

THE COMMISSION ON ADMINISTRATIVE JUSTICE
“Office of the Ombudsman”



Hata Mnyonge ana Haki

**AN INVESTIGATION REPORT ON ALLEGATIONS OF MALADMINISTRATION AT THE
STATE DEPARTMENT OF DEVOLUTION**

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Foreword

The Commission undertook investigations into an anonymous complaint alleging unfair handling of disciplinary cases, improper secondment of staff and irregular hiring of casuals & experts at the State Department of Devolution under the Ministry of Devolution and the Arid and Semi-Arid Lands (ASALS).

The Commission notified the Principal Secretary, State Department for Devolution of the Commission's decision to undertake the investigation. A team of investigators conducted interviews with various members of staff at the State Department and recovered documents relevant to the investigation.

This report was informed by the analysis of the information gathered and the examination of documents recovered in the process of the investigations.

The Commission made various recommendations to the State Department of Devolution as well as the Public Service Commission.

Signed this.....^{30th} day of July, 2021



HON. FLORENCE KAJUJU, MBS

CHAIRPERSON, COMMISSION ON ADMINISTRATIVE JUSTICE

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Acronyms

CAJ Commission on Administrative Justice

PSC Public Service Commission

MHRMAC Ministerial Human Resource Management Advisory Committee

DHRMAC Departmental Human Resource Management Advisory Committee

DHRMD Director Human Resource Management and Development

PS Principal Secretary

CS Cabinet Secretary

ASALS Arid and Semi-Arid Lands

Executive Summary

The Commission received anonymous complaints on unfair handling of disciplinary cases prompted by improper promotions, irregular secondment of staff and irregular hiring of casuals & experts at the State Department of Devolution.

Pursuant to section 8 of the CAJ Act, the Commission carried out investigations to ascertain the veracity of the aforementioned allegations. The Commission sought to establish whether any laws, policies or regulations were violated by any parties at the State Department in carrying out the above specified actions.

The Commission notified the Principal Secretary, State Department of Devolution of the Commission's decision to undertake the investigation. A team of investigators visited the State Department of Devolution and Public Service Commission offices, conducted interviews with staff at the State Department and recovered documents relevant to the issues under investigation.

Investigations established that the allegations were unsubstantiated. However, there arose suspicion on the secondment of staff at the State Department with respect to a particular instance where a member of staff was suspected to have been seconded without approval, although evidence proved otherwise.

In light of these findings, the Commission recommended that the PSC to further monitor and investigate the secondment of staff at the State Department, pursuant to its functions and powers provided for under Article 234 of the Constitution of Kenya, 2010. It was also recommended that the PSC shares with CAJ its final determinations on the disciplinary cases arising from suspected fraudulent promotions staff at the State Department. Further, it was recommended that the determinations be communicated to the affected staff by the authorized officer and they be advised to appeal at the PSC if dissatisfied with the same.

1.0 Introduction to the Investigations

The Commission received an anonymous complaint dated 27th July 2020 alleging irregular hiring of casuals, irregular engagements of experts, lack of an organizational structure, irregular interdiction of staff at the State Department of Devolution and irregular appointment of advisors to the CS Devolution and ASALs. Another anonymous complaint was received on 17th August 2020 reiterating some of the aforementioned complaints as well as improper promotions and irregular secondment of staff from counties to the State Department of Devolution.

Given the general nature of the complaints, a preliminary investigation was undertaken at the State Department to seek clarity on the issues and establish the need for further investigation or otherwise on the aforementioned allegations. Subsequently, it was recommended that further investigations be undertaken to establish the veracity of the allegations on the issues listed below in section 1.1. This was informed by the nature of the complaints vis-à-vis the mandate of CAJ.

Pursuant to section 8 of its constitutive Act, the Commission carried out an investigation to verify the veracity of the allegations.

1.1 Issues under investigation

- i. Alleged administrative injustice on the disciplinary process arising from alleged fraudulent promotions;
- ii. Alleged irregular engagement of experts;
- iii. Alleged irregular secondment of staff into the State Department;
- iv. Alleged irregular hiring of casuals.

1.2 Investigation Process

1.2.1 Notification

The Principal Secretary, State Department for Devolution was notified of the Commission's decision to conduct investigations on the matter vide a letter Ref: **CAJ/IE/6/90/2019** dated 29th October 2019.

1.2.2 Offices Visited

- i. State Department of Devolution
- ii. Public Service Commission

1.2.3 List of interviewees

- i. Director Human Resource Management and Development, State Department of Devolution
- ii. Director Technical Assistance, State Department of Devolution

1.2.4 Documents Recovered

- i. Organizational structure
- ii. Documents on secondment
- iii. Documents on employment of experts
- iv. Documents on employment of casuals
- v. Documents on Disciplinary process

1.3 Legal Framework

The following legal documents provided a framework which guided the investigation.

1.3.1 Constitution of Kenya, 2010

Article 252(1) provides *inter-alia* that "each commission and each holder of an independent office may conduct investigations on its own initiative or on a complaint made by a member of public."

Article 47 of the constitution provides *inter-alia* that:

- 1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- 2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

Article 232 (1) of the constitution provides *inter-alia* that “The values and principles of public service include-

- g) Fair competition and merit as the basis of appointments and promotions

Article 234 (2) provides *inter-alia* that:

“(b) The Public Service Commission shall exercise disciplinary control over and remove persons holding or acting in public offices...

(d) The Commission shall investigate, monitor and evaluate organisation, administration and personnel practices of the public service...”

1.3.2 Commission on Administrative Justice Act, 2011

Section 8 of the CAJ Act provides that CAJ has a mandate, *inter-alia*, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

Sections 26-29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons and require that statements be given under oath, adjudicate on matters relating to administrative justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

Under Section 31 of the Act, the Commission has power not limited by other provisions to investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question. After undertaking its investigations, the Commission is required under Section 42 of its constitutive Act, to prepare a report to the state organ, public office or organization to which the investigation relates. The report shall include the findings of the investigation,

action the Commission considers to be taken and reasons whereof and recommendations the Commission deems appropriate.

1.3.3 Public Service Commission Act, 2017

Section 36 (1) of the Act provides that:

“In selecting candidates for appointment or promotions, the Commission or other lawful appointing Authority shall have regard to-

- a) Merit, equity aptitude and suitability
- b) The prescribed qualifications for holding the office
- c) The efficiency of the public service
- d) The provable experience and demonstrable milestones attained by the candidate and
- e) The personal integrity of the candidate”

Section 42(1) of the Act provides that: “The Authority to second a public officer shall vest in the Commission and shall be carried out on the request of an authorised officer or a public officer”.

Section 44 of the Act provides that: “The Commission shall prescribe the terms and conditions for employment of casual employees within the public service.”

Section 58(2) provides that “the Commission shall investigate, monitor and evaluate the organisation of the public service with respect to any public body and make recommendations to the public body, the President and Parliament.”

Section 65(1) provides that “the power to exercise disciplinary control within the public service shall vest in the Commission.”

Section 65 (2) provides *inter-alia* that: “The Commission may subject to this Act and to subject to such instructions as it may determine delegate the following disciplinary powers to its authorized officers:

- (a) In respect of all public officers the power-
 - i. To interdict any public officer
 - ii. To suspend any public officer

- iii. To stop, withhold or defer a normal increment of any public officer
- iv. To reprimand a public officer
- v. To stop a public officer's pay or salary"

Section 69(3) provides that "the Commission or any other lawful Authority shall not prescribe any disciplinary process that offends the rules of natural justice."

69(10) provides that " where disciplinary proceedings have been taken against a public officer under this Act, the public officer shall be informed by the Commission, authorized officer or other lawful authority of

- a) Findings on each alleged misconduct which has been preferred against the public officer
- b) The penalty if any to be inflicted upon the public officer
- c) The right to appeal or application for review with the Commission or other lawful authority within the time prescribed in the applicable disciplinary procedures."

69 (11) provides that any disciplinary proceeding against any public officer shall uphold the right to a fair administrative action as provided for in Article 47 of the constitution and the Fair Administrative Action Act.

Section 70(1) provides that "where an authorized officer is satisfied that public interest requires that a public officer should cease to exercise the powers and functions of a public office, the Authorised officer may, where the proceedings which may lead to the public officer's dismissal are being undertaken, or are about to be taken, interdict the public officer from the exercise of those functions and powers."

Section 74 provides that "Any person who is dissatisfied or affected by a decision made by an Authorised officer or other authority in exercise of disciplinary control against any public officer under this Act may appeal to the Commission."

1.3.4 Fair Administrative Action Act, 2015

Section 4(3) provides *inter-alia* that: “where an administrative action is likely to adversely affect the rights and fundamental freedoms of any person. The administrator shall give the person affected by the decision-

- a) Prior adequate notice of the nature and reasons for the proposed administrative action
- b) An opportunity to be heard and to make representations in that regard
- c) Notice of a right to review or internal appeal against an administrative decision...”

1.3.5 Public Service Regulations, 2020

Section 21 of the regulations provide *inter-alia* that-

- (1) “All promotions on merit shall be done by the Commission
- (2) An officer may be considered for promotion on merit on recommendation by the relevant human resource committee of a public body and a request to the Commission by the authorized officer.”

Section 27 of the regulations provides *inter-alia* that-

- (1) “The Commission shall be responsible for appointment of advisors to the office of the President, Deputy President and Cabinet Secretary...
- (3) Where the Commission appoints advisors for a Cabinet Secretary, it shall not appoint more than two advisors at a time...”

Section 37(13) provides that “a public officer shall not proceed on secondment before being notified in writing by the Commission”.

1.3.6 Human Resource Policies and Procedures Manual for the Public Service, 2016

Section A7(1) provides that the Principal Secretary shall be responsible to the Cabinet Secretary for the day to day operations of the Ministry/State Department as well as the administration and management of Human Resource functions.

Section K3 (1) of the manual provides *inter-alia* that “Disciplinary cases dealt with under delegated powers shall be processed through the respective Human Resource Management Advisory Committee.” Section K3 (4) provides that “Disciplinary cases should be dealt with promptly and finalised within a period of six (6) months. Where it is impracticable to do so the authorized officer shall report individual cases to the Public Service Commission explaining the reason for the delay.”

Section K4 (1) provides that the procedure to be followed by Authorized officers in dealing with discipline cases in respect to officers in job group ‘Q’ and above is as follows:

- i. Carry out preliminary investigation and consultation as to the circumstances surrounding the act of misconduct
- ii. Issue the officer with a statement of the alleged offence (‘show cause’ letter) and the charges framed against him/her and invite him/her to state in writing the ground, if any, on which he relies to exonerate himself.
- iii. The officer shall respond to the charges within twenty-one days from the date of the ‘show cause’ letter.
- iv. The case shall be presented to the Human Resource Management Advisory Committee for deliberation and recommendation.
- v. If the officer fails to respond within the specified period or if in the opinion of the Authorised officer, the explanation given is not satisfactory, he shall forward the case with copies of the charge and the officer’s reply if any, with his comments to the Commission for decision.

Section K5 (1) provides that while conducting investigations, the authorizing officer shall observe the following conditions:

- i. Constitute a team of not less than three officers to investigate the matter.
- ii. The officers conducting the investigation shall be senior to the accused officer and should not have dealt with the case before.

Section K.5 (4) provides that in respect to officers in job group ‘P’ and below but who have not qualified for pension:

- i. All the steps in (1) above will be observed and where the Authorised officer is of the opinion that further investigation is not necessary, he will decide on the punishment to be inflicted on the accused officer.

- ii. Where the authorised officer finds it necessary to carry out further investigation, the conditions specified in (1) above shall be observed.
- iii. On receipt of the investigation report the Authorised officer shall on the recommendation of the Human Resource Management Advisory Committee decide whether and how the accused officer will be punished.

Section K.6 (1) provides that the powers of interdiction should be exercised as set out in the PSC Regulations. An officer may be interdicted to allow investigations to be conducted in a case where proceedings may lead to his dismissal.

1.3.7 Discipline Manual for the Public Service, 2016

Section 3.0 of the manual provides *inter-alia* that where the PSC has delegated disciplinary powers to the Authorised officers, the cases shall be considered and finalised at the Ministry/State Department Level through the Ministerial Human Resource Management Advisory Committee.

Section 3.0 of the manual provides for the institutional framework for handling disciplinary cases in respect of officers in Ministry/State Departments Headquarters as follows:

- a) Head of Department: Reports the misconduct to the Authorised officer at the Ministry/State Department
- b) Director, HRM&D:
 - i.) He/she is the secretary to the MHRMAC and provides technical advice
 - ii.) Analyses the misconduct and commences the disciplinary action by issuing a show cause letter
 - iii.) Summarizes the cases upon receipt of the officers' representations, if any, and submits the case to MHRMAC
 - iv.) Implements the decisions of the Public Service Commission and the Authorized officer
- c) MHRMAC: Deliberates on the case and makes recommendations to the Authorised officer on the next course of action.
- d) Authorised officer:
 - i.) Considers recommendations of the MHRMAC and makes decisions.

- ii.) He/she also forwards cases with comments and recommendations to the Commission for decision where applicable
- iii.) Communicates decisions to affected officers.

e) Public service Commission:

- i.) Considers the recommendations of the Authorised officers and makes decisions related to powers which are not delegated
- ii.) Hears and determines appeals and applications for review
- iii.) Communicates decisions to Authorised officers for implementation

Section 4.2 of the manual provides that “the interdiction process entails the following:

- a) An officer may be interdicted where gross misconduct which is likely to lead to dismissal is reported and requires investigation or a report that an officer has been charged in criminal proceedings is received.
- b) If the case relates to criminal charge, the officer is served with an interdiction letter.
- c) If the misconduct is one which can lead to dismissal but is not of criminal nature the officer shall be served with a show-cause letter which shall also contain a communication on interdiction.
- d) A public officer on interdiction shall be entitled to half of his basic salary, full house allowance and medical insurance cover.
- e) A public officer who is on interdiction should not leave the duty station without the permission of the Authorized officer.
- f) A public officer whose interdiction had been lifted shall promptly be served with a decision letter.

Offences that amount to gross misconduct under section 4.6 include among others, falsification of information or references on appointment.

2.0 Analysis and Findings

2.1 Unfair Handling of Disciplinary cases

Background of the allegation

It was alleged that staff had been irregularly interdicted following allegations of fraudulently obtaining promotions. It was alleged that the case was under investigations by PSC and that the Director, Human Resource Management and Development (DHRMD) at the State Department prematurely and without authority interdicted the officers instead of awaiting the outcome of the investigation by PSC. It was further alleged that the interdiction was selective in that one of the accused officers was not interdicted. The investigations therefore sought to establish whether indeed disciplinary action was initiated with respect to the alleged fraudulent promotions and whether due procedure in line with the relevant laws, regulations and policies was followed in the disciplinary process.

Investigation Findings

It was established that during the period February to April 2020, the State Department received letters from the PSC conferring promotions to various members of staff. The Department also received a letter reviewing the terms of service of two supernumerary staff. The letters bore the signature of the PSC Chief Executive Officer Simon Rotich. Among those promoted were staff that had previously been promoted in the preceding four months. Also, according to the DHRMD some of the letters had errors on the grading of the officers and so this elicited suspicion on the authenticity of the promotions.

Subsequently, the DHRMD wrote a memo to the PS State Department of Devolution expressing concern and suspicion on the purported promotion letters from the PSC. Thereafter, a letter dated 9th April 2020 and signed by the PS State Department for Devolution was written to the PSC questioning the authenticity of the promotions as well as the review of terms of service of the supernumerary staff. In a response dated 29th April 2020 PSC confirmed that some of the promotion letters were indeed fraudulent as they did not originate from the PSC and that the Commission was dispatching officers from the Compliance and Quality

Assurance Department to look into the matter. The PSC is yet to share its report on the investigations carried out by the team.

The officers alleged to have obtained the promotions fraudulently are as follows:

- Daniel Ouma Okwiri
- Catherine Wanjiru Mwithiga
- Reuben Wamukota Sikulu
- Nancy Chepkosgei Kiprop
- Evans Kimutai Chelanga
- Mercyline Nasambu Wamalwa
- Reuben Thuku Ngugi
- Judith Nyadimo

The fraudulent changes of terms of supernumerary terms were in respect to Kizito Temba under the State Department of Devolution, and Josph Kubende under the State Department of ASALs.

Following the confirmation by the PSC that the promotion letters were fraudulent, disciplinary action was instituted by the State Department of Devolution against nine of the aforementioned officers serving under the department. This was evidenced by copies of correspondences between the State Department and the accused staff as well as minutes of the DHRMAC meeting held on 8th and 12th October 2020 that summarized the disciplinary process.

The disciplinary action taken against the nine was as follows:

- Show cause/interdiction letters dated 8th May 2020 and signed by the DHRMD for the PS, were issued to the officers stating the allegations and welcoming them to make any representations within twenty one days.
- The officers submitted written representations on various dates between 5th May 2020 and 9th June 2020.
- The DHRMAC deliberated on the discipline cases in a meeting held on 24th June 2020 and upon finding that the responses from the accused officers were unsatisfactory, it was recommended that a sub-committee of the DHRMAC be formed to undertake further investigations on the cases.

- The sub-committee submitted their report for deliberation by the DHRMAC on 12th October 2020 with the findings and observation on each individual case which also included summaries of the officers' oral and written responses.
- The DHRMAC deliberated the cases and made recommendations as obtained in the minutes of the meeting held on 8th and 12th October 2020. The same were signed by the PS on 14th October 2020 and by the CS Devolution and ASALs on 19th October 2020, but with amendments to some of the recommendations.
- The report was thereafter submitted to the PSC for further direction through a letter dated 13th November 2020.

The process was in concurrence with section K3 to K6 of the Human Resource Policies and Procedures Manual for the Public Service, 2016 as well as section 3 and 4.2 of the Discipline Manual for the Public Service, 2016.

It is worth noting that as per the minutes of the DHRMAC meeting pg. 51-56, one Evans Kimutai Chelanga played the role of a whistleblower as the investigations committee made a finding that he participated in the process of obtaining the promotions but when he became suspicious of the fraudulent nature of the promotions he made a report to the Secretary Administration and the DHRMD. The committee therefore recommended that he be exempted from the disciplinary action as he played the role of a whistleblower in unearthing the fraudulent promotions.

The PSC confirmed that it finalized the disciplinary cases and conveyed its final decision to the CS for Devolution and ASALs for implementation vide a letter dated 3rd February, 2021. The PSC however did not specify the determinations made on these disciplinary cases.

2.2 Allegation on irregular engagement of experts

Background to the Allegation

It was alleged that the State Department of Devolution had been irregularly hiring experts and that the manner and purpose for which the experts had been hired was not clear since there are enough staff within the department who can perform the roles assigned to the experts. It was further alleged that there was tribalism in the appointment of experts as they are mostly from Maasai and Kalenjin communities. The investigations therefore sought to confirm whether indeed there were experts engaged at the State Department and if so, what were their terms of service as well as justification if any of having the experts at the State Department. It also sought to verify whether due and fair procedure was followed in the recruitment of the experts.

Investigations Findings

It was established that currently eight experts are engaged at the State Department under the Kenya Devolution Support Programme (KDSP) which is a programme financed by the World Bank through conditional grants to support capacity building and technical assistance at the counties. As evidenced from extracts of the Programme Appraisal Document, one of the conditions of the programme was that a Secretariat be established to support operations of the grant scheme, provide related capacity building support and offer co-ordination of annual capacity and performance assessment. It was provided that the secretariat would be placed under the Directorate of the Ministry of Devolution responsible for capacity building and would report through the relevant director, to the PS Devolution. The document dictates that the secretariat should include at least six full-time professional staff as follows:

- Program coordinator
- Intergovernmental fiscal relations expert
- Capacity building specialist
- Financial management specialist
- Procurement and social/environmental safeguards specialist
- Monitoring and evaluation specialist

Subsequently, the State Department recruited the following experts in fulfilment of the conditions of the programme document:

1. Dr. Kennedy Ole Kerei- Capacity Building Expert
2. Mr. Christantus T. Charo- Environmental & Safeguards Expert
3. Dr. Yusuf K. Kibet- Procurement Expert
4. Mr. Douglas N. Nkere- Inter-governmental fiscal relations Expert
5. Ms. Catherine M. Muimi- Social Risk Management Experts
6. Mr. Ronald Jumbe – Social Risk Management Expert
7. Mr. Simon Ochieng'- Monitoring and Evaluation Expert
8. Ms. Triza Bwazo- Public financial management Expert

The Director, Technical Assistance at the State Department confirmed that part of his responsibilities include managing the programme under which the experts are recruited. He averred that the experts were recruited on a competitive basis through local advertisements and processing by an internal panel appointed by the PS. As the programme director, he oversees all the activities of the secretariat and appraises their performance.

Investigations examined the recruitment process of the social safeguard experts as a representative sample to confirm whether due process was followed. It was confirmed that an internal memo dated 31st October 2019 and signed by the Director Human Resource was done to the PS requesting for authority to recruit the experts. After the authorization, a request dated 7th November 2019 for advertisement was sent to the Government Advertising Agency. Subsequently, applications were received and a shortlisting and interviewing panel formed vide an internal memo at the State Department dated 3rd December 2019. Seven candidates were shortlisted and interviews conducted on 19th December 2019 where two candidates were selected and one placed on the waiting list. One of the two selected candidates declined the offer and so the third candidate was appointed in his place, bringing the total of recruited safeguard experts to two. The experts are recruited to work on a contractual full-time basis and the purpose for which they were recruited was justified. As per the list availed, there was tribal balance in the composition of the experts.

2.3 Allegation on irregular secondment of staff

Background to the Allegation

It was alleged that staff had been irregularly seconded from counties to the State Department. Investigations sought to establish whether indeed staff had been seconded from the counties to the State Department and whether due process was followed in the secondment.

Investigations Findings

Evidence revealed that only one member of staff is currently on secondment at the State Department from the counties. The officer has been on secondment from Narok County as from 28th January 2020. Copies of correspondences obtained indicate that the secondment was initiated by the State Department vide a letter dated 12th November 2019 to the PSC. The same was approved by PSC through a letter to the State Department dated 10th December 2019 and was communicated to the officer on 24th January 2020. The officer was released by Narok County to the State Department on 28th January 2020.

It is worth noting that the State Department requested the secondment of one officer by the name Amos Lekakeny from Kajiado County and the PSC required to be provided with details of the officer's anticipated designation at the State Department. The State Department provided the same to PSC through a letter dated 24th August 2020 but PSC is yet to approve the secondment to date. However, in his statement dated 2nd December 2020 the DHRMD indicated that the same officer was already seconded at the State Department as a Personal Assistant to the PS. In a subsequent further statement, the Director indicated that the officer had not yet joined the State Department on secondment as the same was yet to be approved by the PSC. The Director provided a certified extract of a list of officers on secondment in the Department which indicated that only an officer from Narok County was on secondment at the State Department from the County Governments. It was therefore established that as per evidence availed

only one staff had been seconded to the State Department from the County Governments and the same was approved by the PSC.

2.4 Alleged irregular engagement of casual employees

Background to the Allegation

It was alleged that the State Department in the financial year 2019/2020 had only 23 authorized positions for casuals but instead engaged 58 casuals unprocedurally. Investigations sought to establish whether indeed casuals were employed and whether due procedure was followed in their employment.

Investigations Findings

The DHRMD stated that in the financial year 2019/2020 the hiring of casuals was determined by availability of funds and necessity by user departments. He further stated that the number of casuals to be employed is not pre-determined at the beginning of the financial year. The Director explained the practice was that the user departments would write to him and he would consolidate and forward the requests to the PS. Once the PS' approval was obtained, the casual workers were obtained from a data bank. The casuals were hired for a period not exceeding three months.

Documents availed confirm that during the financial year 2019/2020 the DHRMD received various requests for employment of casuals through internal memos from the user departments. The DHRMD then escalated the requests to the PS who approved the employment of 60 casuals. The approval was based on availability of funds which in a memo dated 4th September 2019 from the DHRMD to the PS indicated that funds were available for hiring of casuals under Vote R1032 item 2110202 for the financial year 2019/2020.

Hiring of casuals was therefore justified by needs from the user departments and approved by the accounting officer.

3.0 Conclusions

i. Disciplinary Cases

The disciplinary cases at the State Department arising from alleged fraudulent promotions of staff were procedural and in accordance with the provisions of the PSC Act, the Human Resource Policies and Procedures Manual for the Public Service and the Discipline Manual for the Public Service. The principle of fair administrative action was as well adhered to as the accused officers were informed of the offences and given an opportunity to make their representations. However, the PSC did not share the determination as well as its initial report on the matter after an inquiry was done by its Compliance and Quality Assurance team.

ii. Engagement of experts

The state department engaged experts under the Kenya Devolution Support Programme financed by the World Bank and implemented by the State Department. The experts are part of the secretariat which is a requirement of the programme. They are recruited competitively and work on a full time contractual basis. Therefore, the manner in, and purpose for which the experts are recruited is clear. There was tribal balance in the composition of experts recruited. The allegation that the experts are mainly from the Maasai and Kalenjin communities was unsubstantiated.

iii. Secondment of staff to the State Department

One staff member is currently seconded at the State Department from Narok County. Due procedure was followed in the secondment as per the provisions of the PSC Act, 2017 and Public Service Regulations, 2020.

However, the inconsistencies in the DHRMD statements elicit suspicion as to whether an additional member of staff was seconded to the State Department from Kajiado County without the approval of PSC, though evidence provided could not prove the same.

iv. Hiring of casuals

Employment of casuals in the financial year 2019/2020 was determined by availability of funds and user department needs. Due procedure was followed whereby heads of user departments formally requested the DHRMD to employ casuals and the same were consolidated and forwarded to the PS for approval. Evidence therefore shows that funds were available for the employment of 60 casual employees and there was need for recruiting them as communicated by the various user departments.

4.0 Consequential Observations

- i.) The allegation that the State Department lacks an organisational structure was unsubstantiated as a certified copy of the organisation structure was provided by the DHRMD.
- ii.) The allegation that the CS Devolution and ASALs has 7 advisors and that the advisors perform duties similar to those of other officers in the ministry in contravention of the public service commission regulations 2020 section 27(3) which puts a limit of 2 advisors and sec 27(6) which requires that the advisors shall not be assigned any role that is performed by other officers in the public body was not investigated by the commission.

5.0 Recommendations

- i.) PSC to investigate and monitor secondment of officers to the State Department with focus on the officer suspected to have been seconded from Kajiado County.
- ii.) The PSC to share with the Commission its final determination on the disciplinary cases arising from suspected fraudulent promotions.
- iii.) The Authorized Officer at the State Department of Devolution to communicate the final determination of the disciplinary cases to the affected staff and they be advised to appeal at the PSC if dissatisfied by the determination of the disciplinary process.
- iv.) The PSC to look into the allegation that the number of advisors to the CS Devolution and ASALs exceeds the required threshold and that the advisors perform roles similar to those of other staff in the ministry.