

THE COMMISSION ON ADMINISTRATIVE JUSTICE
“Office of the Ombudsman”



Hata Mnyonge ana Haki

CREATING DESTITUTES

**AN INVESTIGATION INTO THE 1ST DECEMBER 2016 SURRENDER OF THE KENYA
SCIENCE CAMPUS PREMISES AND FACILITIES**

NOVEMBER, 2016

Serial No CAJ 35/2016

Foreword

The Commission on Administrative Justice (CAJ), pursuant to its mandate as stipulated under section 8 of CAJ Act, undertook on *suo motu* basis investigations into the decision to surrender the Kenya Science Campus (KSC) premises and facilities to the Council of the Kenya Technical Trainers College (KTTC) by 1st December, 2016.

The Commission wrote to the Cabinet Secretary, Education Science and Technology seeking information in respect of the circumstances surrounding the decision to relocate KTTC to the KSC premises along Ngong road. The Commission did not receive response from the Cabinet Secretary and in line with law prompting CAJ to send reminders following which the Commission decided to undertake investigations into the matter and hence notified him of the decision.

CAJ investigations team visited KSC, KTTC and UoN, interviewed public officers and students, conducted a Focus Group Discussion at KSC and recovered documents that informed the preparation and compilation of this report.

The Commission has made determinations to relevant government agencies for implementation. CAJ is confident that the findings of this investigations will help the government with the best way forward in the decision to relocate KTTC without disrupting learning programmes in the affected institutions.

Signed this.....day of November, 2016

Dr. Otiende Amollo, EBS

Chairperson of the Commission

Commission on Administrative Justice

(Office of the Ombudsman)

Acronyms

CAJ	:	Commission on Administrative Justice
CBPS	:	College of Biological and Physical Sciences
CS		Cabinet Secretary Education
EGRIC	:	Early Grade Reading Instruction Curriculum
ICT	:	Information Communication Technology
KSC	:	Kenya Science Campus
KTTC	:	Kenya Technical Trainers College
MoEST	:	Ministry of Education, Science and Technology.
PPP		Public Private Partnership
SEPU	:	Scholl Equipment Production Unit
SMASSE	:	Strengthening Mathematics and Science in Secondary
TSC	:	Teachers Service Commission
UMC	:	University Management Board
UN	:	United Nations
UoN	:	University of Nairobi

Executive Summary

The Commission on Administrative Justice (CAJ), pursuant to its mandate as stipulated under section 8 of CAJ Act, undertook inquiries into the 1st December 2016 surrender of the Kenya Science Campus premises and facilities.

CAJ notified a number of relevant government agencies including the Cabinet Secretary, Ministry of Education Science and Technology about its intention to conduct an investigation.

Summary of findings

The Commission established that the Cabinet Secretary, Ministry of Education, Science and Technology issued a directive vide a letter Ref: MOEST/VTT/CONF, 13/1 (4) dated September 9, 2016 to the Chairman of University of Nairobi Council to surrender the premises of KSC and all facilities within it to the Council of KTTC with effect from 1st December, 2016.

On October 9, 2016 the Cabinet Secretary held a meeting with the Council Chairman, Principal and officials of the student union of KTTC and informed them about a government strategic decision to relocate KTTC to KSC by 1st December, 2016, in order to allow for the expansion of UN premises.

The University of Nairobi Management Council deliberated on the directive and issued a detailed report outlining the implications of the decision and recommendations on best alternatives.

The principal of KTTC convened an assembly on the 13 October, 2016 and informed the staff and students about a planned 'strategic decision' to move the college to the premises of Kenya Science College by December, 2017.

Kenya Science Campus (KSC)

KSC has 576 students who are accommodated in four hostels 432 of these are male while 144 are female and 362 non-residents. In addition, 200 students from CEES are taught at KSC, thus making a total student number of **1138** and 140 members of staff who reside with their families in staff housing on the campus. This presents a challenge in terms of relocating them, re-housing and possible loss of jobs and livelihoods.

KSC is a constituent college of University of Nairobi since 2007 which has spent almost Kenya shillings 1.7 billion building specialized labs, equipment and theatres.

CAJ confirmed that KSC has ongoing programmes for 2nd, 3rd and 4th year students. It would be improper and unfair if their studies are disrupted. Furthermore, the new students who are expected in January will have no place to go, should the institution be removed.

Kenya Technical Trainers College (KTTC)

KTTC is uniquely situated on 82 acres of land with huge financial investment in specialized mechanical and automotive workshops, lecture theatres, staff housing, nursery school and ongoing construction of new facilities. The College was established with the primary objective of training technically skilled personnel who would be qualified to teach in technical institutions and also absorbed in the industrial sector of the economy.

KTTC has total student population of **2400**, 100 TSC employees, 219 governing Council employees and residential population of 600 members. The college is currently undertaking PPP project to build accommodation for 4,500 students.

Merits of the substantive decision to relocate KTTC and KSC

CAJ finds there is no rationale for the decision to close KSC and relocate KTTC to its premises. These are two separate institutions established for two completely different academic purposes with distinct equipment, large student population with on-going programmes. The decision lacks a realistic timeframe which is achievable considering that students are sitting for exams at the time of relocation.

There are development partners who financed the construction of these two institutions and there is a likelihood of fallout with them or at very least injury to the good relationship.

Owing to the foregoing, CAJ finds no merit in the decision and highlights the following:

- i. CAJ confirmed that the CS, Ministry of Education, Science and Technology wrote a letter Ref: CAJ/OM/7/96 dated October 13, 2016, directing the Chairman University of Nairobi Council surrender the premises and facilities of KSC by 1st December, 2016. In the subsequent deliberations by the UMC the Science graduates could not be relocated to the overstretched CBPS and Kikuyu Campus.
- ii. According to those interviewed in the course of the inquiry there was no consultation with appropriate stakeholders before this decision was made, contrary to Article 47 of the Constitution of Kenya and the Fair Administrative Act, 2015 (Section 4 (1)(2)).
- iii. CAJ has established that the relevant stakeholders have not been given adequate notice of the nature and reasons for the government decision contrary to Article 47 of the Constitution of Kenya and the Fair Administrative Act, 2015 (Section 4 (3) (a)).
- iv. The grounds upon which such a decision was made remains unclear and unexplained by the Cabinet Secretary, Ministry of Education Science and

Technology despite a request to do so by CAJ vide a letter Ref: CAJ/OM/7/96 dated October 13, 2016.

- v. According to the principal KTTC the decision outlined by the CS, Ministry of Education, the premises of KTTC will be handed over to the UN to allow expansion. However, by the time of writing this report, CAJ could not establish whether the process of public property appropriation or legal process of land acquisition was initiated or undertaken by the Ministry of Education Science and Technology.
- vi. CAJ has established that the CS has not issued a public notice on the government decision, inviting public views especially the students and members of staff adversely affected as well as other members of the public contrary to the Fair Administrative Act, 2015 (a).
- vii. CAJ has also established that all relevant and material facts were not considered before reaching the government decision to relocate KTTC to KSC premises:
 - a) There is a distinct mismatch between the academic orientation of the KSC and KTTC: the former has heavily invested and specialized in science laboratories while the latter is unique in mechanical and electrical workshops.
 - b) It was also confirmed the facilities at CBPS, University of Nairobi are overstretched and Kikuyu Campus is already fully utilized to maximum allowable capacity and lacks specific science laboratories to accommodate the three additional programmes from KSC as envisaged in the decision.
 - c) CAJ noted that the facilities in the College of Architecture and Engineering (CAE) and the College of Agriculture and Veterinary Medicine (CAVS), University of Nairobi, are not suitable for KSC students as their laboratories are specific to the disciplines in those colleges.
- viii. CAJ is convinced the decision to relocate KSC and KTTC will certainly adversely affect and disrupt the education of the students in both institutions

and it is evidently clear no consideration was made to mitigate the circumstance.

- ix. The financial implication of this decision has also not been carefully considered and in particular the enormous financial cost of over Ksh.12 Billion to construct a facility equivalent to the current KSC.
- x. The decision would have been more appropriate if better alternative such as relocating KTTC to other technical institutions (including Technical University of Kenya, Nairobi Technical Training Institute and Kabete Technical Training Institute) was considered.

Legal Analysis on the decision directing KSTC to surrender its premises to KTTC

Who made the decision?

According to the Cabinet Secretary, Ministry of Education, the Government of Kenyan made a strategic decision to relocate KTTC to KSC. It is not discernible which Government office, organ or entity issued the directive.

Assuming that the decision was not made by the Ministry of Education, but by the President or the Cabinet as the case may be, then the requirements of Article 135 and 153 of the Constitution ought to apply. These provisions mandate that a decision of the President or the Cabinet must be in writing, any such decision is yet to be provided to any of the stakeholders.

In the absence of a written President's or Cabinet's decision and in the light of contrariness by the Ministry of Education, then the above decision should be called into question.

Fairness of the decision

The decision to relocate KTTC from its current premises to KSC is an administrative action which should be made within the provisions of Article 47 of the Constitution of Kenya and Section 4 of the Fair Administrative Action Act

which requires administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair.

A question for determination in this matter is the procedural fairness of the decision. To pass the test of procedural fairness, the law requires prior and adequate notice of the nature and reasons for the proposed administrative action; an opportunity to be heard and to make representations; notice of a right to a review or internal appeal against an administrative decision and a statement of reasons amongst others. In this regard, the only notice given was the letter of 9th September 2016, which was a directive and not a notice of engagement or a call for participation.

These requirements are further reinforced by the National Values and Principles of Governance outlined in Article 10 of the Constitution. The National Values and Principles of Governance binds all state organs, state officers, public officers and all persons when applying the Constitution, enacts, applies or interprets any law or makes and implements public policy decisions. The National Values and Principles of Governance include *inter alia* the rule of law, democracy, and participation of the people, good governance, integrity, transparency and accountability.

Section 12 of the Public Service (Values and Principles) Act No. 1A of 2015 requires public participation in policy making and in particular, requires the public to be given adequate opportunity to review a draft policy; adequate opportunity to make comments on a draft Policy; an opportunity to be heard by the makers of a policy; and notification of the final draft of the policy and whether or not it incorporates their views.

Clauses 40 and 41 of Sessional Paper No. 3 of 2009 states the principles that guide the National Land Policy as transparency and accountability; participation of the citizenry in decision-making; equitable access to land;

resolution of genuine historic and current land injustices; and protection of human rights.

Alienation of Public Land/Power to alienate Land

According to the Cabinet Secretary's letter dated 8th November 2016, the Government seeks to grant KTTC's land and premises to the United Nations for its expansion in honour of its international obligations and commitments. While this may be a good cause, it should be noted that Article 60 (1) of the Constitution states that Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. It further sets out the principles of land policy which *inter alia* include transparent and cost effective administration of land.

In addition, Section 9 (3) of the Land Act stipulates that any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or county assembly as the case may be.

Thus, the mandate to alienate public land exclusively vests in the National Land Commission with the consent of the National or County Government or in the instances of conversion of public land to private land an approval by the National or County Assembly is necessary. Consequently, any other attempts of alienation by any other person or institution that is not compliant as such is *ultra vires* the Constitution and the various statutes. In this matter, the procedure of how the land was alienated has not been clearly detailed and it is unclear if all relevant stakeholders have been consulted in the alteration. Moreover, the question still remains as to the status of the property and whether the same will be converted to private land, or remains public land.

Consequential Observation

- i. CAJ noted that the government decision would have injurious effect of disrupting the teaching, learning and the sitting of examinations by

students on 5th December, 2016 as well the unsettling of staff and their families.

- ii. The lack of ample notice would be a violation of Article 47 of the Constitution of Kenya and the Fair Administrative Act, 2015 (Section 4 (3) (a).
- iii. CAJ noted there was an element of fear among staff to discuss this matter and they declined to record statements for fear of reprisals. The staff were apprehensive about the whole process which appears to be surrounded by secrecy and “orders from above syndrome”.
- iv. CAJ noted KTTC is engaged in Private-Public Partnership to finance, build and operate student accommodation. The total estimated cost of the PPP project is Ksh. 5 Billion.
- v. The psychological impact of the directive is taking a toll on the students as well as staff at both institutions. The uncertainty regarding their future has led to apathy on the part of students and an inability of staff to focus on their duties. Furthermore the date set for the move, 1st December, 2016 at KSC is impractical as it is 5 days before the sitting of student examinations.
- vi. Disruption of academic programmes due to industrial unrest has been the norm in the University. The government move is likely to trigger such unrest. The student unions are already of the view that the students had been disregarded in the whole process and were on the verge of rioting.

Conclusion

- i. CAJ confirmed the Cabinet Secretary, Ministry of Education, Science and Technology issued a directive vide a letter Ref: MOEST/VTT/CONF, 13/1 (4) dated September 9, 2016 to the Chairman of University of Nairobi Council to surrender the premises of KSC and all facilities within it to the Council of KTTC with effect from 1st December, 2016.
- ii. Ther

There were no formal communications to the two institutions affected by way of writing to communicate the government's decision, in particular, to the two principals of KSC and KTTC.

iii. The two institutions affected by the decision are distinct in terms of academic programmes, facilities and equipment. Whilst KSC specializes in training graduate science teachers with specialized science laboratories, KTTC specializes in mechanical and automotive engineering with specialized electrical and mechanical workshops.

iv. There has been heavy investment in both institutions by donor partner's as well successive governments. KTTC was funded by the Canadian Government while KSC received funding from the Swedish Government.

v. The closure of KSC which trains graduate science teachers will have a far reaching consequence of shortage of science and mathematics teachers in Kenya.

vi. CAJ is at a loss to understand as to why a technical institute i.e. KTTC should be moved to a science institute i.e. KSC, whereas there are other technical institutions that could also absorb students of KTTC.

Determinations

- i. The decision by the government through the CS Education, Science and Technology, requiring KSC to vacate their premises and surrender to KTTC by 1st December, 2016, should be withdrawn immediately.
- ii. CAJ having noted the weight of this matter, makes the following suggestions in terms of what better alternatives are available for the relocation of KTTC:
 - a) **Option 1:** Relocation of KTTC students to other technical institutions. Students of KTTC can be relocated to other technical institutions such as

Technical University of Kenya (TUK), Kabete Technical Training Institute (KTTI) and Nairobi Technical Training Institute (NTTI).

CAJ views this option as the suitable alternative because it would leave KSC intact and entirely unaffected. The government decision would then only affect one institution, that is KTTC, and not two institutions, that is KSC and KTTC, which is the case if the government decision goes ahead as announced by the CS.

b) **Option 2:** Phasing out and suspension of new intake at KSC and KTTC

This option would require a robust plan to be in place for relocation of students and staff of both institutions including construction of temporary accommodation facilities in the short term and permanent hostels and appropriate laboratories and workshops in the long term. This option would carry huge financial implication to the government and adverse effect on the education of students of both institutions.

iii. The CS, Education Science and technology should have considered the most appropriate alternative to honor the government commitment to allow the expansion of the UN premises. The CS also ought to have communicated and involved all stakeholders equally instead of holding a meeting with the management Council, Principal and leaders of student union at KTTC.

vii. The implementation of the decision to relocate KTTC to KSC will result in big time loss in terms of specialized facilities and equipment for the two institutions which the government should take into consideration noting the cost of reconstructing, reequipping new facilities will certainly be a huge burden to tax payers.

viii. The welfare of continuing students, especially final year students, must be a priority. The government should equally take into account the disruptive effect on the many families that are resident in these institutions and whose relocation will have a psychological and financial implication.

Way forward

- i. The letter from the CS Education, Science and Technology, requiring KSC to vacate their premises and surrender to KTTC by 1st December, 2016 must be withdrawn or suspended forthwith.
- ii. A task force comprising of all stakeholders including CAJ, UON, KSC, KTTC, MoE, NLC, NCG and student union officials must be constituted to look into the government decision.
- iii. The PPP contract that KTTC is currently engaged in to finance, build and operate student accommodation must be suspended immediately to avoid any further financial loss given that this contract will be null and void under the current circumstance to relocate KTTC

1.0 Introduction to Investigations

The Commission on Administrative Justice (Office of the Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission on Administrative Justice (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.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 8, 26, 27, 28 and 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.

Pursuant to section 8 of the CAJ Act, 2011, the Commission undertook on *suo motu* basis an inquiry into the 1st December, 2016 surrender of the Kenya Science Campus (KSC) premises and facilities to the Kenya Technical Trainers College (KTTC).

1.1 Kenya Science Campus (KSC)

Kenya Science Campus is the former Kenya Science Teachers College (KSTC) which is located on approximately 62 hectares along Ngong road opposite Nakumatt Junction. It was established in 1965 through partnership between the Government of the Republic of Kenya and the Swedish Government. The KSTC initially trained secondary school (S1) teachers for Mathematics, Physics, Chemistry, Biology and Industrial Education. From 1980, it started training Diploma in Science Education teachers in the same science subjects.

The KSTC was elevated to become a Campus of the University of Nairobi following a recommendation by the Public Universities Inspection Board. The recommendation to upgrade the former KSTC to a University Campus was informed by the observation that the Campus would expand teacher training in science education but at graduate level as the Diploma curriculum was phased out. The Campus was officially handed over to the University of Nairobi on 9th October 2007 and renamed Kenya Science Campus which offers education science programs in Chemistry, Physics, Biology, Mathematics, Physical Education and Sport, Agriculture and Geography.

The University of Nairobi has constructed state-of-the-art chemistry, biology and physics laboratories each with seating capacity of 200 students and a modern theatre with a seating capacity of 500 people. Since taking over the Campus in 2007, the UoN has constructed specialized facilities for teaching sciences.

In addition, the University has extensively renovated the existing accommodation and catering facilities, games and sports facilities, lecture venues and the physical infrastructure expanded.

The Campus also hosts a number of Secretariats and National Projects, including:

The University of Nairobi Alumni Association, The University of Nairobi Quality Assurance, The Early Grade Reading Instruction Curriculum (EGRIC) Project; The Centre for African Women Studies; and The School Equipment Production Unit (SEPU), Strengthening Mathematics and Science in Secondary Education (SMASSE) Project, and the National ICT Integration and Innovation Centre of the Ministry of Education.

KSC has a total of **576** students who are accommodated in four hostels, **432** of them are male while 144 are female. In addition, the college has 362 non-resident students and 200 students from College of Education and External Studies taught at KSC, thus making a total student number of **1138** and a staff population of 140.

On 7th May 2014, the then Education Cabinet Secretary Jacob Kaimenyi regretted that the pupil-teacher ratio at primary and secondary schools is still below the international standards. In many schools the ratio is above 42:1, with as high as 85:1," said Kaimenyi. KSC is therefore a vital institution that is producing science teachers who have high demand in Kenyan schools being affected by low pupil-teacher ratios.

1.2 Kenya Technical Trainers College (KTTC)

The Kenya Technical Trainers College (KTTC) was built in 1978 with support of the Canadian Government. KTTC is located on an 82 acres plot with huge financial investment in the construction and equipment of mechanical and electrical workshops estimated to be about 10 Billion shillings. KTTC has other facilities expanded over time in terms of academic programs, staffing, students and

physical facilities since its inception in 1978. KTTC has continued to be a center of excellence in training highly qualified technical teachers to teach in public and private institutions.

KTTC has both teaching and non-teaching departments with about 100 TSC employees, 219 governing council employees and a total of 2400 student population. The residential population is about 600 members.

KTTC specializes in training of technical teachers for secondary schools and tertiary institutions and develops syllabi for technical training in collaboration with other stakeholders.

KTTC caters for the high need of advancing technical education in Kenya and in the achievement of the social pillar envisaged in vision 2030. Therefore, KTTC plays a major role in the production of middle cadre technical and engineering experts required in the market. The institution has heavily investments in mechanical and electrical workshops and a state of the art ICT Centre.

1.3 Issues under inquiry

CAJ sought to inquire into the 1st December 2016 surrender of the Kenya Science Campus premises and facilities to the Kenya Technical Trainers Institute Council.

The issues under inquiry are:

- i. Merits of the substantive decision

- ii. Means of effecting the decision
- iii. Best alternatives
- iv. Remedying deleterious effects

1.4 The process of inquiry

1.4.1 Notification

Pursuant to Section 37 of the CAJ Act, the Commission notified the following of its decision to inquire into the matter.

- i. Dr. Fred Matiang'i Okengo, the Cabinet Secretary, Education (**Annexure A1**).
- ii. Prof. Peter M. F. Mbithi, Vice Chancellor, University of Nairobi (**Annexure A2**).
- iii. Prof. Francis W. Odhiambo Aduol, Vice Chancellor, Technical University of Kenya (**Annexure A3**).
- iv. Prof. Ochanda Horace, Deputy Principal, Kenya Science Campus (**Annexure A4**).
- v. Hon. Mathew Adams Karauri, Chairman, Governing Council, Kenya Technical Trainers College (**Annexure A5**).
- vi. Mr. Jamleck Maina, Chief Principal/Secretary, Kenya Technical Trainers College (**Annexure A6**).

1.4.2 Interviews held

CAJ investigators interviewed staff at the KTTC and the University of Nairobi main campus. The investigations team also held a Focus Group Discussion at the KSC.

1.4.3 Documents recovered

Various documents were recovered in the process of inquiry. These include;

- i. A letter by Cabinet Secretary, Education, to University of Nairobi Management Council on surrender of KSC premises and facilities (**Annexure A 7**)

- ii. A report by the University of Nairobi Management Board on the surrender of KSC **(Annexure A8)**
- iii. A report on the visit to KSC by MoEST dated 7th September, 2016 **(Annexure A 9)**
- iv. A copy of the land title for KTTC. **(Annexure A10)**
- v. A copy of the Private Public Partnership Agreement **(Annexure A11)**

1.5 Normative Framework

CONSTITUTION OF KENYA, 2010

Chapter two-The Republic

Article 10. (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

(2) The national values and principles of governance include—

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;

(c) good governance, integrity, transparency and accountability;

Chapter four- The Bill of Rights

Article 40(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

Article 47. (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.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—

(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

(b) promote efficient administration.

Chapter Five—Land and Environment

Article 61. (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

(2) Land in Kenya is classified as public, community or private.

Article 62. (1) Public land is—

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(d) Land in respect of which no individual or community ownership can be established by any legal process;

(2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under—

(a) clause (1) (a), (c), (d) or (e); and

(b) clause (1) (b), other than land held, used or occupied by a national State organ.

(3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.

Article 67. (1) There is established the National Land Commission.

(2) The functions of the National Land Commission are—

a) to manage public land on behalf of the national and county governments;

Chapter Nine—The Executive

Article 135. A decision of the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.

Article 153. (1) A decision by the Cabinet shall be in writing.

(2) Cabinet Secretaries are accountable individually, and collectively, to the President for the exercise of their powers and the performance of their functions.

Chapter Thirteen- The Public Service

Article 232. (1) The values and principles of public service include—

- (a) high standards of professional ethics;
- (b) efficient, effective and economic use of resources;
- (c) responsive, prompt, effective, impartial and equitable provision of services;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts;
- (f) transparency and provision to the public of timely, accurate information;

(2) The values and principles of public service apply to public service in—

- (a) all State organs in both levels of government; and
- (b) all State corporations.

LAND ACT, NO. 6 OF 2011

8. Management of public land

In managing public land on behalf of the national and county governments, the Commission—

- (a) shall identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;
- (b) shall evaluate all plots of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning.

9. Conversion of land

(1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

(2) Without prejudice to the generality of subsection (1)—

(a) public land may be converted to private land by alienation;

(3) Any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or county assembly as the case may be.

12. Allocation of public land

(1) The Commission may, on behalf of the National or county governments, allocate public land by way of—

(a) public auction to the highest bidder at prevailing market value subject to and not less than the reserved price;

(b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;

(c) public notice of tenders as it may prescribe;

(d) public drawing of lots as may be prescribed;

(e) public request for proposals as may be prescribed; or

(f) public exchanges of equal value as may be prescribed.

(2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—

(d) public land that has been reserved for security, education, research and other strategic public uses as may be prescribed; and

NATIONAL LAND COMMISSION ACT, 2011:

According to Section 5 (1) of the National Land Commission Act, 2011 and pursuant to Article 67(2) of the Constitution, the functions of the Commission that address the issue under discussion include:

(a) to manage public land on behalf of the national and county Governments;

(c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;

(h) to monitor and have oversight responsibilities over land use planning throughout the country.

FAIR ADMINISTRATIVE ACTION ACT, 2015:

2. Interpretation

In this Act, unless the context otherwise requires—

“administrative action” includes—

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

4. Administrative action to be taken expeditiously, efficiently, lawfully etc.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

5. Administrative action affecting the public.

(1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall-

(a) issue a public notice of the proposed administrative action inviting public views in that regard;

(b) consider all views submitted in relation to the matter before taking the administrative action;

PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, 2015

8. Transparency and provision to the public of timely accurate information

(1) A public officer shall not—

(a) give information that the public officer knows or ought to know to be inaccurate; or

(b) unduly delay the provision of any information where required to provide that information.

11. Public participation in promotion of values and principles of public service

(1) The public service shall facilitate public participation and involvement in the promotion of values and principles of public service.

12. Public participation in policy-making

(1) The public service shall develop guidelines for the involvement of the people in policy-making.

(2) The guidelines developed under subsection (1) shall ensure that the public is given—

(a) adequate opportunity to review a draft policy;

(b) adequate opportunity to make comments on a draft policy;

(c) an opportunity to be heard by the makers of a policy; and

(d) notification of the final draft of the policy and whether or not it incorporates their views.

THE UNIVERSITIES ACT, 2012:

20.(1) A university granted a Charter in accordance with section 19—

(a) shall be a body corporate, and as such shall continue the activities of the university as undertaken under the Letter of Interim Authority, including the employment of staff, except where activity is expressly altered under the Charter.

(2) Notwithstanding the generality of subsection

(1), constituent colleges and campuses of universities shall not share premises with incompatible businesses.

UNIVERSITY OF NAIROBI CHARTER, 2013

Establishment and Incorporation of the University

3. (1) The University is the successor to the University of Nairobi established by the University of Nairobi Act, Cap. 210 Laws of Kenya (now repealed) and subject to this Act.

(2) The University is a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) receiving, investing, borrowing and lending money;

2.0 Findings and Analysis

The Commission established that the Cabinet Secretary, Ministry of Education, Science and Technology issued a directive vide a letter Ref: MOEST/VTT/CONF, 13/1 (4) dated September 9, 2016 to the Chairman of University of Nairobi Council to surrender the premises of KSC and all facilities within it to the Council of KTTC with effect from 1st December, 2016.

It was noted that the Cabinet Secretary held a meeting with the Council Chairman, Principal and officials of the student union of KTTC on October 9, 2016. The CS informed the attendants of the meeting about the government

strategic decision to relocate KTTC to KSC in order to allow for the expansion of UN premises by December, 2017.

Upon receipt of letter from CS, University of Nairobi Management Council set up a committee of the executive management that deliberated on the issues surrounding the directive from the Cabinet Secretary to surrender KSC by 1st December, 2016 to KTTC. The Committee issued a detailed report outlining the implication of the decision and recommendations on best alternatives to the directive from CS.

Following the meeting with the CS, the principle of KTTC convened an assembly on the 13 October, 2016 and informed the staff and students about a planned 'strategic decision' to move the college to the premises of Kenya Science College by December, 2017. The principal said he will share further information if and when it becomes available.

2.1 Kenya Science Campus (KSC)

KSC has 576 students who are accommodated in four hostels (432 of these are male while 144 are female) and 362 non-residents. In addition, 200 students from CEES are taught at KSC, thus making a total student number of **1138**.

KSC is a constituent college of University of Nairobi since 2007 and the institute specializes in the preparation of graduate science teachers in the fields of Science, Technology, Engineering and Maths (STEM).

KSC was specifically designed for STEM students. UON has spent an amount of almost Kenya shillings 1.7 billion building specialized labs, equipment and theatres for STEM subjects

KSC has over 140 members of staff who reside with their families in staff housing on the campus. This presents another challenge in terms of relocating them and

re-housing them. Furthermore there is a threat to their livelihood as it would mean possible loss of jobs.

KSC is constituent college of UON that offers degrees, whereas KTTC is a tertiary technical institution offering diploma courses. Traditionally a minor institution cannot dislodge a superior institution. The reverse though often occurs whereby a superior institution takes the place of a minor institution, so the directive that KTTC should occupy KSC's premises is difficult to understand from that point of view.

KSC currently has 2nd, 3rd and 4th year students undergoing their degree programmes and has 1st years waiting to be admitted in January. It would be improper and unfair if they discontinued or terminated the studies of the students prior to completion and graduation. Furthermore the new students who are expected in January will have no place to go, should the institution be removed.

Figure 1 shows specialized fume hoods in the Chemistry laboratory at KSC.



Figure 1: The specialized fume hoods in the Chemistry labs

Figure 2 shows specialized science laboratory at KSC



Figure 2: Chemistry laboratory at KSC

2.2 Kenya Technical Trainers College (KTTC)

KTTC is uniquely situated on 82 acres of land with huge financial investment in specialized mechanical and automotive workshops, lecture theatres, staff housing, nursery school and ongoing construction of new facilities. The College was established with the primary objective of training technically skilled personnel who would be qualified to teach in technical institutions and also absorbed in the industrial sector of the economy.

The College has the following staff:

- i. TSC employees-100
- ii. Governing Council Employees-219
- iii. Total student population of 2400
- iv. Residential population of about 600 members

The college is currently undertaking PPP project to build accommodation for 4,500 students.

Figure 3 shows heavy automotive equipment installed at KTTC.



Figure 3: Mechanical workshop at KTTC

Figure 4 shows the installation of heavy electrical equipment at KTTC



Figure 4: Electrical workshop at KTTC

Figure 5 shows the newly built Building and Engineering workshops at KTTC



Figure 5: Newly built Building and Civil engineering workshops at KTC

Figure 6 shows heavy equipment installed at electrical workshop at KTC



Figure 6 Electrical workshop at KTC

Figure 7 shows heavy equipment stalled in electrical workshop at KTC.



Figure: 7 Heavy Electrical equipment at KTC

Figure 8 shows heavy equipment stalled in electrical workshop at KTC.



Figure: 8 Heavy Electrical equipment at KTC

Figure 9 shows ongoing construction of a new training facility in hotel industry at

KTTC.



Figure 9: Ongoing construction of training facility

2.3 Merits of the substantive decision to relocate KTTC and KSC

CAJ finds there is absence or lack of justifiable rationale for the decision to close KSC and relocate KTTC to its premises. These are two separate institutions established for two completely different academic purposes with distinct equipment, large student population with on-going programmes.

The decision lacks a timeframe which is realizable and achievable considering that students are sitting for exams at the time of relocation. There are development partners who financed the construction of these two institutions and there is a likelihood of fallout with them or at very least injury to the good relationship.

Owing to the foregoing, CAJ finds no merit in the decision and highlights the

following demerits:

- a) CAJ confirmed that the CS, Ministry of Education, Science and Technology wrote a letter Ref: CAJ/OM/7/96 dated October 13, 2016, directing the Chairman University of Nairobi Council surrender the premises and facilities of KSC by 1st December, 2016. In the subsequent deliberations by the UMC the Science graduates could only be relocated to the overstretched CBPS and Kikuyu Campus.
- b) According to those interviewed in the course of the inquiry there was no consultation with appropriate stakeholders before this decision was made, contrary to the Fair Administrative Act, 2015 (Section 4 (1)(2)).
- c) CAJ has established the relevant stakeholders have not been given adequate notice of the nature and reasons for the proposed administrative action contrary to the Fair Administrative Act, 2015 (Section 4 (3) (a) and article 43 of the Constitution of Kenya.
- d) The grounds upon which such a decision was made remains unclear and unexplained by the Cabinet Secretary, Ministry of Education Science and Technology despite a request to do so by CAJ vide a letter Ref: CAJ/OM/7/96 dated October 13, 2016.
- e) According to the principal KTTC as per the strategic decision outlined by the CS, Ministry of Education, the premises of KTTC will be handed to the UN to allow expansion. However, by the time of writing this report, CAJ could not establish whether the process of public property appropriation or legal process of land acquisition has been initiated or undertaken by the Ministry of Education Science and Technology.
- f) CAJ has established the CS has not issued a public notice of the proposed action inviting public views especially the students and members of staff who are adversely affected as well as other members of the public contrary to Fair Administrative Act, 2015 (a),.
- g) CAJ has established no feasibility study involving relevant stakeholders was done which is a clear indication that all the relevant and material facts were not considered before reaching this decision. There is a distinct mismatch

between the academic orientation of the KSC and KTTC: the former has heavily invested and specialized in science laboratories while the latter is unique in mechanical and electrical workshops.

It was also confirmed the facilities at CBPS, University of Nairobi are overstretched and Kikuyu Campus is already fully utilized to maximum allowable capacity and lacks specific science laboratories to accommodate the three additional programmes from KSC as envisaged in the decision. Facilities in the College of Architecture and Engineering (CAE) and the College of Agriculture and Veterinary Medicine (CAVS), University of Nairobi are not suitable for KSC students as their laboratories are specific to the disciplines in those colleges. The lack of consideration of all these relevant and material facts is contrary to Fair Administrative Act, 2015, Section 5 (1) (c).

- h) CAJ is convinced the decision to relocate KSC and KTTC will certainly adversely affect and disrupt the education of the students in both institutions and it is evidently clear no consideration was made to mitigate the circumstance.
- i) The financial implication of this decision has also not been carefully considered and in particular the enormous financial cost of over Ksh. 12 Billion to construct a facility equivalent to the current KSC.
- j) The decision would have been more appropriate if better alternative such relocating KTTC to other technical institutions (including Technical University of Kenya, Nairobi Technical Training Institute and Kabete Technical Training Institute) was considered.

2.3.1 Legal Analysis on the decision directing KSTC to surrender its premises to KTTC

3.3.1.1 Who made the decision?

The Cabinet Secretary, Ministry of Education vide the letter dated 9th September 2016 addressed to the University of Nairobi Council stated that the “Kenyan Government” made a strategic decision to relocate KTTC to KSC. From the letter, it is not discernible which Government office, organ or entity issued the directive. Efforts by the Commission to establish the source of the directive were unsuccessful due to the lack of cooperation by the Cabinet Secretary, who in his response of 8th November 2016 termed the Commission's inquiries as ‘unnecessary and untimely correspondence’.

In any event, it is suggestive in the Ministry's letter that the decision was made by the Ministry of Education. In light of the above, it is still unclear who made the decision.

Assuming that the decision was not made by the Ministry of Education, but by the President or the Cabinet as the case may be, then the requirements of Article 135 and 153 of the Constitution ought to apply. These provisions mandate that a decision of the President or the Cabinet must be in writing, any such decision is yet to be provided to any of the stakeholders.

In the absence of a written President's or Cabinet's decision and in the light of contrariness by the Ministry of Education, then the above decision should be called into question.

3.3.1.2 Fairness of the decision

The decision to relocate KTTC from its current premises to KSTC is an administrative action which should be made within the provisions of the Constitution and the Fair Administrative Action Act. Article 47 and Section 4 of the Fair Administrative Action Act requires administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair.

A question for determination in this matter is the procedural fairness of the decision. To pass the test of procedural fairness, the law requires prior and

adequate notice of the nature and reasons for the proposed administrative action; an opportunity to be heard and to make representations; notice of a right to a review or internal appeal against an administrative decision and a statement of reasons amongst others. In this regard, the only notice given was the letter of 9th September 2016, which was a directive and not a notice of engagement or a call for participation.

These requirements are further reinforced by the National Values and Principles of Governance outlined in Article 10 of the Constitution. The National Values and Principles of Governance binds all state organs, state officers, public officers and all persons when applying the Constitution, enacts, applies or interprets any law or makes and implements public policy decisions. The National Values and Principles of Governance include *inter alia* the rule of law, democracy, and participation of the people, good governance, integrity, transparency and accountability.

Section 12 of the Public Service (Values and Principles) Act No. 1A of 2015 requires public participation in policy making and in particular, requires the public to be given adequate opportunity to review a draft policy; adequate opportunity to make comments on a draft Policy; an opportunity to be heard by the makers of a policy; and notification of the final draft of the policy and whether or not it incorporates their views.

Clauses 40 and 41 of Sessional Paper No. 3 of 2009 states the principles that guide the National Land Policy as transparency and accountability; participation of the citizenry in decision-making; equitable access to land; resolution of genuine historic and current land injustices; and protection of human rights.

3.3.2 Alienation of Public Land

3.3.2.1 Power to alienate Land

According to the Cabinet Secretary's letter dated 8th November 2016, the Government seeks to grant KTTC's land and premises to the United Nations for its expansion in honour of its international obligations and commitments. While this may be a good cause, the question that needs to be answered is whose function/mandate is it to alienate public land and what is the procedure?

Article 60 (1) of the Constitution states that Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. It further sets out the principles of land policy which *inter alia* include transparent and cost effective administration of land.

Article 67 establishes the National Land Commission and sets out its functions which include to manage public land on behalf of the national and county governments and to monitor and have oversight responsibilities over land use planning throughout the country. Section 5(2) of the Land Act and Section 5 of the National Land Commission Act reiterates this position.

Section 9 (3) of the Land Act stipulates that any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or county assembly as the case may be. The Land Act further has comprehensive provisions on other aspects of management of public land including conversion of public land, register of all conversions and allocation of public land amongst others.

Thus, the mandate to alienate public land exclusively vests in the National Land Commission with the consent of the National or County Government or in the instances of conversion of public land to private land an approval by the National or County Assembly is necessary. Consequently, any other attempts of alienation by any other person or institution that is not compliant as such is *ultra*

vires the Constitution and the various statutes. In this matter, the procedure of how the land was alienated has not been clearly detailed and it is unclear if all relevant stakeholders have been consulted in the alteration. Moreover, the question still remains as to the status of the property and whether the same will be converted to private land, or remains public land.

3.0 Consequential Observation

- i. Immediate shut down of KSC and KTTC would have injurious effect of disrupting the teaching, learning and the sitting of examinations by students on 5th December, 2016 as well the unsettling of staff and their families.
- ii. The lack of ample notice would be a violation of Fair Administrative Act, 2015 (Section 4 (3) (a) and article 43 of the Constitution of Kenya.
- iii. CAJ noted there was an element of fear among staff to discuss this matter and they declined to record statement for fear of reprisals. The staff were apprehensive about the whole process which appears to be surrounded by secrecy and scanty information.
- iv. CAJ noted Kenya Technical Trainers College (KTTC) is engaged in Private-Public Partnership to finance, build and operate student accommodation. The total estimated cost of the PPP project is Ksh. 5 Billion. A detailed feasibility study has been conducted which clearly outlined the rationale for KTTC to embark on this project, as well as providing the most feasible site and design option, which have been technically, financially and economically appraised. This PPP project will cease if the decision to relocate KTTC is implemented.
- v. The psychological impact of the directive is taking a toll on the students as well as staff at both institutions. The uncertainty regarding their future has led to apathy on the part of students and an inability of staff to focus on their duties. Furthermore the date set for the move, 1st December, 2016 at KSC is impractical as it is 5 days before student exams begin.

- vi. Disruption of academic programmes due to industrial unrest has been the norm in the University. The government move is likely to trigger such unrest. The student unions are already of the view that the students had been disregarded in the whole process and were on the verge of rioting. It is only through the intervention of the Deputy Principal at KSC, the principal at KTTC and the student leaders that they agreed to await the resolution of the matter in an amicable manner. Any move which is not beneficial to all parties concerned will most likely result in industrial unrest.

4.0 Conclusion

- i. CAJ confirmed the Cabinet Secretary, Ministry of Education, Science and Technology issued a directive vide a letter Ref: MOEST/VTT/CONF, 13/1 (4) dated September 9, 2016 to the Chairman of University of Nairobi Council to surrender the premises of KSC and all facilities within it to the Council of KTTC with effect from 1st December, 2016.
- ii. There were no formal communications to the two institutions affected by way of writing to communicate the government's decision, in particular, to the two principals of KSC and KTTC.
- iii. The two intuitions affected by the decision are distinct in terms of academic programmes, facilities and equipment. Whilst KSC specializes in training graduate science teachers with specialized science laboratories, KTTC specializes in mechanical and automotive engineering with specialized electrical and mechanical workshops.
- iv. There has been heavy investment in both institutions by donor partner's as well successive governments. KTTC was funded by the Canadian Government while KSC received funding from the Swedish Government.
- v. The

closure of KSC which trains graduate science teachers will have a far reaching consequence of shortage of science and mathematics teachers in Kenya.

vi.

CAJ

is at a loss to understand as to why a technical institute i.e. KTTC should be moved to a science institute i.e. KSC, whereas there are other technical institutions that could also absorb students of KTTC.

5.0 Determinations

- i. The decision by the government through the CS Education, Science and Technology, requiring KSC to vacate their premises and surrender to KTTC by 1st December, 2016 should be withdrawn immediately.
- ii. CAJ having noted the weight of this matter, makes the following suggestions in terms of what better alternatives are available for the relocation of KTTC:

a) Option 1: Relocation of KTTC students to other technical institutions.

Students of KTTC can be relocated to other technical institutions such as Technical University of Kenya (TUK), Kabete Technical Training Institute (KTTI) and Nairobi Technical Training Institute (NTTI).

CAJ views this option as the as suitable alternative because it would leave KSC intact and entirely unaffected. The government decision would then only affect one institution, that is KTTC, and not two institutions, that is KSC and KTTC, which is the case if the government decision goes ahead as announced by the CS.

b) Option 2: Phasing out and suspension of new intake at KSC and KTTC

This option would require a robust plan to be in place for relocation of students and staff of both institutions including construction of temporary accommodation facilities in the short term and permanent hostels and appropriate laboratories and workshops in the long term. This option would carry huge financial implication to the government and adverse effect on the

education of students of both institutions.

- iii. The CS, Education Science and technology should have considered the most appropriate alternative to honor the government commitment to allow the expansion of the UN premises. The CS also ought to have communicated and involved all stakeholders equally instead of holding a meeting with the management Council, Principal and leaders of student union at KTTC.
- iv. The implementation of the decision to relocate KTTC to KSC will result in big time loss in terms of specialized facilities and equipment for the two institutions which the government should take into consideration noting the cost of reconstructing, reequipping new facilities will certainly be a huge burden to tax payers.
- v. The welfare of continuing students' especially final year students must be a priority. The government should equally take into account the disruptive effect on the many families that are resident in these institutions and whose relocation will have a psychological and financial implication.

6.0 Way forward

- I. The letter from the CS Education, Science and Technology, requiring KSC to vacate their premises and surrender to KTTC by 1st December, 2016 must be withdrawn or suspended forthwith.
- II. A task force comprising of all stakeholders including CAJ, UON, KSC, KTTC, MoE, NLC, NCG and student union officials must be constituted to look into the government decision.
- III. The PPP contract that KTTC is currently engaged in to finance, build and operate student accommodation must be suspended immediately to avoid any further financial loss given that this contract will be null and void under the current circumstance to relocate KTTC to KSC premises.