MCA – Vice Chairperson
- iii. Hon. Muchene Kabiro, MCA
- iv. Hon. Daniel Ngengi, MCA
- v. Hon. Julius Njoka, MCA
- vi. Hon. Elizabeth Nyambura, MCA
- vii. Hon. Mwaura Samora, MCA
- viii. Hon. Sylvia Museiya, MCA
- ix. Hon. Doris Kanario, MCA
- x. Hon. Anthony Kimemia, MCA
- xi. Hon. Elijah Mputhia, MCA

- xii. Hon. Wanjiru Kariuki, MCA
- xiii. Hon. Michael Ogada Okumu, MCA
- xiv. Hon. David Ayoi, MCA
- xv. Hon. Francis Otieno Ngesa, MCA
- xvi. Hon. Elias Otieno Okumu, MCA
- xvii. Hon. Jackline Apondi, MCA
- xviii. Hon. Esther Nyangweso, MCA
- xix. Hon. Patrick Kanyangi Logedi, MCA

### 3.0 Official Opening and Introductory remarks

The workshop was officially opened by a word of prayer by the Chairperson before giving his opening remarks. The Chairperson in his opening remarks, thanked all participants among them; the Committee Members, the Facilitator Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya and the Committee Secretariat for facilitation.

The Chairman emphasized on the importance of the retreat as it was an activity that was aimed at equipping the Committee with proper skills and technical knowhow for executing their Legislative, Oversight and Representation role as Members of the County Assembly and more so as the Committee Members.

The Chairperson reiterated to the participants the objective of the retreat urging them to maximize on the session and raise pertinent issues that they may wish clarified by the facilitator who is an experienced officer on parliamentary practice, procedures and on Committee systems and management.

In conclusion, the Chairman once more thanked Members for their commitment before officially opening the workshop.

### 3.0 Adoption of the Workshop Program and Deliberations

The workshop program was adopted for the deliberations of the workshop with an amendment to have Presentation of the Committee Legacy Report included in the first session.

The amended program was thereafter adopted through a proposal by Hon. Julius Njoka, MCA and a seconding by Hon. Moses Ogeto, MCA.

### 3.1 Presentation of the Committee Legacy Report

The Committee Chairperson invited the then Committee Secretariat –Mr. Adam Kibwana (Clerk Assistant) to present the first Committee on Justice and Legal Affairs Committee Legacy report.

The Committee was taken through some of the Committee achievements, challenges and pending works which was as highlighted below, that:-

#### Background;

- i) The Committee exercised oversight over the following sectors;



- a) the Legal Affairs department /Office of the County Attorney;
  - b) Security and Compliance sector;
  - c) City Inspectorate;
  - d) Investigation section;
  - e) ICT & E- Government (before the function was reviewed);
  - f) Executive Committee services; and,
  - g) Sub-County administration.
- ii) The Committee exercises its Representation, Oversight and Legislation through the following ways:-
- a) Bills;
  - b) Motions;
  - c) Statements;
  - d) Petition;
  - e) Examination of reports; and,
  - f) Committee Meetings.
- iii) The Stakeholders whom the Committee often engaged especially while conducting public participation include, but not limited to:-
- a) The residence of Nairobi City County;
  - b) National Executive (Ministry of Devolution, Justice, Office of the AG etc.);
  - c) National Assembly;
  - d) Senate of Kenya;
  - e) Judiciary of Kenya;
  - f) The County Government of Nairobi City;
  - g) Kenya Law Reform Commission;
  - h) Kituo Cha Sheria(NGO);
  - i) Oxfam Kenya;
  - j) Kenya National Commission on Human Rights;
  - k) Kenya Police Service –Office of the IG; and,
  - l) Ethics and Anti-Corruption Commission.
- iv) The operations and management of the Committee was under the custody of the Assembly Clerk, delegated to the Clerk Assistants;

#### Achievement;

- v) In regards to Bills, the 1<sup>st</sup> Justice and Legal Affairs Committee was able to pass the following Bills:-
- a) Nairobi City County Office of the County Attorney Bill, 2016 sponsored by Hon. Hassan I. Abdi, MCA- currently the Majority Leader and passed in November 2016; and,
  - b) Nairobi City County City Inspectorate Services Bill, 2016 sponsored by Hon. Jaffer Kassam, MCA – the then Committee Chairperson passed in June 2017.
- vi) In regards to reports whose motion for adoption by the House were passed, the 1<sup>st</sup> Committee was able to table the following reports and adopted by the House:-

- a) Report on the vetting of the nominees for the County Policing Authority pursuant to Section 41 of the National Police Service Act, 2011 tabled on March 2016;
  - b) Report on the Consideration of the Nairobi City County Office of the County Attorney Bill, 2016 tabled on September 2016;
  - c) Report of the Committee retreat held at Masada Hotel, Naivasha as from 12th – 15th November, 2015 to deliberate on the draft Nairobi City County Inspectorate Bill, 2015 tabled February 2016;
  - d) Report on the vetting of the nominee for the position of Chief Officer for Decentralized Units, Mr. John Ntoiti tabled September 2016;
  - e) Report on the consideration of the Nairobi City County Petition to County Assembly (Procedure) Bill, 2015 tabled June 2016;
  - f) Report on the Consideration of the Petition by the Nairobi united Internally Displaced Persons (IDPS) C.B.O to Nairobi County Government on the request for resettlement tabled October 2015;
  - g) Report on site visit to Langata Road area, opposite Nyayo Stadium in order to establish the alleged illegal hawking in the area October 2015;
  - h) Report on the site visit in Deep Sea Ward, at Parklands/ Highridge Ward to establish the displacement of Residents by Kenya Urban Roads Authority (KURA) tabled September 2015;
  - i) Report on the vetting of the nominee for the position of Chief Officer for Information, Communication and e-Government, Mr. Kennedy Okong'o tabled March 2014;
  - j) Report on the Committee's inquiry into the assault of Hon. Clarence Munga, MCA by the County Askaris on 18th June 2013 tabled April 2014;
  - k) Report on the inquiry into the assault of Hon. David Mberia, MCA and the demolition of the structures in Karen shopping centre by the City County Askaris on the 9th January 2014 tabled August 2014;
  - l) Report of the Committee site visit to the Inspectorate Training School, the Dog Pound and the General Stores tabled August 2014; and,
  - m) Report of the Committee site visit to Kangundo road and Komarock ward regarding the intended demolition of Jua-Kali premises along the said road tabled August 2014.
- v) In regard to Statements, the 1<sup>st</sup> Justice and Legal Affairs Committee during its time received twenty four (24) Statement requests from Members in the floor of the House and responded to all;
- vii) In regards to petitions, the 1<sup>st</sup> Committee received two petitions, considered both but one report was finalized, tabled in the Assembly and thereafter adopted. These were:-
- a) Petition by the Nairobi United Internally Displaced Persons (IDPs) requesting the County Government to assist in resettling them; and,



- b) Currently; a petition by the Eastleigh hawkers who were removed from Eastleigh requesting for an allocation of trading space by the County Government (pending).
- viii) In regards to Committee Examination of reports, the 1<sup>st</sup> Committee often considered the following reports:-
  - a) Monthly crime reports – by the Investigation & info. Analysis dept.
  - b) Enforcement report by the Inspectorate, Revenue & Planning sector; and,
  - c) Progress report on sector's implementation of projects and programs
- ix) During Committee meetings, the Committee deliberated on among others:-
  - a) Examination of the sector CIDP, CFSP and Budget Estimates;
  - b) Vetting of the Public Officers from the County Executive;
  - c) Conducting investigations and sermons;

#### Committee Challenges;

- x) Challenges experienced by the 1<sup>st</sup> Justice and Legal Affairs Committee were as follows:-
  - a) Delayed or lack of implementation of key resolutions and recommendations of the Committee by the County Executive
  - b) Devolution being a new dispensation, there is lack of existing curriculum for Members by tertiary institutions for short courses and basics on the legislation;
  - c) Lack of proper out-reach programs to sensitize the public for active citizen participation on matters affecting them;
  - d) Lack of liaison office in place to bridge the two organs of the County (Executive and Assembly) and to tracking implementation of the Assembly resolutions;
  - e) Tarnished corporate image from the public's view, and,
  - f) sub judice against the assembly especially when matters and issues are before the Assembly/ Committee for deliberations

### 3.2 Presentation on overview of the Role of Committees in achieving the Mandate of an Assembly by Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya

The Chairman thanked the 1<sup>st</sup> presenter Mr. Adam Kibwana before inviting the next sessional Chairperson, Hon. Sylvia Museiya, MCA, to take the Committee through the next session. The Chairperson in that regard invited Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya to take Members through the presentation on the role of the Committees.

The presenter thanked the Committee for the opportunity before taking Members through the presentation, whose highlights were as follows, THAT;-

- i) County Assemblies discharge these mandates collectively in plenary or through Committees as its specialized units;
- ii) Committees in the Assembly are thus smaller units or groups of Members of the County Assembly that allow the Assembly to perform multiple functions simultaneously;

- iii) The power for Assemblies to establish Committees is inherent in its authority/functions given under Articles 176 and 185 of the Constitution;
- iv) Section 14(1)(b) of the County Governments Act grants the Assembly power to establish Committees;
- v) County Assemblies discharge these mandates collectively in plenary or through Committees as its specialized units;
- vi) Committees in the Assembly are thus smaller units or groups of Members of the County Assembly that allow the Assembly to perform multiple functions simultaneously;
- vii) The power for Assemblies to establish Committees is inherent in its authority/functions given under Articles 176 and 185 of the Constitution
- viii) Section 14(1)(b) of the County Governments Act grants the Assembly power to establish Committees;
- ix) County Assembly (Powers and Privileges) Act establishes the Committee of Powers and Privileges;
- x) Statutory Instruments Act provides for establishment of a Committee on Delegated County (applicable to Counties pending passage of similar Act for county legislation);
- xi) Standing Orders provide for establishment of Assembly Committees and prescribes subject areas and mandate;
- xii) Committees may also be established vide a resolutions of the Assembly;

### 3.3 Presentation on Rational for Assembly Committees by Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya

The Presenter took the Committee through the Rational for Assembly Committee which was as highlighted below, that:-

- i) The roles of County Assembly under Article 185 and Part 2 of Fourth Schedule to the Constitution are expansive and cannot be effectively discharged in plenary (*strict rules of procedure, limited time and large number*)
- ii) Committees are handy in increasing efficiency of Assemblies in the following ways:
  - allowing multiplicity in performance of functions (*increases pace*)
  - 'take Assembly to the people' and allow direct contact between members of the public (*public participation under Art. 196 of the Constitution*)
  - Allow expert input and stakeholder engagement in legislative processes;
  - tapping from the expertise of Members based on their academic and professional backgrounds
  - offer in-depth, specialized and detailed consideration of matters under consideration by the Assembly
  - finding out the facts of a case/matter before the Assembly
  - examining witnesses,
  - inquiries and gathering of evidence from expert or individuals.
  - sifting evidence, and drawing up reasoned conclusions on
  - promote public debate on a subject issue.



- Advising the Assembly on a position on matters requiring a resolution (Committee Reports- recommendations)

### 3.4 Presentation on Powers of Assembly Committees by Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya

The Presenter took the Committee through the Powers of Assembly Committees which was as highlighted below, that:-

- i) Effective discharge of mandate of Committees is guaranteed by powers and immunities conferred to the Committees collectively and to Committee Members in their individual capacities;
- ii) Powers and immunities are derived from –
  - The Constitution (Art. 196 of the Constitution)
  - County Governments Act (s. 17)
  - County Assemblies Powers and Privileges Act
  - Standing Order
- iii) Immunities are limited to when the extent of the nexus with parliamentary work and precincts of the Assembly;
- iv) Committee have the following powers and immunities:-
  - Power to Summon witnesses to appear
  - Power to enforce attendance of witnesses
  - Power to examine witnesses on oath/affirmation
  - Power to compel production of documents
  - Power to compel answering of questions
  - Power to examine to issue commission or request to examine witnesses abroad
  - Freedom of debate and speech
  - Protection from civil or criminal proceedings for parliamentary work (committee, reports)

#### 3.2.1 Plenary discussion

During the plenary session, clarification on the following areas were sought and responded to be the facilitator:-

- a) How the Committee conduct investigations;
- b) How Committees cross examine witnesses;
- c) How the Committee receives a delegation and conducts its sittings.

The facilitator satisfactorily explained to the Member the above raised issues satisfactorily.

#### 3.2.2 Way forward

As the Committee concluded the first day of the workshop sessions, the following way forward were proposed by Members;

- i. The Committee secretariat to facilitate the Committee in developing a comprehensive work plan that will guide the operations of the Committee;
- ii. The Committee considers visiting its counterpart Committee at the Senate to deliberate some of the issues related to its mandate and to share on best Committee practices; and,
- iii. For purpose of exposure, the Committee secretariat to make follow up on the International Conferences and other global events for benchmarking purpose.

### 3.3 Adjournment for the day

The time being 6.30pm and having dispensed with items in the program for the day, the Chairperson adjourned the sessions until the 2<sup>nd</sup> day of the workshop at 8.30am.

### 3.3 Presentation on the Mandate of Justice And Legal Affairs Committee by Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya

The sessional Chairperson, Hon. Daniel Ngengi, MCA called the meeting for the 2<sup>nd</sup> day of the workshop in order at 8.40am with a word of prayer before inviting the facilitator to take the Committee through the Justice and Legal Affairs Committee mandate.

The Presenter took the Committee through the Powers of Assembly Committees which was as highlighted below, that:-

- i) The Sectoral Committee on Justice and Legal Affairs S.O. 203
- ii) The mandate of the Committee is derived from:
  - the Constitution (Section 8 of Part 2 of the Fourth Schedule);
  - the Standing Orders (Third Schedule); and/or,
  - any other act.
- iii) The mandate is on matters related to Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights; city inspectorate and enforcement;
- iv) In discharging its mandate, the Committee is limited or confined to:
  - Its mandate under the Standing Orders
  - extension or limitation thereof as may be directed by the County Assembly
  - the Bill committed to it and relevant amendments thereof
  - mandate of the County Assembly under Part 2 of the Fourth Schedule to the Constitution.

### 3.4 Presentation on the Functions of the Committee by Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya

The Presenter took the Committee through the Functions of the Committee which was as highlighted below, that:-

- i) study and review all county legislation referred to it that relates to planning and development (*including delegated legislation*)



- ii) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives (*request for strategic plans/objectives and implementation status/outputs and weigh variation*)
- iii) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly
- iv) vet and report on all appointments of Chief Officers for Departments under the Committee's mandate (*including those prescribed under an Act of the Assembly relating to its Mandate*)
- v) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation on matters under its purview (*on its own motion*)

### 3.5 Presentation on the How Committees conduct business by Mr. Peter Mulesi - Clerk Assistant, Senate of Kenya

The Presenter took the Committee through the Functions of the Committee which was as highlighted below, that:-

- i) The Assembly conducts its business through the following tools:
  - Committee meetings/Sub-Committee meetings
  - Request for memoranda
  - Site visits
  - Public hearings
  - Committee Inquiries
  - Fact finding visits
  - Benchmarking visits
  - Review of Legacy reports by previous Committees
  - Review of public audit Reports by Independent Offices & Commission
  - Questioning witnesses for oral evidence

### Management of Committees

Under the sub-topic, the presenter's highlights on the presentation was as follows:-

- i. Committees work under the direction of the Speaker, the Assembly Business Committee and Supervised by the Liaison Committee
- ii. Administratively supported by the Clerk through the Department of Committee Services and Committee Clerks
- iii. Resourced by the CASB through provision of staff, committee rooms and financial resources
- iv. Managed by the Chairperson with assistance of Vice chair;
- v. The effectiveness of an Assembly committee largely depends on number of factors , these include:-
  - A clarity of mandate, clear roles and responsibilities of the committee & work plan;

- Size of the committee - large vs. small (*if a committee is too large or small it renders it ineffective; large committees become unwieldy while small numbers limit the quality of ideas needed for effective work*);
- The skills of the chairperson in managing activities and meetings of the committee;
- The quality of support staff and resources available;
- Consensus building - bipartisanship; and
- Level of commitment and involvement of Members in Committee matters.
- Public & stakeholder involvement and participation
- Adequate preparation of the Committee Chair and Members
- Integrity of Committee membership – declaration of interest
- Production of timely and qualitative committee reports
- Ability to evaluate or assess its own performance
- Quality of staffing is essential for effective functioning.
- Consensus building – the multiparty nature of legislatures often translates into multiparty committees that calls for effective consensus building for committee effectiveness.
- Adequate resources and facilities to carry out assigned mandates
- Manageable size of the committee – if a committee is too large or too small it renders it ineffective; large committees become unwieldy and small numbers limit the quality of ideas needed for effective work.
- The skills of the chairperson of the committee in managing activities and meetings of the committee – this can have a tremendous impact on committee output;
- Commitment of Members to committee business

### 3.5.1 Plenary discussion

During the plenary session, clarification on the following areas were sought and responded to by the facilitator:-

- The Functional operations of the County Inspectorate department
- Roles of the County Attorney
- Budget making process
- Stakeholders that are part of Justice and Legal Affairs Committee

The facilitator satisfactorily explained to the Member the above raised issues satisfactorily.

### 3.5.1 Way forward

As the Committee concluded the first day of the workshop sessions, the following way forward were proposed by Members;



That the Committee should organize for enough site visits to

- Dagorreti Training School
- Mworoto Training Facility
- City Courts

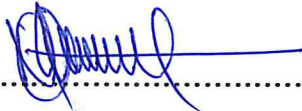
#### 4.0 General Recommendations of the Workshop

The workshop agreed on the following as recommendations for the Sectoral Committee on Justice and Legal Affairs, THAT:-

- i. Inspectorate department to operationalize inspectorate act
- ii. A policy be developed by the Security, inspectorate and Compliance

#### 5.0 Closing of the Workshop

The Chairman Jayendra Malde congratulated the facilitator for the Job well done and invited Hon. Elijah Mpuhia to close the workshop with a word of prayer.

Signed.....

Hon. Jayendra Malde, MCA – Chairperson.

Date ..25/01/2018.....



