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to be tabled
House this day
before 30/10/2013
by Hon. Gachagua
Sunday
31/10/13*



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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE
ON
FINANCE, PLANNING & TRADE

REPORT ON
THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS)(AMENDMENT) BILL,
2013

PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2013

Approved for tabling

*But SNA
30/10/13*

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(1) INTRODUCTION

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental committees of the National Assembly established under SO 216 and mandated to, inter alia: 'to study and review all legislations referred to it;

Specifically, the Committee deals with *Public finance, monetary policies, public debt, financial institutions, investment and divestiture policies, pricing policies, banking, insurance, population, revenue policies, planning, national development, trade, tourism promotion and management, commerce and industry.*

The Standing Orders also empowers the Committee to make its own selection of the subjects regarding the policy, management and administration among others of the Ministries and Departments falling under its jurisdiction.

COMMITTEE'S MEMBERSHIP

The committee comprises of the following members:-

1. Hon. Benjamin Langat, MP (Chairman)
2. Hon. Nelson Gaichuhie, MP (vice Chairman)
3. Hon. Jones M Mlolwa, MP
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP
19. Hon. Mary Emase, MP

20. Hon. Joseph Limo, MP
21. Hon. Lati Lelelit, MP
22. Hon. Kirwa Stephen Bitok, MP
23. Hon. Sammy Mwaita, MP
24. Hon. Daniel E. Nanok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Abdul Rahim Dawood, MP
27. Hon. Sakwa John Bunyasi, MP
28. Hon. Alfred W. Sambu, MP
29. Hon. Sammy Koech, MP

On Thursday, 27th June, 2013, the Kenya Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2013 went through the First Reading and referred to the Departmental Committee on Finance, Planning & Trade pursuant to the provisions of the Standing Order No. 127 of the National Assembly.

The Departmental Committee on Finance, Planning & Trade facilitated Public Participation by engaging the stakeholders on the Bill pursuant to Standing Order 127 and Article 118 of the Constitution of Kenya 2010. The Committee met with the Association of Kenya Insurers (AKI); Pricewaterhousecoopers (Independent auditing firm), and the Institute of Certified Public Accountants of Kenya (ICPAK). The Law Society of Kenya also sent its written submissions to the Committee.

(2) COMMITTEE OBSERVATIONS

1. The Bill proposes to amend Sections 3 and 10 of the Principal Act to insert a schedule that contains an elaborate compensation liability structure payable in respect to death of or bodily injury to any person caused by or arising out of the use of a vehicle on the road, as a percentage of the maximum compensation prescribed of the KSh. 3 million provided for in Section 5(b) of the Principal Act.
2. Section 5 (b) of the Cap 405 caps damages to Khs. 3 Million in respect to passengers in any motor vehicle whether private, PSV or commercial. The Khs. 5 Million capping is not based on any scientific known criteria and as such remains illogical. The proposed compensation is much higher than the actual industry average compensation awarded by the courts or by consent between parties. For instance, the average death claim has been settled at an average of Khs. 600.

000 in the last seven years whereas the Bill proposes to deal with the same at Khs. 3 million.

3. The scheme as proposed by the Bill, entails a fixed compensation for each body part and is pegged to individual income levels and the nature and extent of injury. Compensation in the cases of death as a result of an accident is uniform for all categories of victims. Unlike the current system where the driver who causes an accident pays for the injuries sustained for the driver who did not cause the accident, the proposed structure ensures that everybody benefits. This will increase insurance costs at the end of the day and thus insurance premiums. This plan is called a “No Faulty Plan”.
4. The proposed structured scheme has been tested in various other jurisdictions with varying degrees of success. In Switzerland, the structured compensation scheme is being implemented with an independent budgetary allocation from the government to a Commission to settle the claims. Definite figures have been assigned on each particular claim and everybody qualifies for compensation without going through litigation. In the US states, the scheme was tested but failed to deliver its promises of lowering premiums and reducing court expenses; the same proposal put forward in the Bill’s memorandum and objects. The scheme will infact increase the court costs because of the attendant rising costs of medical claims by the injured who find the scheme’s compensation inadequate. This problem of inadequate compensation will be transferred to medical insurance schemes thus further complicating the scenario.
5. The Bill does not propose to compensate soft tissue injuries despite the fact that they account for 60% of all the injuries sustained by road accident victims. Incorporation of this crucial component of the compensation scheme will go a long way in meeting the objects of the Bill.
6. The schedule lacks definite compensation percentage values as it provides wide margins applied to a total compensation thus leaving the adjudicating bodies with the discretion to determine the exact value.
7. The proposed schedule fails to address instances of multiple injuries.
8. This Bill does not propose creation of a new institution and it does not contain provisions for expenditure of more public funds.

(3) PROPOSED AMENDMENTS

Arising from the Committee's interaction with the stakeholders and its own analysis, the following amendments are being considered for possible introduction to the House at the committee Stage:

CLAUSE 2

THAT, Clause 2 be amended by inserting the following definitions—

- i. "Judgement" means a determination of the right to compensation and the sums payable taking into consideration the circumstances of the cause of action and the categories of injury or disablement defined in the Scheme to this Act.
- ii. "earnings" means revenue gained from labour or services and includes the income or money or other form of payment that one receives from employment, business or occupation OR in the absence of documentary evidence of such revenue, the applicable minimum wage under the Labour Relations Act or the determination of the reasonable income, whichever is higher.
- iii. "multiplier" means the number of years a dependant would reasonably have been expensed to receive financial support from the deceased person.
- iv. "dependant" means a dependant under the provisions of the Fatal Accident Act, Chapter 32 laws of Kenya.
- v. "dependency" means that part or portion of the deceased's earnings that he spent on maintenance or financial support of his dependants or in the case of a person who was not in employment, reasonably anticipated earnings

CLAUSE 3

THAT, clause 3 be amended —

- (i) In paragraph (b) (1A) by inserting the following words "and the Insurance Regulatory Authority" between the words "services," and "prescribe"

Justification

Introduces the Introduces the Insurance Regulatory Authority as a body to be consulted by the Cabinet Secretary before prescribing any compensation to claimants not covered under the scheme

- (ii) by inserting the following new paragraph

(1B) the maximum percentage of the sum specified in Section 5 (b) and prescribed in the Schedule under this Act shall be inclusive of the medical expenses on the judgement or claim.

Justification

Amendment of Section 5(b) of the Principal Act that Caps the maximum capital at Khs. 3 Million to be inclusive of the medical judgment or a claim.

(iii) by deleting the words “fourteen days” under subsection 2 (a) and substituting thereof with “thirty days”.

Justification

Provides sufficient period for the insurer to verify documents

(iv) By inserting the following subsection (iv) immediately after subsection 2 (c) (iii):-
unless the insured or the person entitled to indemnity under the policy has settled the policy excess with the insurer which shall be ten percent of the total sum payable or ten thousand shillings, whichever is less, for every claim or judgement.

(v) by deleting the phrase “delivered to the insurer” at the end of subsection 3 and substituting thereof with the phrase “duly served upon the insurer together with a disclosure under oath of all the documents intended to be used to prove the claim whether in or out of court”

(vi) by inserting the following subsections immediately after subsection (3)-

(3A) That no judgement or claim shall be payable by an insurer unless the judgement debtor or claimant had before determination of liability subjected themselves to medical examination by a medical practitioner or specialist of the insurer’s choice.

(3B) That the Insurer shall have a right to obtain or verify information from the institution which issued the documents intended to be used to prove the claim and this right shall be enforceable before any sum or judgement is satisfied by the insurer.

(vii) In subsection 4 by deleting the words “*three months*” and substituting thereof with the words “*twelve months*” and by deleting the words “*he has obtained a declaration that*” and substituting thereof with the words “*he has obtained a declaration or commenced an action for a declaration that*”

(viii) By inserting the following subsection immediately after subsection 4:-

(4A) Notwithstanding any other provision under this Act or any other law, any person or persons who willfully presents false or inaccurate information to the insurer or any court of competent jurisdiction with the intention of benefiting under this Act through:-

- i) falsification and alteration of treatment documents and records
- ii) exaggeration of injuries or degree of incapacitation
- iii) falsification and alteration of police documents and records
- iv) falsification and alteration of identification documents and records shall be guilty of an offence and upon conviction, the claim or judgement subject matter of the false or inaccurate information shall not be payable by the insurer.

Justification

Introduction of disciplinary provisions to deter fraudulent claims

NEW CLAUSES

- (i) THAT, the Principal Act is amended Section 12 by inserting the following new subsections immediately after subsection (1):-

(1B) The insurer shall, upon being served with the statutory notice and documents, admit or deny liability for the claim or judgement by a notice in writing to the person or persons presenting the claim or judgement.

(1C) The claimant or judgment debtor or his representative shall upon receipt of the admission of liability shall allow the insurer a period of not more than sixty days to settle the claim or judgement out of court and both the insurer and the claimant or judgement debtor or his representative commit to arbitration or mediation during that period before resorting to court.

- (ii) THAT, the Principal Act is amended in Section 17 by-

- a) deleting the words “*five thousand shillings*” and substituting thereof with the words “*five hundred thousand shillings*” and the phrase “three months” with “one year”.
- b) deleting the words “for which no other penalty is specifically provide”

CLAUSE 4

THAT, Clause 4 is amended by deleting the schedule and substituting thereof with the following new schedule:

SCHEDULE

STRUCTURED COMPENSATION LIABILITY SCHEDULE

				RECOMMENDATION S/ REMARKKS
DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)	COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5 (b) (iv) OF THE ACT)
A.	DEATH AS A RESULT OF AN ACCIDENT			
	1. Adult		100	(3%-100%) based on the following computation =Multiplier (yrs) * Multiplicand (earnings) * 12 months *Dependency Ratio.
	2. Minor (ages 0-5 yrs)			5%
	3. Minor (age 6-12 yrs)			10%
	4. Minor (age 12-18 yrs)			15% or the formula in 1 above (where applicable) whichever is higher.
B	BLINDNESS			
	1. Total		100	100%

2.	Partial				
	(a)	Acuity 1/20		75	50%
	(b)	Acuity 1/10 – 1/20		70	25%
3.	Narrowed Field of Vision				
	(a)	Affecting one eye			
		(i)	30-10 degrees from focal point	1 – 5	5%
		(ii)	Less 10 degrees from focal point	5 – 15	10%
	(b)	Affecting both eyes			
		(i)	30-10 degrees from focal point	10 – 50	10%
		(ii)	Less 10 degrees from focal point	50 – 60	20%
	(c)	Paracentral scotoma			
		(i)	Affecting one eye	5 – 15	5%
		(ii)	Affecting both eyes	15 – 30	10%
4.	Hemi-anopsia (with central vision)			15 – 25	Addressed under (a) to (g) below
	(a)	Homonymous right or left		5 – 10	10%
	(b)	Nasal		50 – 60	10%
	(c)	Bitemporal		5 – 10	10%
	(d)	Upper		10 – 30	5%
	(e)	Lower		5 – 10	5%
	(f)	Upper Quadrant		10 – 30	5%
	(g)	Lower Quadrant		5 – 10	5%
5.	Double Vision (diplopia)			5 – 10	Addressed under (a) to (b) below
	(a)	Affecting upper field of vision		10 – 20	5%
	(b)	Affecting lower field of vision		10 – 20	5%
6.	Aphakia (loss of lens) – bilateral			25	10%
7.	Aphakia (loss of lens) – unilateral			20	5%
8.	Ectropion, entropion, lagophthalmos			0-5	5%
C. INJURY (GENERAL)					
1.	Bilateral shoulder luxation			10	10%
2.	Unilateral shoulder luxation			5	5%
3.	Chewing impairment				
	(a)	Mild		2 – 10	5%
	(b)	Moderate		10 – 15	10%
	(c)	Severe		15 – 25	20%
4.	Severe, painful functional impairment of vertebral column			90	50%
5.	Quadriplegia (all limbs)			100	100%
6.	Severe lung impairment			50	30%
7.	Severe kidney impairment				50%
	(a)	One kidney		50	25%
	(b)	Both kidneys		75	50%
8.	Impairment of memory or ability to concentrate			40	40%
9.	Post traumatic epilepsy				
	(a)	One seizure yearly		10-15	5%
	(b)	Two seizures yearly		15 – 30	10%
	(c)	More than two seizures yearly		30 – 50	15%
10.	Severe psycho-organic syndrome (Loss of speech)			75	
11.	(a)	Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Right	65	10%
	(b)	Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Left	60	35%
12.	(a)	Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Right	50	30%
	(b)	Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Left	50	25%
13.	Loss of arm between shoulder and elbow (consider hand dominance)			50	30%
14.	(a)	Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Right	50	30%
	(b)	Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Left	40	25%

15.	Loss of arm between wrist and elbow (consider hand dominance)		50	25%
16.	Loss of four fingers and thumb of one hand (by amputation or ankylosis) (consider hand dominance)		60	25%
17.	Loss of four fingers (by amputation or paralysis or ankylosis)		40	20%
18.	Loss of thumb (consider hand dominance)			
	(a)	One phalanx	5	5%
	(b)	Both phalanges	Right Left	15% 10%
19.	Loss of index finger			
	(a)	One phalanx	5	2%
	(b)	Two phalanges	10	4%
	(c)	Three phalanges	10	6%
20.	Loss of middle finger			
	(a)	One phalanx	2	2%
	(b)	Two phalanges	4	4%
	(c)	Three phalanges	6	6%
21.	Loss of ring finger			
	(a)	One phalanx	2	2%
	(b)	Two phalanges	4	4%
	(c)	Three phalanges	4	4%
22.	Loss of little finger			
	(a)	One phalanx	1	1%
	(b)	Two phalanges	2	2%
	(c)	Three phalanges	3	3%
23.	Loss of toes			
	(a)	All	15	15%
	(b)	Great, both phalanges	5	5%
	(c)	Great, one phalanx	2	2%
	(d)	Smaller toes, each	1	1%
24.	Loss of eye			
	(a)	Eye off	30	30%
	(b)	Lens damage	30	30%
25.	Ears, loss of hearing and associated defects			
	(a)	Hearing loss, one ear	15	15%
	(b)	Hearing loss, both ears	50	50%
	(c)	Unilateral hyperacusis	0 – 12	5%
	(d)	Bilateral hyperacusis	10 – 15	10%
	(e)	Subjective noise in the ears	1 – 2	2%
	(f)	Loss of one ear	10	10%
	(g)	Vertigo (dizziness, rotating feeling, unsteadiness)	2 – 10	2%
26.	Monoparesis (Monoplegia)			
	(a)	Right upper limb	50	50%
	(b)	Left upper limb	25	25%
	(c)	Lower limb	50	50%
27.	Hemiparesis			
	(a)	Spastic hemiplegia	10 – 50	30%
	(b)	Flaccid hemiplegia without urinary/fecal incontinence	50 – 80	50%
	(c)	Flaccid hemiplegia with urinary and/or fecal incontinence	80 – 90	75%
28.	Paraparesis		100	70%
29.	Post-traumatic neurosis		10 – 20	15%
30.	Post-traumatic dementia		75	0% Cannot arise from RTA and covered under severe head injuries
31.	Loss of voice			
	(a)	Dysphonia	0 – 10	5%
	(b)	Aphonia	25	10%
32.	Nose and mouth			
	(a)	Defects in smell detection		

	(i)	Hyposmia or anosmia		2 – 5	5%
	(ii)	Nasal defects leading to breathing difficulties		2 – 4	4%
	(iii)	Loss of Nose		30	15%
	(b)	Teeth loss (not replaced)			
	(i)	Incisor		1	1%
	(ii)	Premolar		1 – 1.5	1%
	(iii)	Canine and molars		2	2%
	(iv)	Total loss of all teeth		30	30%
	(v)	Loss of pulp vitality of a tooth		1	1%
	(c)	Tongue loss (total or partial)		0 – 10	10%
	(d)	Total permanent unilateral facial nerve paralysis		25	15%
	(e)	Partial unilateral facial paralysis		10	10%
	(f)	Injury to the trigeminal nerve and its branches			
	(i)	Inferior orbital		2 – 4	3%
	(ii)	Lower dental nerve		2 – 4	3%
	(iii)	Lingual nerve		2 – 4	3%
	(g)	Scalp injury – aesthetic damage		1 – 5	5%
33.	Joints				
	(a)	Aggravation of previous arthritis		2 – 5	2%
	(b)	Segmentary neuralgia with slight ligament or bone lesions stiffness (without neuro-sensory complications of:-			
	(i)	Cervical column		5 – 15	10%
	(ii)	Dorsal (thoracic) column		5 – 10	10%
	(iii)	Lumber column		5 – 15	10%
	(c)	Fracture/dislocation of cervical vertebra with stiffness		15 – 20	15%
	(d)	Fracture/stiffness of thoracic/lumber vertebra		10 – 15	10%
	(e)	Ankylosis (fusion of two bones across a joint space)			
	(i)	Shoulder joint	Right	30	5%
		"	Left	25	5%
	(ii)	Elbow joint	Right	20	5%
		"	Left	15	5%
	(iii)	Wrist Joint	Right	25	5%
		"	Left	15	5%
	(iv)	Hand (all joints)	Right	50	10%
		"	Left	25	10%
	(f)	Joint stiffness – average stiffness			
	(i)	Shoulder joint	Right	15	5%
		"	Left	10	5%
	(ii)	Elbow joint	Right	10	5%
		"	Left	5	5%
	(iii)	Wrist Joint	Right	15	2%
		"	Left	10	2%
	(iv)	Hand (all joints)	Right	25	10%
		"	Left	10	10%
	(g)	Paralysis of various nerves of upper limb			
	(i)	Radial nerve (consider hand dominance)	Right	50	20%
		"	Left	25	15%
	(ii)	Circumflex nerve	Right	25	5%
		"	Left	10	5%
	(iii)	Musculocutaneous	Right	10	5%
		"	Left	8	5%
	(iv)	Subscapular	Right	8	5%
		"	Left	6	5%
	(v)	Median nerve (at arm)	Right	30	5%
		"	Left	25	5%
	(vi)	Median nerve (at wrist)	Right	15	5%
		"	Left	10	5%
	(viii)	Cubital nerve (at arm)	Right	25	5%
		"	Left	20	5%
	(viii)	Cubital nerve (at wrist)	Right	15	5%

				Left	10	5%
34.	Limbs					
	(a)	Lower limb shortening				
		-	Less than 3 cm		0 – 2	2%
		-	3 – 6 cm		2 – 8	5%
		-	6 – 10 cm		8 – 15	10%
	(b)	Total loss by amputation or paralysis				
		(i)	At hip		60	50%
		(ii)	At thigh		58	45%
		(iii)	At knee		50	40%
		(iv)	At leg		45	35%
		(v)	At ankle		30	30%
	(c)	Tarsometatarsal				
		(i)	All toes		15	15%
		(ii)	Great toes		5	5%
	(d)	Ankylosis (fusion in anatomical position)				
		(i)	At the hip		50	30%
		(ii)	At the knee		30	20%
		(iii)	At the ankle		20	10%
		(iv)	At the toes		10	5%
	(e)	Stiffness (loss of full range of movement at joint)				
		(i)	At the hip		25	15%
		(ii)	At the knee		10	10%
		(iii)	At the ankle		4	4%
		(iv)	At the toes		2	2%
	(f)	Articular (Joint) instability				
		(i)	At the hip (hip dislocation)		30 – 35	10%
		(ii)	At the knee			
		-	Loose ligaments (well corrected to allow normal activity)		2 – 5	2%
		-	Loose ligaments (but hampering some activities even after correction)		5 – 10	5%
		-	Loose ligaments hampering walking		10 – 20	10%
	(g)	Heel instability				
		(i)	In form of diastasis without clinical impact		0 – 4	2%
		(ii)	Causing recurrent sprains		4 – 10	5%
		(iii)	Hampering walking		10 – 12	10%
	(h)	Paralysis of nerves of lower limb				
		(i)	Sciatic nerve		20 – 30	20%
		(ii)	Popliteal nerve (back of knee)		10 – 20	10%
		(iii)	Femoral nerve (thigh)		30 – 50	10%
		(iv)	Sciatic neuralgia (pains)		10 – 20	10%
	(i)	Total prosthesis of the Hip				
	(j)	Anthrodesis of the knee				
	(k)	Patellectomy				
	(l)	Meniscus injury				
		(i)	Without operation		10 – 15	5%
		(ii)	After operation		5	5%
	(m)	Special care of the foot				
		(i)	Some pain while walking – normal or slightly reduced movement		0 – 2	2%
		(ii)	Sporadic pain. moderate limitations of movement some claudication: but foot stable		2 – 5	2%
		(iii)	Pain while walking (subsides on rest); some claudication; limiting walking; circulatory disorders		5 – 10	5%
		(iv)	Ankylosis of tibio-tarsal joint at a functional position		10	10%
		(v)	Severe pains of the foot equines deformity. moderate trophic disorders. limited walking using a walking stick		10 – 25	15%
		(vi)	Sharp pains on walking or standing.		25 – 30	25%



			severe stiffness, equinus, trophic disorders requiring two walking sticks or crutches				
		(vii)	Sharp pains of the foot interfering with sleep ankylosis at critical position or severe deformity walking on crutches		30 – 35	25%	
		(viii)	Severe pains (continuous), severe deformity: impossible to stand unless on crutches		35 – 40	35%	
35.	The Pelvis						
	(a)	Pubic symphysis separation or sacro-iliac separation			5 – 10	5%	
	(b)	Post injury coccydynia with a fracture detected by radiography			2 – 5	2%	
	(c)	Obturator neuralgia			2 – 5	2%	
36.	Respiratory Injuries						
	(a)	Slight respiratory insufficiency (dyspnoea occurring during great strain)			0 – 5	2%	
	(b)	Moderate respiratory insufficiency (dyspnoea during moderate strain)			5 – 20	5%	
	(c)	Considerable respiratory insufficiency (dyspnoea during normal activities)			20 – 50	10%	
	(d)	Dyspnoea at rest			50 – 100	15%	
37.	Circulatory Injuries						
	(a)	No cardiac insufficiency (subject leads a normal life but treatment necessary)			0 – 10	2%	
	(b)	Mild cardiac insufficiency (treatment necessary – disorders occur during exertion but subject leads a normal life)			10 – 20	5%	
	(c)	Moderate cardiac insufficiency (Constant treatment necessary, exertion to be avoided, daily life is interrupted)			20 – 50	10%	
	(d)	Aortic prosthesis			20	10%	
	(e)	Valvular prosthesis			25	15%	
	(f)	Severe Cardiac Insufficiency (treatment needed, rest mandatory, daily activities severely disrupted)			50	50%	
38	Alimentary system and abdominal organs						
	(a)	Biliary hepatic system					
		(i)	Minor disorders without ascites, jaundice or esophageal varices		0 – 10	2%	
		(ii)	Marked liver disorders shown by laboratory tests but without nutritional or general disorders ascites jaundice or oesophageal varices		10 – 20	5%	
		(iii)	Nutritional/general disorders present e.g. ascites, hemorrhages, e.g. from oesophageal varices hepatic coma, recurrent obstructive jaundice		20 – 60	0% Cannot arise from RTA	
		(iv)	Progressive liver failure ascites jaundice haemorrhage, hepatic coma and nutritional disorders		60 – 100	0% Cannot arise from RTA	
	(b)	The spleen – splenectomy				10	5%
	(c)	Abdominal wall - hernia				5 – 10	5%
	(d)	Stomach, Small intestines and Pancreas					
		(i)	No operation after effects – normal weight maintained without special diet or treatment		0 – 5	2%	
		(ii)	Uptake (absorption) disorders leading to weight loss (less than 10% weight loss)		5 – 15	5%	
		(iii)	Weight loss (due to uptake disorder) in range of 10-20% average body weight, electrolyte imbalance		15 – 30	0% Cannot arise from RTA	
		(iv)	Weight loss diarrhea x4 - x6 daily,		30 – 50	0%	

			abdominal cramps, steatorrhea electrolyte imbalance			Cannot arise from RTA	
		(v)	Weight loss more than 20% anaemia hypoproteinaemia		50 – 60	0% Cannot arise from RTA	
		(e)	The Colon				
		(i)	No functional disorder normal body weight and activity		0 – 5	0%	
		(ii)	Weight disorder – moderate pains, but no nutritional disorders		5 – 10	0% Cannot arise from RTA	
		(iii)	Uptake disorders sporadic abdominal pains anemia weight loss – diet and treatment necessary		10 – 30	0% Cannot arise from RTA	
		(iv)	Permanent uptake disorders: pains, general disorders – diet and treatment necessary		30 – 50	0% Cannot arise from RTA	
		(v)	Colostomy done				
		-	Descending colon		50 – 60	20%	
		-	Transverse colon		30 – 40	20%	
		-	Ascending colon		20 – 30	20%	
		(f)	The kidneys and urinary system				
		(i)	Severe nephrotic syndrome and hypertension		50 – 60	50%	
		(ii)	Renalcolic, with respect to number of attacks		0 – 20	10%	
		(iii)	Renal atrophy (total kidney loss)		10	10%	
		(iv)	Nephrectomy (kidney removal)		10	10%	
		(v)	Partial atrophy, normal life		0- 10	5%	
		(vi)	Renal insufficiency				
		-	Normal life, minor insufficiency - creatinine clearance 80-100ml/min		5 – 10	5%	
		-	Normal life on treatment creatinine clearance 40-80ml/min: high blood pressure		10 – 20	10%	
		-	Creatinine clearance 15-40 ml/min		20 – 50	30%	
		(vii)	Chronic cystitis		5 – 20	5%	
		(viii)	Urinary retention				
		-	Mild (weekly catheter)		10 – 15	5%	
		-	Moderate (catheter several time a week)		15 – 20	10%	
		-	Severe (indwelling catheter)		20 – 40	20%	
		(ix)	Cystostomy done		40	0% Corrective/Surgical procedure not an injury	
		(x)	Urethral stricture requiring manual dilatation (no renal infection)		5 -10	5%	
		(xi)	Urethral stricture requiring frequent dilatation (no renal infection)		15 – 40	10%	
		(g)	Genital system and reproductive organs				
		(i)	Mechanical failure in sexual relations		30 – 40	20%	
		(ii)	Loss of ovary or testicle (but subject to the next item)		5	5%	
		(iii)	Bilateral castration or sterility while functionally healthy		30 – 40	20%	
39.	Special conditions						
	(a)	Mild pain/disfiguration (Soft tissue Injuries/blunt trauma, minor cuts & lacerations, bruises)			0 – 10	2%	
	(b)	Moderate pain/disfiguration(Deep cuts& lacerations, frictional burns, degloving injuries)			10 – 50	5%	
	(c)	Severe pain/disfiguration(severe Degloving requiring skin graft, very severe burns)			50 – 100	15%	
40	General						
Except where otherwise expressly provided, the following conditions shall apply to all assessments in this schedule:-							
	(a)	Combination of two or more categories of injuries or disablement				Percentage for the most severe or dominant injury	

Justification

To provide for the compensation package for the following:

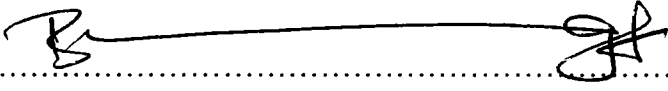
- Soft tissue injuries
- Multiple injuries
- A definite compensation percentage to each and every claim; avoid large margins

(4) ACKNOWLEDGEMENTS

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the Secretariat for the preparation of this report.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade to table this report on the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2013 and commend it to the House for debate pursuant to the provisions of Standing Order 127 of the National Assembly.

Signed 

CHAIRPERSON
(HON. BENJAMIN LANGAT, MP)

Date: 29-10-2013

**MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 2ND OCTOBER,
2013 IN THE COMMITTEE, 4TH FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS AT 10.00 AM.**

PRESENT

Hon. Benjamin Langat, MP (**Chairperson**)
Hon. Nelson Gaichuhie, MP(**Vice Chairperson**)
Hon. Mary Emase, MP
Hon. Tiras N. Ngahu, MP
Hon. Ronad Tonui, MP
Hon. Joseph Limo, MP
Hon. Anyanga AndrewToboso, MP
Hon. Timothy M .E.Bosire, MP
Hon. Sammy Mwaita, MP
Hon. Iringo Cyprian Kubai, MP
Hon. Abdul Rahim Dawood, MP
Hon. Abdullswamad Sheriff, MP
Hon. Daniel EpuyoNanok, MP
Hon. Shakeel Shabbir Ahmed, MP
Hon. Jimmy NuruAngwenyi, MP
Hon. Jones M.Mlolwa, MP
Hon. Dennis Waweru, MP
Hon. Patrick MakauKing'ola, MP

ABSENT WITH APOLOGIES

Hon. Sakwa John Bunyasi, MP
Hon. Joash Olum, MP
Hon. Lati Lelelit, MP
Hon. Dr. Oburu Oginga, MP
Hon. Eng. Shadrack Manga, MP
Hon. Alfred W. Sambu, MP
Hon. Sumra Irshadali,
Hon. Sammy Koech, MP
Hon. Sakaja Johnson, MP
Hon. Ogendo Rose Nyamunga, MP

INATTENDANCE

KENYA NATIONAL ASSEMBLY

Hellen Kina - Clerk Assistant
Tobias Opana - Junior Legislative Fellow

KENYA DEPOSIT PROTECTION FUND BOARD

Jane Ikunywa - Secretary, Board of Directors
Rose Deso - Director, Deposit Protection Fund Board

ASSOCIATION OF KENYA INSURERS

Mark Obuya - Chairman Association of Kenya Insurers
Peter Chacha - Chief Executive Association of Kenya Insurers
Tom Gichuhu - Executive Director Association of Kenya Insurers
Stephen Wandera - Member of the Board of Association of Kenya Insurers
Beatrice Wafula - Senior Manager Pricewaterhousecoopers
Gideon Rotich - Senior Consultant Pricewaterhousecoopers
Tariim Ujenje - Chief Executive of Assurance Company

CENTRAL BANK OF KENYA

Fredrick Pere - Director, Banking Supervisory
Martin Mugo - Assistant Director Banking Supervisory CBK
Marriam Mohammed - Legal Counsel

MIN. NO.160/2013: PRELIMINARIES

The Chairperson called the meeting to order at 10.15 am followed by a word of prayer. The chair outlined the agenda of the meeting which was to consider the Bills under the Committee. He therefore welcomed the members present and the representatives of the Kenya Deposit Protection Fund Board, Association of Kenya Insurers and the Central Bank of Kenya.

MIN.NO.161/2013: PRESENTATION FROM DEPOSIT PROTECTION FUND BOARD

The Committee learned that;

- 1) The Deposit Protection Fund Board was created by an Act of Parliament in 1986 to protect depositors from loss of their saving should any bank go under and also to instill confidence and stability in the financial sector in the country.
- 2) The Deposit Protection Fund Board is managed by the Central Bank of Kenya and that the Governor of the Central Bank of Kenya is its chairman.
- 3) The Deposit Protection Fund Board can reimburse a maximum of Ksh. 100,000, to depositors should a bank collapse. Depositors can further be paid dividends arising from the liquidation of the fallen bank.

- 4) The Deposit Protection Fund Board levy 0.15% of all the deposits from all the Banks under Central Bank's regulation annually.
- 5) The fund collected is invested in Government bond and securities as required by the Regulations of the Deposit Protection Fund Board.
- 6) The Kenya Deposit Insurance (Amendment) Bill, 2013 seek to transform Deposit Protection Fund Board to Kenya Deposit Insurance Cooperation.
- 7) The Kenya Deposit Insurance (Amendment) Bill, 2013 proposes to restructure and extended the mandate of the protection board. The Amendment is also seeking to change the leadership of the board by bringing in an independent board Chairperson separate from the governor of the Central Bank of Kenya..
- 8) Since inception of the Deposit Protection Fund Board, a total of 24 financial institutions have collapsed and the Board has sufficiently compensated all the depositors affected.

MIN.NO.162/2013: CONSIDERATION OF THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL, 2013

The Association of Kenya Insurers raised the following concerns regarding the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2013:

- 1) Compensation as proposed in the bill is very high and that this had a possibility of forcing the Insurance companies to increase their premiums. Should this happen, the insurance industry is likely to face challenges as many clients are likely to shy off.
- 2) The proposed bill does not provide for equal treatment of injured person as it proposes that any compensation should be capped at Khs. 3 million regardless of the profession, status, age or economic productivity of the affected person. Compensation should be based on the economic contribution to the economy.
- 3) The proposed bill does not provide for soft tissue injury compensation. Soft tissue injuries account for about 60% of compensation of third party risks.
- 4) The proposed bill does not provide definite compensation but rather provides wide percentage margins for the same injury.

Resolution

After deliberations, it was resolved that the Association of Kenya Insurers should prepare specific amendments to the Bill and submit them to the Committee for consideration.

MIN.NO. 163/2013: CONSIDERATION OF THE INSURANCE (AMENDMENT) BILL, 2013

The Association of Kenya Insurers presented the following on the Insurance (Amendment) Bill, 2013:

1. The Propose to amend Section 203 of the Principal Act (Clause 17) will require an insurer to settle a claim within a period of ninety (90) days from the date of reporting of the claim; where a claimant will have submitted all relevant documents to them. The association proposed that the number of days be reviewed.
2. All the other proposed amendments in the Bill were agreed to the association.

MIN.NO. 164/2013: CONSIDERATION OF THE MICROFINANCE (AMENDMENT) BILL, 2013

The Committee observed that the Governor of Central Bank usually do not honor any invitation from the Committee on Finance, Planning and Trade. The team from the Central Bank was directed to inform the Governor that the Committee will no longer accept any apology and that the committee will take further actions should the Governor continue absconding the committee meetings whenever invited. The team from Central Bank presented the following on the Microfinance (Amendment) Bill 2013.

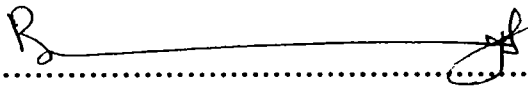
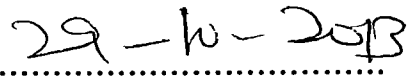
1. The main differences between microfinance institutions and the Commercial banks were the operation of current accounts.
2. CBK was opposed to the proposal to allow Deposit Taking Microfinance Institutions to use the name Microfinance Bank as this may be perceived to be lincensed to carry on banking business; which in many aspects differ from microfinance business and that people may not be able to differentiate microfinance from convectional banks.
3. CBK was opposed to the proposal to allow DTMs to transact in forex as this require complexity of foreign trading. DTMs do not have the necessary capacity to do this business.

4. CBK was opposed to the proposal to allow the DTMs to issue third party cheques, operating current accounts and foreign operations as DTMs are not full members of the clearing house.
5. The Microfinance (Amendment) Bill, 2013 will strengthen the prompt corrective action powers of the Central Bank. Further, consultations to be held on other amendments proposed by Association of Microfinance Institutions through the comprehensive review of the Microfinance Act and Regulations

The Committee directed the team from the Central Bank of Kenya to furnish them with a document clearly explaining the major differences between a Microfinance Institution from a Convectional Bank.

MIN.NO. 165/2013: ADJOURNMENT

There being no any other business, the meeting was adjourned at 12.40 p.m.

Chairperson.......... Date..........

**MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 29TH OCTOBER,
2013 IN THE COMMITTEE ROOM, SECOND FLOOR, CONTINENTAL
HOUSE, AT 10:00 AM**

PRESENT

Hon. Benjamin Langat, MP (**Chairperson**)
Hon. Nelson Gaichuhie, M.P (**Vice Chairperson**)
Hon. Joseph Limo, MP
Hon. Anyanga Andrew Toboso, MP
Hon. Sammy Mwaita, MP
Hon. Jones M. Mlolwa, MP
Hon. Sakwa John Bunyasi, MP
Hon. Alfred W. Sambu, MP
Hon. Iringo Cyprian Kubai, MP
Hon. Sakaja Johnson, MP
Hon. Timothy M .E. Bosire, MP
Hon. Daniel Epuyo Nanok, MP
Hon. Abdul Rahim Dawood, MP
Hon. Joash Olum, MP
Hon. Lati Lelelit, MP
Hon. Patrick Makau King'ola, MP
Hon. Sammy Koech, MP

ABSENT WITH APOLOGIES

Hon. Dr. Oburu Oginga, MP
Hon. Eng. Shadrack Manga, MP
Hon. Abdullswamad Sheriff, MP
Hon. Tiras N. Ngahu, MP
Hon. Ronad Tonui, MP
Hon. Sumra Irshadali, MP
Hon. Ogendo Rose Nyamunga, MP
Hon. Mary Emase, MP
Hon. Shakeel Shabbir Ahmed, MP
Hon. Jimmy Nuru Angwenyi, MP
Hon. Dennis Waweru, MP

INATTENDANCE

MINISTRY OF DEVOLUTION & PLANNING

Anne Waiguru - Cabinet Secretary
John Konchellah - Principal Secretary
Amb. James Chepsongol
Samson Wangosi
Erastus Wamugo
Betty Maina

KENYA NATIONAL ASSEMBLY

Hon. David Wafula, M.P - Friend of the Committee
Hon. Francis Kigo, M.P - Friend of the Committee
Evans Oanda - Clerk Assistant
Tobias Opana - Junior Legislative Fellow

MIN.NO. 200/2013: PRELIMINARIES

The meeting was called to order at 10.35 a.m by the Vice Chairman (chairing) followed by word of prayer. After introductions of the Members present and the team from the Ministry of Devolution & Planning, the Vice Chairman outlined the day's agenda as circulated and welcomed the Cabinet Secretary to make a response of to the statements sought.

MIN.NO.201/2013: RESETTLEMENT OF THE INTERNALLY DISPLACED PERSONS (IDPs) RESIDING IN KIENI FOREST.

This statement was sought by the Hon. Francis Kigo, MP on 11th June 2013. He directed it the Committee on Finance, Planning & Trade Cabinet. However, the Committee could not process owing to the urgent Bills that were before it. After tabling her written submission, the Cabinets Secretary responded as follows:

1. During the 1991/1992 Post Election Violence, some people were displaced in various parts of Rift Valley such as Njoro, Enosupukia and Elburgon. This group illegally invaded Kieni Forest on Slopes of Aberdare Ranges. To avoid destruction of Kieni Forest, these households were evicted from the forest therefore becoming forest evictees. Since the mandate of the Ministry is to resettle forest evictees who were pushed out of major water towers, this group of evictees was taken on board for resettlement.

Resettlement of the Kieni 805 forest evictees

2. The Government has resettled all the 805 kieni forest evictees through the cash payment programme. Each of the households was paid Khs. 400,000 and a total of Khs. 322 million was paid out to households, camps closed and forest evictees moved out.

Integrated IDPs of 2007/2008

3. The government has continued to pay start-up capital of Khs. 10.000 to all displaced persons. A total 140,459 households were targeted.

Currently, there is a backlog of 62,784 IDPs who are yet to be paid and will be paid once funds are appropriated by parliament.

MIN.NO.202/2013: RESETTLEMENT OF THE INTERNALLY DISPLACED PERSONS RESIDING IN TRANSNZOIA COUNTY (REQUEST BY HON. DAVID WAFULA, MP)

The Member had requested the following:

- (i) *How the Government arrived on the total number of IDPs;*
- (ii) *Why the Government is compensating the IDPs by way of Monetary compensation vis-à-vis the allocation of land;*
- (iii) *Whether the Government has complied with Section 9(3) of the act, which prescribes the procedure for resettlement of IDPs and state the expected timelines for closure of all IDP camps;*
- (iv) *Whether the Government has facilitated consultation with the IDPs as provided for in section 9 (4) of the Act, including the establishment of the National Consultative Coordination Committee as provided for in section 12;*
- (v) *The criterion that is currently being used by the Government to identify IDPs and the measures in place to ensure that compensation is not diverted; and*
- (vi) *The role of area Members of Parliament in the resettlement process.*

The Cabinet Secretary responded as follows:

(i) How the Government arrived on the total number of IDPs;

The National Humanitarian Fund Advisory Board authorized a census of the victims of the PEV by the National Bureau of statistics and the District Commissioners. Profiling was undertaken in June and July 2008. In essence therefore IDPs were profiled at two levels: by the DCs on one hand and by the National Bureau of Statistics on the other.

The census helped to determine the actual number of displaced persons in the country as illustrated in the table below:-

Number of Profiled IDPs per province

	Province	Households	No. of Individuals
1.	Nyanza	24,981	118,547
2.	Western	12,385	58,677
3.	Rift Valley	84,947	408,631
4.	Central	10,092	46,959
5.	Eastern	1,438	6,769
6.	Coast	1,241	4,774
7.	North Eastern	26	148
8.	Nairobi	5,349	19,416
	TOTAL	140,459	663,921

Some NGOs who fear that their relevance would diminish if IDPs are resettled have continued to pose a major hindrance to the resettlement programme.

g) Inadequate Funding

Over the years the funds allocated for resettlement have been inadequate hence prolonging the time taken to resettle IDPs.

h) Cash preference by IDPs

Some IDPs have been agitating for cash payment instead of land allocation and their wishes were met to end the stalemate.

The Government has had to keep changing its strategies to deal with the above challenges. Indeed these challenges made the Government shift its strategy from settling IDPs on Government Purchased land to monetary compensation. This has enabled most IDPs/Forest Evictees to buy their preferred parcels of land or venture into other livelihood activities.

(iii) Whether the Government has complied with Section 9 (3) of the Act, which prescribes the procedure for resettlement of IDPs and states expected timelines for closure of all IDP camps.

The Government has fully complied with section 9 (3) of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012. Some of the structures put in place to comply with the Act include construction of Police Posts and Stations in hot spot areas. Those affected have been provided with relief food, decent housing and reconstruction of public amenities which were destroyed during clashes such as Schools, Health facilities water, etc. the Ministry has guaranteed those affected equal participation in public affairs, access to documentation and justice without discrimination. Further, decent housing continue being provided to those affected.

For those, targeted for cash payment in lieu of land allocation, the money has been allocated, and all the paperwork has been prepared. Only two camps areas are remaining, these are; Embobbut which will be completed before the end of November, and Kipkurere who have now gone to Court. These shall be completed in due course, once all the issues are resolved.

Due to financial constraints, the Integrated IDPs will be paid once Treasury avails requisite funds.

(iv) Whether the Government has facilitated consultation with the IDPS as provided for in Section 9 (4) of the Act, including the establishment of the National Consultative Coordination Committees as provided for in Section 12;

Consultation with the IPDs on issues of resettlement has been going on throughout the resettlement process. Indeed this is one of the reasons why we have shifted from land allocation to cash payment given that this is what a majority of the remaining IDPs preferred. Several parcels of land have also been rejected by IDPs and they had to be relocated to other land.

The formation of the National Consultative Committee as provided by the Section 12 of the Act is underway. However the process was slowed down first by the formation of the Government given the most of the Committee members are Principal Secretaries. It was then decided that the

current IDP Resettlement Taskforce clears the backlog of the un-settled IDPs before handing over the work to a new team given the complex nature of resettlement and the need for institutional memory.

(v) The criterion that is currently being used to by the Government to identify IDPs and the measures in place to ensure that compensation is not diverted;

The IDPs are already profiled and are not being identified a fresh. What is being done now is to confirm and verify the data to ensure all bio-data relating to names, Identity numbers, names of spouses etc. are correctly reflected in the data base and that only genuine targeted groups are paid. It is worth noting that only the profiled households are compensated as stipulated in item 2 (i) above.

(vii) The role of the area Members of Parliament in the Resettlement Process

The Member of Parliament provides an oversight role in the entire resettlement process. They appropriate the required budget and most importantly ensure stability and sensitization of their constituents on peaceful coexistence.

MIN.NO.203/2013: RESETTLEMENT OF THE INTERNALLY DISPLACED PERSONS RESIDING IN TURKANA WEST CONSTITUENCY (REQUESTED BY HON. DAVID WAFULA, MP.

The Cabinet Secretary informed the Committee as follows:

- (i) This comprises of 169 households belonging to Kakuma camp, which are part of the 211 households that were part of the former Turkana North. Out of these, 86 households have been paid the Ksh. 10,000. The remaining 116 were not paid because they did not identification documents. These will be paid once they present all relevant identification documents.
- (ii) These Kakuma IDPs were allocated over 100 acres of land by Turkana County Council in Turkana West District where they are residing. So far the National Christian Council of Kenya has constructed 40 houses for them.
- (iii) This group does not fall under the targeted 2595 households from Turkana County for resettlement because; they did not register within the deadline provided by the government of 31st December 2008. For this reason, therefore, this group does not qualify for resettlement under the current programme. They are however still entitled to the Ksh. 10,000, which is the amount that all integrated IDPs are entitled to.
- (iv) Any group that was not profiled within the 31st December 2008 deadline was not part of the resettlement programme. The government undertook a broad based publicity effort before then to ensure that all IDPs were aware of the need to register. This was done to

bring the programme of resettlement to closure. The Ministry does not have any further plans with regard to the resettlement this group of IDPs.

Committee observations and conclusions:

- (i) The government has been doing a great job in resettling the IDPs across the country. However, the amount allocated to the integrated IDPs was too little to have any meaningful impact in the victims' social economic lives.
- (ii) There is need to build schools and other social amenities in areas where IDPs were resettled especially in Dunga Farm (the Cabinet Secretary undertook to communicate the same information to her Counterparts

MIN. NO.204/2013: ADOPTION OF THE REPORT ON THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL, 2013

The Committee considered the draft report together with its appendices (Minutes) and unanimously adopted it.

MIN. NO.205/2013: ANY OTHER BUSINESS

The Committee deliberated on its programme for the rest of the week and resolved as follows:

- (i) It will attend an invited breakfast meeting with PWC in Intercontinental Hotel on 31st October, 2013 at 7:30am.
- (ii) Due to prior engagements, it requested postponement of the meeting with Dr. Mukhisa Kituyi that was scheduled to take place on 31st October 2013 at 10:00am.
- (iii) It will attend a consultative retreat organized by the Transition Authority, the Controller of Budget and the Commission on Revenue Allocation between 31st October and 3rd November 2013.

MIN. NO.206/2013 ADJOURNMENT

There being no any other business, the Chairperson adjourned the meeting at 12.40 .p.m.

Chairperson.....Date.....