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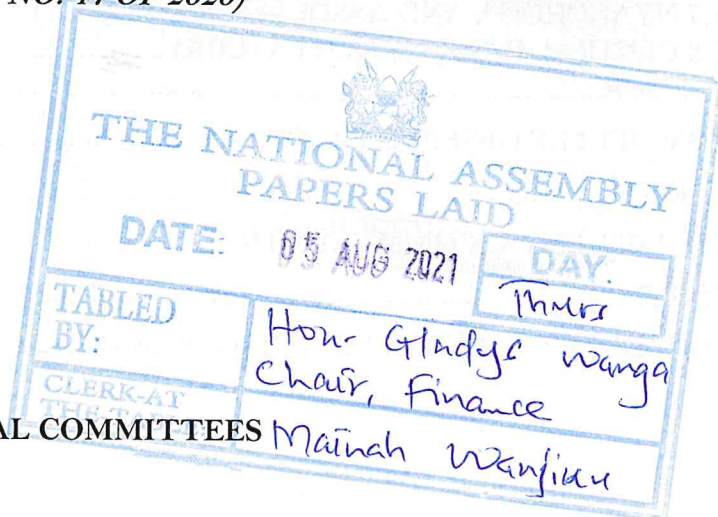
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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON –
THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL
NO. 47 OF 2020*)



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AUGUST 2021

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) which was published on 30th November 2020.

The Bill went through the First Reading on 25th February 2021 and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill has three (3) clauses and seeks to amend the Central Bank of Kenya Act (Cap. 491) to safeguard the interest of consumers of the services of digital money lenders. The amendments seek to achieve the following objectives: (i) Expand the role of Central Bank of Kenya (CBK) to license and regulate all persons, institutions or firms lending money to Kenyans; (ii) Prohibit any person, firm, institution or firm lending money to Kenyans, unless licensed by CBK; (iii) CBK to prescribe capital requirements; and (iv) Mandate CBK to publicise the list of lenders in categories including banks, lending institution or firm every quarter.

Following placement of adverts in the print media on 3rd March 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received three (3) written memoranda from stakeholders.

In order to extensively carry out public participation on the Bill, the Committee invited stakeholders vide letter REF: NA/DDC/F&NP/2021/26 dated 6th July 2021 for a stakeholder engagement meeting which was held on Monday, 12th and Tuesday, 13th July 2021 at Emara Ole Sereni Hotel where six (6) stakeholders attended the meeting.

Most stakeholders were opposed to the requirement that mobile money lenders should have minimum capital in order to be licensed. They also noted that the time within which CBK should issue a license after an application is made should be provided in the Bill. Additionally, the Bill should provide the criteria of grant or refusal of license. In order to ascertain the veracity of documentation submitted by mobile money lenders prior to issuing a license, CBK should cooperate with other agencies including Office of the Data Protection Commissioner, Kenya Revenue Authority and Communications Authority of Kenya. The stakeholders' comments on the Bill are contained in Part III of the Report. All the stakeholders' comments were put into consideration while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

While considering the Bill, the Committee observed that the Bill seeks to regulate all mobile money lenders including those who are already regulated by other Acts like the Microfinance Act, Capital Markets Authority Act and Insurance Act. The Bill only seeks to regulate mobile money lenders excluding entities that lend money through other digital channels. To this end, the Committee made amendments to the Bill to remedy the above issues. Details of the Committee's proposed amendments are contained in Part VI of the Report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Central Bank of Kenya (Amendment) Bill, 2020. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to

thank all the stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and have the honour to report back to the National Assembly with the recommendation that the Bill be approved with amendments as contained in the report.

Hon. Gladys Wanga, CBS, MP
Chairperson, Departmental Committee on Finance and National Planning

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. ***To study and review all the legislation referred to it;***
 - iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
 - vii. *To examine treaties, agreements and conventions;*
 - viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 COMMITTEE'S SUBJECTS

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. National Treasury and Planning
 - ii. State Department for Devolution
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget
 - v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in July, 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County
ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency
Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency
Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency
ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency
Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County
ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency
Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency
MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency
WDM-K

Hon. Catherine Waruguru, MP
Laikipia County
Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency
Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency
Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency
Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Lauren O. Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

Mr. Vitalis Augo
Office Assistant

PART TWO

2 OVERVIEW OF THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020)

2.1 INTRODUCTION

6. The principle object of the Bill is to amend the Central Bank of Kenya Act (Cap. 491) to safeguard the interest of consumers of the services of digital money lenders.
7. The amendments seek to achieve the following objectives including, expanding the role of Central Bank of Kenya (CBK) to license and regulate all persons, institutions or firms lending money to Kenyans; prohibiting any person, firm, institution or firm lending money to Kenyans, unless licensed by CBK; mandating CBK to prescribe capital requirements; and requiring CBK to publicise the list of lenders in categories including banks, lending institution or firm every quarter.

2.2 ANALYSIS OF THE BILL

The Bill has three clauses and proposes the following amendments:

8. **Clauses 1** of the Bill provides for the short title.
9. **Clauses 2** of the Bill provides for definition of the term “*digital money lender*”.
10. **Clause 3** of the Bill provides for the licensing of mobile money lender platforms by the Central Bank of Kenya.
11. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.
12. The Bill does not concern county governments in terms of Article 110(1) of the Constitution.
13. Enactment of this Bill shall not occasion additional expenditure of public funds.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

14. Following the call for memoranda from the public through the placement of adverts in the print media on 21st May 2021 and vide a letter REF: NA/DDC/F&NP/2021/26 dated 6th July 2021 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- i. Office of the Data Protection Commissioner
- ii. Communications Authority of Kenya
- iii. Institute of Certified Public Accountants of Kenya (ICPAK)
- iv. The Kueq Limited
- v. Safaricom PLC
- vi. Anjarwalla and Khanna LLP
- vii. Nyanchoga and Associates
- viii. Central Bank of Kenya (CBK)

The stakeholders submitted as follows:

3.1 OFFICE OF THE DATA PROTECTION COMMISSIONER

The Data Commissioner Mrs. Immaculate Kassait appeared before the Committee on Monday, 12th July 2021. She submitted **THAT**—

15. Both the Central Bank of Kenya (Amendment) Bill, 2020 and the Central Bank of Kenya (Amendment) Bill, 2021 seek to regulate digital money lending yet both speak to different terminologies and legal subjects as used in the text of the Bills. The two Bills should be harmonized and the scope of the legislative proposal expressly stated.
16. The Bill should be amended in Clause 2 by expanding the definition of “*digital money lender*” so as to capture all relevant terms i.e. money lender entity and credit facility; defining the term “*mobile app*”; clarify scope of the proposed Bill; and capture digital money lenders that provide services through use of other technologies and online means, and not only mobile applications. This is to provide clarity and a defined scope to which the Bill is intended to regulate.

Committee’s Observation

The Committee did not support the proposed definitions as the Bill already has defined the term digital money lender.

17. Under Part VII A, there is need to define the money lending platforms in the context of the Bill. For clarity to avoid ambiguity.

Committee’s Observation

The definition is not necessary as the memoranda objects and reasons of the Bill is only intended for the mobile money lender platforms. The proposal was therefore rejected

18. Under clause 3 of the Bill which is inserting section 43B (2) (b), there is need for clarity as to what amounts to a verifiable official notification. Requirement to accompany the application should be feasible and clear.
19. Clause 3 of the Bill seeking to insert a section 43B (2) (c) requires the applicant to provide the prospective place of operation indicating the address of the head office and branches. Prospective means an entity may register without having an actual physical address. There is need to clarify the intent of the provision in order to address the contradiction.

Committee's Observation

The Committee noted the contradiction raised by the Commissioner and therefore proposed an amendment to require that a licensee must provide details of notification of the company's registered address.

20. Clause 3 of the Bill seeking to insert section 43B (2) (d) provides for evidence that the company meets the minimum prescribed capital requirement. The Bill should be amended to specify the minimum capital requirement as it relates to digital money lenders since it is a substantive matter that should not be in the proposed regulations. This is for ease of enforceability.

Committee's Observation

The requirement for a licensee to meet minimum prescribed capital requirement was dropped. This is because DLIs are not deposit-taking hence such prudential requirement may not be necessary.

21. Clause 3 of the Bill should be amended by inserting section 43B (2) by inserting the following new provisions immediately after section 43B(2)(f) requiring the applicant: *"(a) to provide proof of registration as a data controller or data processor pursuant section 18 of the Data Protection Act, 2019; (b) to prove compliance with the provisions of the Data Protection Act, 2019 and specifically section 25 of the Act; and (c) to demonstrate protection by design and by default mechanisms by the applicant so as to ensure protection of personal data of the data subject"*. This is because digital money lenders are big data handlers of sensitive personal data of data subject and other third parties.

Committee's Observation

The Committee adopted the proposal.

22. Clause 3 of the Bill be amended by inserting section 43B (3)(a) requires satisfactory proof of a valid service agreement between an applicant and the intended telecommunication service provider if the applicant is to rely on a telco mobile money platform. The provision limits the digital lending platform to telecoms based yet there exist a variety of other platforms including the emerging platforms. There is need to exhaust the different platforms to cover the emerging platforms and the already existing platforms and the form proof required.

Committee's Observation

The proposal in the Bill was deleted since it would amount to over legislation. The Central Bank of Kenya has been given powers to prescribe any other document that may be necessary for licensing.

23. Clause 3 of the Bill be amended by inserting section 43B (3)(b) which requires that the prominent terms and conditions of the mobile lenders before activation of mobile loan accounts. There is need to define the term “prominent terms and conditions”; insert a new clause requiring that the consumer has understood the terms and conditions and proof of consent on the same; and insert a new provision requiring the money lender to proof compliance with the provisions of the Data Protection Act, 2019. This is to avoid ambiguity and to protect the Consumer.

Committee’s Observation

The Committee noted the concern and therefore proposed a proviso that an applicant shall provide the terms and conditions applicable to the digital credit and which must be accepted by the borrower before activation of a mobile loan account. This is intended to ensure that borrowers are aware of all the terms and conditions before signing up for a credit facility.

24. Clause 3 of the Bill be amended by inserting section 43C to provide for the licensing process. The Bill should therefore be amended by inserting the following new provision immediately after subsection (3): “(4) the CBK may cooperate with other agencies including the ODPC and KRA to ascertain the veracity of the documentation submitted to it by the digital money lenders prior to issuing a license”. This is to give effect to provisions of the proposed Bill and to allow for verification mechanisms especially for processes that are not within CBK’S mandate.

Committee’s Observation

The proposal was adopted.

25. Clause 3 of the Bill be amended by inserting section 43C (5) provides that the CBK shall publish a list of digital lenders in the Kenya Gazette. Amend to provide: for the publication of a list of compliant digital lenders only; for other means of publication as opposed to only the Kenya Gazette; criteria for grant or refusal of license; and for a review mechanism where an application is denied.

Committee’s Observation

The proposal was adopted.

26. Clause 3 of the Bill be amended by inserting section 43D (1) requires every digital money lending institutions to be managed by two directors. There is need to justify the need for two directors, why not more or less since under the Companies Act one can operate as a sole proprietor.
27. Clause 3 inserting section 43D (2) requires every foreign owned digital money lending institution to be managed by one director who is Kenyan. There is need to harmonize the clause with the Companies Act, 2015 and to clarify the spirit of the provision.

Committee's Observation

The Committee deleted the proposal in the proposed section 43D as it would be guided by the Companies Act, 2015.

28. They proposed that there is need to balance the ease of business and technological innovations in the text of the Bill and the right to privacy. Provision on offences should also be created in the Bill. Further, there should be consequential amendments on the other laws that speak of the subject matter. Additionally, provisions requiring that any processing of data, including collection and use, is done in accordance with the provisions of the Data Protection Act should be inserted.

Committee's Observation

The Committee adopted the proposal and made amendments to provide for adherence to Data Protection Act, Consumer Protect Act and also proposed provision on offences.

29. The memorandum of objects of the proposed legislation demonstrate that the objects of the proposed Bill is to regulate and license digital money lenders by the CBK. They noted that the fintech space or the credit lenders ought to be regulated by a specific standalone statute in order to avoid overlap of regulations and laws with other regulated financial services such as banks which are already licensed by CBK and who may desire to engage in the mobile app lending services thereby forced to take out a second license.

Committee's Observation

The Committee rejected the proposal for a standalone legislation given that Bill is only intended to capture the unregulated digital credit products.

3.2 COMMUNICATIONS AUTHORITY OF KENYA (CA)

The Acting Director General of the Communications Authority of Kenya, Ms. Mercy Wanjau appeared before the Committee on 12th July 2021. She proposed the following amendments to the Bill:-

30. Amend definition of the words "Digital money lender" by including online credit facilities and other digital platforms. This is because digital money lenders are not limited to mobile devices, they include internet services through other electronic devices.

Committee's Observation

The definition of the term Digital money lender is adequately provided for in the Bill. The proposal was therefore rejected.

31. Amend section 43(2)(d) to include prescription of the minimum capital requirement or in the alternative, to allude to existing laws i.e. the Banking Act and Money Payment Systems Act that provide for the minimum capital requirement of financial institution and other relevant thresholds. This will provide clarity in the law.

Committee's Observation
The proposal was adopted.

32. Amend section 43(2) by inserting the following new paragraph; "(h) proof of a license from the ICT regulator where necessary". In instances where the digital moneylenders are licensees of the ICT regulator, it would be prudent for CBK to require evidence of the license issued by the ICT regulator.

Committee's Observation
The Committee agreed with their proposal.

33. Amend section 42(3)(a) to read as follows; "*Satisfactory proof of a valid service agreement between applicant and the intended telecommunications service provider, if the applicant is to rely on a telco mobile money platform, duly licensed and approved by the ICT regulator*". Given that the Authority is vested with the mandate of regulating the ICT sector, a collaborative regulatory approach is best placed in ensuring that the Telco is duly licensed by the Authority.

Committee's Observation
The Committee agreed with their proposal.

3.3 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

34. In a meeting with the Committee held on Monday, 12th July 2021, the CEO, CPA Edwin Makori, submitted that the Bill attempts to introduce direct regulation of the digital financial sector in Kenya and also expands the CBK regulatory jurisdiction over non-digital financial products and services. It gives the CBK power to regulate and supervise the conduct of providers of digital financial products and services; digital credit service providers; providers of financial products and the conduct of financial services.
35. The financial sector has experienced evolution and emergence of different players that have been regulated under the existing frameworks such as the Capital Markets Act, Chapter 485A of the laws of Kenya and the Insurance Act, Chapter 487 of the laws of Kenya. This Bill intends to make the Central Bank of Kenya a super regulator which mirrors the new industry-wide prudential regulator as was proposed in the Financial Market Conduct Bill, 2018 (Kenya Markets Authority).
36. It is worth noting that the evolution and growth of innovation particularly fintech products and services in the market has brought valid regulatory concerns that need to be addressed. However, care must be taken to establish clear and targeted regulatory interventions that will address the consumer protection and public interest needs whilst maintaining a conducive environment for innovation and market growth.
37. The Institute noted that the unregulated financial sector requires some legislative supervision to ensure they operate within the ambit of clearly defined structures and guidelines. According to FSD, digital loans accounted for 54% of the market yearly loans making consumer protection

integral in regulation. In the study, it was found that several borrowers did not adequately understand the costs of borrowing which other than the interest, include; service fees, rollover fees and excise duty. The monthly interest rates charged by these platforms are extremely high since when annualized they come to a rate of over 150% which is well over what commercial banks currently offer. This is exploitative to the consumers who may not otherwise be able to access more formal lines of credit from commercial banks or other financial institutions.

38. This reform is therefore timely to the extent that it establishes a framework through which the unregulated FSD will be brought under regulation. The legal framework to be established to govern digital financial services in Kenya requires a multifaceted approach that brings on board the different players in the sector, each with specific regulatory role assigned to execute. This will avoid overlap of regulations and laws with other regulated financial services.
39. This means that other regulators must be brought on board to take care of the three interrelated aspects of digital financial services: communication, banking, and lending. They include Communications Authority of Kenya, Credit Reference Bureau, Data Protection Act, Competition Authority of Kenya, and Central Bank of Kenya.
40. Regulation of digital financial services and fintech firms is not a completely new phenomenon. Drawn from practice in other jurisdictions, it is high time Kenya adopted the best practices that would not only regulate digital financial services provision but also enhance innovation in the sector to address the versatile market needs.
41. The Bill should be amended 43C (5) to read “(e) Regularly monitor compliance status and publish a list of all licensed digital money lenders in the Kenya Gazette”. This is because the regulator is duty-bound to not only regulate and supervise the activities of digital financial service providers but also monitor the compliance and publish reports for the benefit of consumers. The consumers are entitled to know the list of licensed digital financial service providers and their compliance status for informed choices. Knowledge of digital financial services and products programs should be made available to a broad range of audiences, through a variety of delivery channels including digital and non-digital.

Committee’s Observation

The Committee agreed with their proposal.

3.4 THE KUEQ LIMITED

The Co- Founder of Kueq Limited, Mr. Aristarichus Weru appeared before the Committee on Monday, 12th July 2021. He proposed **THAT**—

42. Sub-clauses (dc) and (dd) capture many entities, products and services that are already offered by traditional banks. The traditional financial products and services have not been articulated in the principal object or other objects of the CBK Act.

Committee’s Observation

The Committee noted that the Sub-clauses (dc) and (dd) being referred to were contained in the Central Bank Amendment Bill (National Assembly Bill No. 21 of 2020) which having being re-published to now become the Central Bank Amendment Bill (National Assembly Bill No. 10 of 2021) did not have the aforementioned clauses.

The Committee however, observed that the products offered by the traditional brick and mortar banking institutions are already regulated. The intention of the Bill is to regulate those that are not under the purview of any regulator.

43. Given that the financial sector is regulated by various laws and bodies, different laws can be amended to accommodate digital financial products and services which will be a very tedious process given the many laws. Alternatively, the process of enacting a new law, 'Digital Financial Services and Products Act' can be initiated in order to address the amendments.

Committee's Observation

The Committee observed that regulation of the digital credit services sits proper within the mandate of CBK as far as financial services are concerned. As such, it may not be necessary at this point and time to come up with a new law and given the urgency to regulate digital lending ecosystem so as to protect both consumers and the lenders.

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3.5 SAFARICOM PLC

Safaricom PLC submitted a written memorandum vide their letter Ref: LSS/M-PESA/Legislation, They submitted **THAT—**

44. The words '*digital financial product*', '*digital financial service*', '*financial product*' and '*financial service*' are broadly defined and encompass products that are currently already regulated by other sectoral laws and regulators. They should therefore be aligned with the specific statutes i.e. Capital Markets Authority Act, Consumer Protection Act, Insurance Act e.t.c.

Committee's Observation

The Committee observed that the terms *digital financial product*, '*digital financial service*', '*financial product*' and '*financial service*' are not contained in the Bill. The terms were being referred to by the Central Bank Amendment Bill (National Assembly Bill No. 21 of 2020) and since it was re-published into Central Bank Amendment Bill (National Assembly Bill No. 10 of 2021) the terms were left out so that it was succinctly clear that the intention of the amendment is to cover the unregulated products.

45. There needs to be inserted definitions for '*digital credit providers*' and '*digital credit service providers*' so as to provide clarity on the persons to whom the Bill applies. The Bill as drafted will cover all forms of credit service provision including credit services that are already regulated by CBK under the Banking Act.

Committee's Observation

The terms were already covered by the Central Bank Amendment Bill (National Assembly Bill No. 10 of 2021) hence no need to insert. Therefore the proposal was rejected by the Committee

46. The Bill should include provisions clearly stating whether its provisions apply to digital credit products already regulated under other provisions of laws such as the Banking Act and attendant

Prudential Guidelines as well as the Sacco Societies Act as well as the Sacco Societies (Deposit-Taking Sacco Business) Regulations. This is because there needs to be a distinction between banking and non-banking digital credit products, digital credit product providers and digital credit services in order to create certainty in application of the law.

Committee's Observation

The intention of the Bill is clear and is in the memoranda for objects and reasons is to cover the unregulated digital credit products. Therefore there is no need for inclusion of any provision as the Bill seeks to exempt products that are regulated under other written laws.

3.6 ANJARWALLA AND KHANNA LLP

In their memorandum, Ref: SS/MJN/GEN dated 10th March 2021, Ms. Sonal Sejjal submitted as follows on the Bill:-

47. The Bill proposes to expand the role of CBK to license and regulate the any digital money lender offering "*credit facilities*" in the form of "*mobile money lending applications*". Additionally, the Bill introduces capital requirements for digital lending as well as a publicized list of lenders in categories including banks, lending institutions or firms every quarter.
48. The Bill does not have any transition provisions to guide digital lenders already in the market. It is therefore unclear how such parties will be brought under the remit of the Bill. Licensed institutions such as banks who already offer digital lending services are also not exempted from the provisions of the Bill implying that they might need to obtain additional licenses as digital lenders.

Committee's Observation

The proposal was supported. The Bill proposes to provide for a process of licensing of all the digital lenders in the market. Hence whether the lender is in the market or not, they will be required to be licensed to operate by CBK. The Committee proposed exemption of already regulated digital products so that they are allowed to operate within the already regulated space through other written laws.

49. Define the term "*Digital money lender*" as "*An entity that offers credit facilities in the form of mobile money lending applications*". This is because there is no definition of what constitutes "*credit facilities*" or "*mobile money lending applications*". The definition will narrow down the scope of who is to be governed by the Bill and will encapsulate the intention of the drafters of the Bill.

Committee's Observation

The Bill already defines the term *digital money lender* and therefore the proposal was not supported.

50. Under the amendment proposed under clause 43B(d), it is not clear which requirements are being referred to and whether they relate to the normal capital requirements in the Companies Act or whether there are other capital requirements that the CBK will impose.

Committee's Observation

The Committee rejected the proposal in the Bill to provide for minimum capital requirement as this would amount to killing digital lending business. Minimum capital requirements are necessary where the institution is taking deposits and hence the need to protect customers. The minimum capital requirement will stifle innovation in the sector.

3.7 NYANCHOGA AND ASSOCIATES

In a meeting with the Committee held on Monday, 12th July 2021, CPA Enock Monari proposed the following amendments to the Bill:

51. Insert the following new paragraph immediately after section 43E; "*43F. The present lenders who are considered to be digital money lenders under this Act may conduct their current activities until obtaining a license in accordance with this Act*".

Committee's Observation

The Committee adopted their proposal.

52. Insert the following new paragraph immediately after section 43C(5); "*(6) The Bank shall within thirty days of receipt of all documentation prescribed in section 43B issue the license to the applicant and the Bank shall notify the applicant of its decision in writing*".

Committee's Observation

The Committee adopted their proposal.

53. Under sub-section 43B(2)(d), describe what constitutes sufficient evidence. The amendment if left as it is will be open to contradictory interpretations and will cause confusion. The Bill should also prescribe the amount of minimum capital requirement.

Committee's Observation

The requirement for minimum capital for licensing DLIs was deleted.

54. Delete sub-section 43B(2)(g) in order to make it express what documents digital lenders will present to improve the licensing process. It will also remove any inequalities between digital lenders.

Committee's Observation

The Committee adopted their proposal. The Committee further proposed a list of requirements for licensing.

55. Delete sub-section 43C(2) because the requirement to add, vary or substitute conditions from time to time affects the uniformity for the licensing process and may lead to uncertainties and generally affect equal treatment of digital mobile lenders who are applying for the same license.

Committee's Observation

The proposal was rejected. The Committee provided a list of all the requirements that may be necessary for CBK to carry out its licensing and supervisory. The CBK

56. Amend sub-section 43C(3) to read as follows; *“(3) A license issued under this Act shall, unless earlier revoked be valid for a period of three years and upon expiry may be renewed”* OR *“(3) The first license issued under the Act shall, unless earlier revoked be valid for a period of three years and upon expiry may be renewed. Each subsequent license will be valid for a period of one year”*.

Committee’s Observation

The Committee adopted their proposal. The digital credit providers will only apply for license once and as long as the license is valid, it is eligible for renewal upon payment of an annual prescribed fee.

57. Amend sub-section 43C(4) to read as follows; *“(4) Every application for renewal of a license must be made at least three months before the expiry of the license and must be accompanied by the current documents listed in section 43B(1) and (2) excluding sub-section (c) and (d)”*.

Committee’s Observation

The proposal was rejected. Requirement to submit document for every renewal is not necessary.

58. Amend sub-section 43D(1) to read as follows; *“(1) Every digital money lending institution shall be managed by at least two directors”*.

Committee’s Observation

The proposal was rejected as this will be guided by the provisions of the Companies Act. 2015.

3.8 CENTRAL BANK OF KENYA (CBK)

59. In a meeting with the Committee held on Tuesday, 13th July 2021, the Governor, Dr. Patrick Njoroge submitted that digital lending in Kenya has grown exponentially in Kenya over the last few years because of high mobile penetration; adoption of mobile phone based financial services; and ease of use and convenience. He noted that usage of unregulated digital had grown from 0.6% (200,000) of Kenya’s adult population in 2016 to 8.3% (approximately 2 million people) in 2019.
60. He noted that the Bill seeks to empower CBK to regulate mobile money lenders. He observed that the scope of the Bill is limited to mobile phones and excludes other digital channels. Further, the Bill is too broad and applies to all entities including licensed institutions like banks, microfinance banks and SACCOs. Due to the above reasons, the Governor proposed that the Bill should be shelved and the Central Bank of Kenya (Amendment) Bill, 2021 progressed.

PART FOUR

4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed the following:

61. The Bill gives Central Bank of Kenya powers to license and regulate mobile money lending applications. The Bill therefore does not provide for regulation of licensing and regulation of other digital lenders who may be offering their services on other platforms.
62. The Bill seeks to regulate all mobile money lenders including those who are regulated under different laws like the Microfinance Act, Capital Markets Authority Act and Insurance Act. As such the Bill is in conflict with other existing laws.

PART FIVE

5 COMMITTEE RECOMMENDATION

63. The Committee having considered the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) recommends that the House passes the Bill with amendments as proposed in the schedule in chapter 6.

PART SIX

6 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

CLAUSE 3

64. THAT, clause 3 of the Bill be amended-

- a) in the proposed new clause 43A by deleting the words "*the Central Bank of Kenya*" and substituting therefor the words "*The Bank*";

Justification

The Amendment is to clean up the Bill for consistency of terms with the Act

- b) in the proposed new clause 43 B -
 - i. by deleting the words "*the Central Bank of Kenya*" appearing in subsection (1) and substituting therefor the words "*The Bank*";

Justification

The Amendment is to clean up the Bill for consistency of terms with the Act

- ii. by deleting subsection (2) and substituting therefor the following new subsections-
 - (2) An application under subsection (1) shall be in the prescribed form and be accompanied by-
 - a. a copy of the certificate of incorporation under the Companies Act;
 - b. a certified copy of the applicant's memorandum and articles of association;
 - c. a notification of the company's registered address;
 - d. such other a certificate of issued pursuant to section 19 of the Data Protection Act;
 - e. a statement as to compliance with the provisions of Part VII of the Consumer Protection Act;
 - f. the prescribed fee; and
 - g. such other documents as may be prescribed by the Bank.
 - (2A) Without prejudice to subsection (2) (e), an applicant shall provide the terms and conditions applicable to the digital credit and which must be accepted by the borrower before activation of a mobile loan account.
 - (2B) The Bank may suspend or revoke a licence by written notice to the holder of the licence, if-
 - a. the licensee does not meet the conditions prescribed by The Bank;
 - b. the licensee is in breach of subsection (2) or the conditions of the Data Protection Act or the Consumer Protection Act;
 - c. the licensee is found to have given false information during the application;
 - d. the licensee goes into liquidation or an order for winding up is issued;
 - e. the carries out activities outside the scope of the licensed activities; and
 - f. the licensee is in breach of any of the provisions of this Act and the regulations made thereto relating to digital lending.

Justification

The amendments are to provide for the application requirements and the process for applying for a licence.

- c) in the new proposed clause 43(C) by-
 - i. deleting subsection (1) and substituting therefor the following subsection-
(1) The Bank may grant or reject an application for a licence by written notice addressed to the applicant within sixty days from the date of receipt of an application.

Justification

The amendment is to provide for a period of sixty days within which the Bank may respond to the application

- ii. deleting the words “*Central Bank*” appearing in subsection (2) and substituting therefor the words “*the Bank*”;

Justification

The Amendment is to clean up the Bill for consistency of terms with the Act.

- iii. deleting the expression “*section 43C*” appearing in subsection (4) and substituting therefor the expression “*section 43B*”;

Justification

The amendment is a clean-up of cross referencing.

- iv. deleting subsection (5) and substituting therefor the following new subsection-
(5) The Bank shall cause to be published in the Gazette and The Bank’s Website-
 - a. before the thirtieth day of March in each year, the names and addresses of all licenced digital lenders under this section;
 - b. within thirty days of suspension or revocation of a license, the name and address of the digital lenders whose licences have been suspended or revoked.

Justification


The amendment is to provide for publication of the names of licenced digital lenders.

- d) by deleting the proposed section 43D and substituting therefor the following new section-
43D. The Bank shall determine and publish parameters for pricing digital credit.

Justification

The amendment is to provide a power for the Bank to determine and publish parameters for pricing of digital credit.

SIGNED..... DATE.....



5th August 2021

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ANNEXTURES

1. Adoption Schedule
2. Minutes of the 48th, 49th, 50th and 51st sittings
3. Newspaper Advertisement – Submission for Memoranda for Public Participation

REPUBLIC OF KENYA



**NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE**

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (N.A. BILL NO. 47 OF 2020)

DATE:

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. PROF. MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON TUESDAY, 13TH JULY 2021 AT 2:00 P.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

1. Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Clause by clause consideration of the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
4. Any Other Business
5. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/232

COMMUNICATION

FROM

THE

CHAIRPERSON

The meeting was called to order at 2.15 p.m. and a prayer was said. The Chairperson then welcomed the meeting to deliberate the day's agenda.

MIN.NO.NA/F&NP/2021/233:
Agenda deferred

CONFIRMATION OF MINUTES

MIN.NO.NA/F&NP/2021/234:

CLAUSE BY CLAUSE CONSIDERATION OF
THE CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 47 OF 2020) AND THE
CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 10 OF 2021)

The meeting deliberated and agreed as follows:

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Clause 2: Agreed to

Clause 3: Agreed to

Clause 4

- i. Amend by providing for the pricing of interest charged on loans
- ii. 33R (a): Insert a timeline of sixty (60) days
- iii. 33R (b) and (c): delete because they may lock out small businesses that want to venture into digital lending business.
- iv. Amend clause 4 by providing a framework for suspension and revocation of a license.
- v. Amend clause 4 by providing that there should be a register of digital lenders which shall be published on the CBK website and the Kenya Gazette.

Clause 5: Agreed to

Clause 6

- i. 3(b): Delete
- ii. Amend by inserting dispute resolution and appeal mechanisms
- iii. 3(e): Delete and insert the following new paragraph; "*credit information sharing with credit reference bureaus, banks, mortgage finance companies, microfinance banks and sacco's and in accordance with the credit information sharing framework prescribed in the Banking Act and Regulations made thereunder*".
- iv. Delete sub-section 2 and substitute therefor; "*Any person who, before the coming into force of this Act, was in the business of providing credit facilities or loan services through a digital channel and is not regulated under any other law, shall apply to the Bank for a license within six months of publication of regulations*".

Clause 7: Agreed to

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020)

Clause 2: Agreed to

Clause 3

- i. 43A: Agreed to
- ii. 43B(3): Delete
- iii. Amend by inserting the following paragraph; "*proof of a license from the ICT regulator, where necessary*".

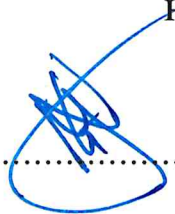
- iv. Amend by providing the manner of verification of the official notification of a company's registered place of business.
- v. Amend by providing criteria for grant or refusal of license.
- vi. 43C(3) and (4): Delete
- vii. Insert the following new paragraph 43C (6); *"The Bank shall within sixty days of receipt of all documentation prescribed in section 43B issue the license to the applicant and the Bank shall notify the applicant of its decision in writing"*.
- viii. 43D: Delete
- ix. 43E: Agreed to
- x. Insert the following new paragraph 43F; *"The present lenders who are considered to be digital money lenders under this Act may conduct their current activities until obtaining a license within six months"*.

MIN.NO.NA/F&NP/2021/235: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 4.04 p.m. The next meeting will be held on Wednesday, 14th July 2021 at 9.00 a.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....DATE.....



5th August 2021

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON TUESDAY, 13TH JULY 2021 AT 9:30 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. David M. Mboni, MP | | |
| 10. Hon. Francis K. Kimani, MP | | |
| 11. Hon. Joseph M. Oyula, MP | | |
| 12. Hon. Joshua C. Kandie, MP | | |
| 13. Hon. Stanley M. Muthama, MP | | |
| 14. Hon. Edith Nyenze, MP | | |
| 15. Hon. James Gichuhi Mwangi, MP | | |
| 16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 17. Hon. Peter Lochakapong, MP | | |
| 18. Hon. Qalicha Gufu Wario, MP | | |

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Chelang'a Maiyo | - | Research Officer II |
| 5. Mr. Yaqub Ahmed | - | Media Relations Officer III |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Ms. Christine Maeri | - | Audio Officer |

CENTRAL BANK OF KENYA

- | | | |
|------------------------|---|----------|
| 1. Dr. Patrick Njoroge | - | Governor |
| 2. Mr. Kennedy Abuga | | |
| 3. Mr. Matu Mugo | | |
| 4. Mr. Wallace Kantai | | |
| 5. Mr. Gerald Nyaoma | | |
| 6. Mr. Dickson Ndegwa | | |

OTHER STAKEHOLDERS

- | | | |
|-------------------------|---|--------------------------------------|
| 1. Ms. Rosemary Koech | - | Safaricom PLC |
| 2. Ms. Acha Ouma | - | Oxygene Media |
| 3. Mr. Frankline Sunday | - | Standard Media Group |
| 4. Ms. Brenda Kombo | - | KTN |
| 5. Mr. Kevin Mutiso | - | Digital Lenders Association of Kenya |
| 6. Mr. Vincent Odhiambo | - | Metropol TV |

- 7. Mr. Stanley Kiprop - Kass Media
- 8. Mr. Linus Roph - Kass Media

AGENDA

- 1. Prayers
- 2. Communication from the Chairperson
- 3. **Meeting with Central Bank of Kenya to consider the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
- 4. **Clause by Clause Consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020) and the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)**
- 5. Any Other Business
- 6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/227 COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.45 a.m. and a prayer was said. The Chairperson then called for introduction of those present before inviting the Governor, CBK to make their submissions.

MIN.NO.NA/F&NP/2021/228: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/229: MEETING WITH CENTRAL BANK OF KENYA TO CONSIDER THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020) AND THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Dr. Njoroge submitted as follows on the two Bills:

- 1. Digital lending has grown exponentially in Kenya over the last few years due to high mobile phone penetration, adoption of mobile-phone based financial services and ease of use and convenience.
- 2. Regulated digital lending has 3.9 million accounts with a loan value of KSh. 50.6 billion which is 1.6% of banking sector loan book as at the end of April 2021.
- 3. FinAccess Survey 2019 showed that usage of unregulated digital credit has grown from 0.6% (200,000) of Kenya’s adult population in 2016 to 8.3% (2 million people) in 2019. There is growing uptake of unregulated digital credit but the number and size of the unregulated digital credit providers is uncertain.
- 4. The following issues have arisen from unregulated digital lending:
 - i. High indebtedness of borrowers;
 - ii. Lack of consumer protection safeguards due to lack of transparency in pricing, aggressive debt collection and personal data abuse;
 - iii. Financial integrity concerns like Anti-Money Laundering/Combating Financing of Terrorism;
 - iv. Misuse of Credit Reference Bureau (CRB) reporting for blackmailing borrowers; and
 - v. Uneven playing field-regulatory arbitrage.
- 5. Actions taken by CBK against unregulated digital lending:

- i. Warnings to the public through speeches, press conferences, public notices, dedicated page on CBK website on fraud safety and warned banks against dealing with fraudulent and unlicensed financial schemes;
 - ii. Carrying out of surveys like the National FinAccess Household Surveys conducted by CBK, KNBS and FSD done in 2016 and 2019 and the CBK Innovation Survey done in 2020;
 - iii. Withdrawal of approval as third party sources of information to CRBs
 - iv. Regulation: CBK hosted Global Alliance for Financial Inclusion Forum on Regulation of Digital Credit and drafted Digital Credit Policy and Regulations; and
 - v. Engagement: Afro-Asia Fintech Festival 2019 and 2020, related Africa Hackathons (Fintech) Competitions in 2019 and 2020 and subsequent engagements with Fintechs.
6. Central Bank of Kenya (Amendment) Bill, 2020:
 - i. The scope is limited to mobile phones, excludes other digital channels;
 - ii. Too broad and applies to all entities including licensed institutions like banks, microfinance banks and sacco; and
 - iii. Recommended that it is shelved and Central Bank of Kenya (Amendment) Bill, 2021 progressed.
 7. Central Bank of Kenya (Amendment) Bill, 2021:
 - i. Seeks to empower CBK to regulate and supervise the conduct of digital lenders; and
 - ii. Seeks to address the issue of unregulated digital lending activities.

MEMBERS' DELIBERATIONS

1. Regarding the setting of the minimum liquidity rate and capital requirements for digital lenders, the meeting was informed that regulation on minimum liquidity and capital will be right sized for digital lenders.
2. Regarding the capping of interest rates for digital lenders, CBK will come up with regulations that will ensure that consumers are protected.
3. With regards to delays in issuance of licenses to digital lenders, the Governor stated that CBK does not sit on licensing requests. Requests take long to be approved because applicants fail to submit all the required information.
4. Regarding the renewal of licenses annually, the meeting was informed that licenses will be paid for annually but digital lenders will not be required to reapply for the licenses.
5. Regarding concerns that regulation of digital lenders will stifle innovation, the Governor informed the meeting that innovators should not be allowed to run amok and that the innovations should be consistent with the principles that are already set out. CBK does not intend to overregulate the industry. All they want is to protect consumers.
6. Regarding the over indebtedness of borrowers, the Governor noted that it is a very important issue that needs to be looked into. Information should be provided to the citizenry on their financial options.
7. Regarding listing of customers on the CRBs, CBK noted that that digital lenders should continue using CRBs in a balanced way. The data should be well protected.
8. On whether these laws will stop pyramid schemes, the Governor stated that the law will not stop pyramid schemes. CBK will however ensure that people are given the right information on investment.
9. Regarding collaboration with the Office of the Data Commissioner and Communications Authority, the Governor stated that this is very welcome as it will enhance consumer protection.

10. On the provision of dispute resolution in the legislation, the meeting was informed that this is not necessary because disputes rarely arise. The law should be clear to prevent disputes.
11. Regarding the extension of the period of compliance with the law, the Governor stated that 6 months after enactment of the law is sufficient. CBK will start working with digital lenders immediately so that the licensing is timely.
12. The Committee requested CBK to submit documentation on legal frameworks on digital lending for countries that they had benchmarked with.

Details of the amendments proposed by CBK on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

MIN.NO.NA/F&NP/2021/230:

CLAUSE BY CLAUSE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2020) AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2020)

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 49 of 2020)

The meeting deliberated and resolved that the Bill be deleted in its entirety because the leap from five hundred million shillings to twenty billion shillings is too high.

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 34 of 2020)

Clause 2(a): Delete because it is not clear what services are being brokered.

Clause 2(b) (6)(a): amend by deleting the words “*defined period*” and replacing with the words “*period as defined in the contract document*”

Clause 2(b) (6)(b): amend by deleting the word “*persons*” and replacing with the word “*Kenyans*”.

Clause 3: Delete

MIN.NO.NA/F&NP/2021/231:

ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.02 p.m. The next meeting will be held at 2.00 p.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED..... DATE.....

5th August 2021

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON MONDAY, 12TH JULY 2021 AT 2:30 P.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. (Dr.) Christine Ombaka, MP
8. Hon. Andrew A. Okuome, MP
9. Hon. David M. Mboni, MP
10. Hon. Francis K. Kimani, MP
11. Hon. Joseph M. Oyula, MP
12. Hon. Joshua C. Kandie, MP
13. Hon. Stanley M. Muthama, MP
14. Hon. Edith Nyenze, MP
15. Hon. James Gichuhi Mwangi, MP
16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
17. Hon. Peter Lochakapong, MP
18. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Chelang'a Maiyo - Research Officer II
5. Mr. Yaqub Ahmed - Media Relations Officer III
6. Mr. John Njoro - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer

CM ADVOCATES LLP

1. Mr. Morris Muriu
2. Ms. Diana Gichuru

LAWYERS HUB

1. Ms. Jennifer Solovea
2. Ms. Selina Onyando

ECM CONSULTING

1. CPA Enoch Monari
2. Mr. Samba Omwoyo

DIGITAL LENDERS ASSOCIATION OF KENYA/PWC

1. Mr. Christopher Ndegwa (PWC)
2. Mr. Lampart Kerio

SAFARICOM PLC
Ms. Rosemary Koech

OXYGENE MEDIA
Ms. Acha Ouma

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Stakeholder engagement on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
4. Any Other Business
5. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/223 COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.33 p.m. and a prayer was said. The Chairperson then called for introduction of those present before inviting stakeholders to make their submissions.

MIN.NO.NA/F&NP/2021/224: CONFIRMATION OF MINUTES Agenda deferred

MIN.NO.NA/F&NP/2021/225: STAKEHOLDER ENGAGEMENT ON THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020) AND THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Stakeholders made their submissions to the two Bills as follows:

1. CM Advocates LLP

In their submission, they noted that it is important for the government to regulate digital lenders but at the same time, innovation should not be stifled. The government should protect consumers but not overregulate the industry.

MEMBERS' DELIBERATIONS

- i. On why they thought that some of the provisions in the Bills were ambiguous, they stated that a timeframe within which CBK responds to a digital lender after application for a license should be provided. Additionally, provision should be made to ensure fairness in licensing by CBK.
- ii. On how consumers can be protected, they stated that digital lenders should be required to have a clear marketing strategy.
- iii. On their ideal timeline within which digital lenders should comply with the law after enactment, they proposed that they should be given twelve months.

2. Lawyers Hub

In their submission, they noted that there was a proposal providing that CBK should have the power to set the minimum liquidity for digital lenders. They proposed that this provision should be deleted because digital lenders do not engage in maturity

transformation. They were also opposed to the setting of timelines within which digital lenders should be licensed after enactment of the law.

MEMBERS' DELIBERATIONS

- i. On the timeline for compliance of the law, they stated that it should be revised from 6 months to 9 months.
- ii. On what can be done to ensure continuity of business for digital lenders as they await licensing, they proposed that provision should be given for the restricted license which will enable them to continue doing business.
- iii. The Committee requested them to provide specific amendments to the Bills for the Committee's consideration.

3. ECM Consulting/Nyanchoga and Associates

In their submission, they proposed amendments to the two Bills. They however noted that it would have been better to introduce a new law as opposed to amending the Central Bank of Kenya Act.

MEMBERS' DELIBERATIONS

On why they were proposing introduction of a new law instead of amending the CBK Act, they stated that this will ensure that the digital lending space is broadly covered in law.

Details of the amendments proposed by stakeholders on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

MIN.NO.NA/F&NP/2021/226: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 5.17 p.m. The next meeting will be held on Tuesday, 13th July 2021 at 9.00 a.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED..........DATE.....*5th August 2021*.....

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN TALEK CONFERENCE ROOM AT EMARA OLE-SERENI HOTEL ON MONDAY, 12TH JULY 2021 AT 9:00 A.M.

PRESENT

1. Hon. Gladys Wangari, CBS, MP - Chairperson
2. Hon. Isaac W. Ndirangu, MP - Vice Chairperson
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. (Dr.) Christine Ombaka, MP
8. Hon. Andrew A. Okuome, MP
9. Hon. David M. Mboni, MP
10. Hon. Francis K. Kimani, MP
11. Hon. Joseph M. Oyula, MP
12. Hon. Joshua C. Kandie, MP
13. Hon. Stanley M. Muthama, MP
14. Hon. Edith Nyenze, MP
15. Hon. James Gichuhi Mwangi, MP
16. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
17. Hon. Peter Lochakapong, MP
18. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Chelang'a Maiyo - Research Officer II
5. Mr. Yaqub Ahmed - Media Relations Officer III
6. Mr. John Njoro - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer

OFFICE OF THE DATA PROTECTION COMMISSION

1. Mrs. Immaculate Kassait
2. Mr. Augustus Munywoki
3. Ms. Anne Njenga
4. Ms. Rose Marero
5. Mr. Christopher Wambua

COMMUNICATIONS AUTHORITY OF KENYA

1. Ms. Mercy Wanjau
2. Mr. Lukas Musembi
3. Mr. Matano Ndaro
4. Ms. Priscah Mutogua
5. Mr. Edward Rinkanya

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

1. CPA Edwin Makori
2. Mr. Elias Wakhisi
3. Mr. Hillary Onami
4. Mr. Evance Juma
5. Ms. Nancy Moraa

DIGITAL LENDERS ASSOCIATION OF KENYA/PWC

1. Mr. Kevin Mutiso
2. Mr. Hezron Gikanga
3. Mr. Ivan Mbowa
4. Ms. Njeri Wagacha
5. Mr. Christopher Ndegwa (PWC)

THE KUEQ LIMITED

Mr. Aristarichus Kuria Weru

SAFARICOM PLC

Ms. Rosemary Koech

OXYGENE MEDIA

Ms. Acha Ouma

AGENDA

1. Prayers
2. Communication from the Chairperson
3. **Stakeholder engagement on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021)**
4. Any Other Business
5. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/218

COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.20 a.m. and a prayer was said. The programme for the retreat was then adopted having been proposed by Hon. James Mwangi, MP and seconded by Hon. Joseph Oyula, MP. The Chairperson then invited the Legal Counsel to brief the Committee on the two Bills.

MIN.NO.NA/F&NP/2021/219:

CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/220:

BRIEFING ON THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2020) AND THE CENTRAL BANK OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2021)

Ms. Jennifer Ndeto briefed the Committee on the CBK (Amendment) Bill, 2020 and the CBK (Amendment) Bill, 2021. The meeting noted that:

1. Both Bills provide for regulation of digital lenders however, the CBK (Amendment) Bill, 2021 provides for regulation of digital lenders who are not regulated by any other

institution while the CBK (Amendment) Bill, 2020 provides for regulation of all digital lenders;

2. The CBK (Amendment) Bill, 2020 focuses on licensing while the CBK (Amendment) Bill, 2021 focuses on regulation; and
3. The Committee will make a decision on how the two Bills will be considered during clause by clause consideration of the Bills and after listening to stakeholders.

MIN.NO.NA/F&NP/2021/221:

**STAKEHOLDER ENGAGEMENT ON THE
CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 47 OF 2020) AND THE
CENTRAL BANK OF KENYA
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 10 OF 2021)**

The stakeholders were invited into the meeting. The Chairperson called for introduction of those present before inviting stakeholders to make submissions on the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 10 of 2021).

Stakeholders made their submissions to the two Bills as follows:

1. Office of the Data Protection Commissioner

The Data Commissioner submitted that it is important to provide for data protection in the legislation as this is very important to consumers.

MEMBERS' DELIBERATIONS

On how the office can ensure that data is protected and there is ease of doing business, the Ms. Kassait informed the meeting that the New Clause 43B(2) that they were proposing to be inserted in the Bill will take care of data protection issues. The digital money lenders will be required to declare that they will protect their clients' data during registration. Before being registered as digital money lenders, companies will be required to provide certificates of registration as data processors from ODPC.

2. Communications Authority of Kenya

The acting Director General, Ms. Mercy Wanjau submitted proposed amendments to the two Bills including an amendment to provide for the licensing of digital lenders by the ICT regulator.

MEMBERS' DELIBERATIONS

- i. On why CA was opposed to having a timeline within which digital lenders should comply with the law after enactment, Ms. Wanjau explained to the meeting that this was because of the experience gained from migration to digital broadcasting. She stated that a mechanism that is flexible should be provided e.g. a clause be inserted to provide that the Cabinet Secretary can open up the period should it be necessary. This will ensure that there is no need to amend the law soon after enactment.
- ii. On CA's role in regulation of digital lenders, the meeting was informed that CBK is the primary regulator of digital lenders. CA provides a framework for digital lending. CA and CBK have an MOU on the regulation of digital lenders. Additionally, CA has Consumer Protection Regulations and Quality of Service Regulations.
- iii. The Committee requested CA to avail the MOU, the Consumer Protection Regulations and the Quality of Service Regulations to the Committee.

3. Institute of Certified Public Accountants of Kenya

In their submission, ICPAK noted that there is need to cap the interest rate charged by digital lenders to their consumers. The CEO, CPA Makori submitted that some digital lenders were charging interest rates as high as 30% per month to their consumers which is exploitative.

MEMBERS' DELIBERATIONS

- i. On the rate at which interest charged on loans offered by digital lenders should be capped, CPA Makori undertook to submit their proposal to the Committee.
- ii. On how a safe environment can be provided in the digital lending space, CPA Makori informed the meeting that technology is evolving from time to time and it is therefore important to involve all players when coming up with regulation for the industry.

4. Digital Lenders Association of Kenya/PricewaterhouseCoopers Limited

DLAK submitted that CBK should only register digital lenders and not license them. DLAK should serve as a delegated self-regulator for digital lenders. Additionally, there should be no timelines within which digital lenders should be licensed after enactment of the law.

MEMBERS' DELIBERATIONS

- i. On the high interest rates charged on loans by digital lenders, the meeting was informed that the loan period for loans given by digital lenders is one month. That therefore means that the rates apply once on the loan and a late fee charged for those who fail to pay the loan in time. The rate only applies to a respective month and not each month of the year. They stated that the highest interest rate charged by their members is 15%.
- ii. Regarding the capping of interest rate for digital lenders, the meeting was informed that that companies may not be able to break even if this is done.
- iii. Regarding the introduction of multiple languages on data sharing information, they stated that it is a good suggestion.
- iv. On the introduction of the Financial Ombudsman, they submitted that this is important as it will reduce any backlog of cases when disputes arise. It will provide dedicated specialists who understand the workings of the industry for speedy resolution of disputes.
- v. On the importance of CRB listings to the digital lenders, the meeting was informed that there is no collateral in the digital lending space and the listing on CRBs is a sort of guarantee for the lenders.
- vi. The Committee requested DLAK to avail data on their members including the interest rates and other charges paid on loans.

5. The Kueq Limited

They proposed that a new law; "*Digital Financial Services & Products Act*" should be introduced instead of amending the Central Bank of Kenya Act.

MEMBERS' DELIBERATION

Regarding the capping of interest rates for digital service lenders, they were of the opinion that the interest rate should be capped at 18%.

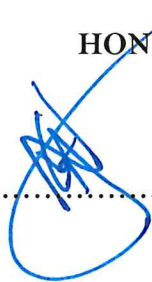
Details of the amendments proposed by stakeholders on the two Bills are contained in Part III of the Reports on the consideration of the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 47 of 2020) and the Central Bank of Kenya (Amendment) Bill (N.A. Bill No. 10 of 2021).

**MIN.NO.NA/F&NP/2021/222: ADJOURNMENT/DATE OF NEXT
MEETING**

There being no other business to deliberate on, the meeting was adjourned at 1.32 p.m. The next meeting will be held at 2.30 p.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....DATE.....



5th August 2021

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT (FIFTH SESSION)

INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA *(Article 118 (1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders*

- In the matters of consideration by the National Assembly:-
1. The Excise Duty (Amendment) Bill (National Assembly Bill No. 42 of 2020)
 2. The Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020)

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Excise Duty (Amendment) Bill (National Assembly Bill No. 42 of 2020) introduced by Hon. Jude Njomo, M.P seeks to amend the Excise Duty Act, 2015 to increase taxation for wooden furniture of a kind used in offices Code/Tariff No. 9403.30.00, imported wooden furniture of a kind used in the Kitchen H.S. Code/Tariff No. 9403.40.00 and wooden items to the excise duty hence increase cost of sale and may eventually protect goods produced locally of similar nature.

The Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 47 of 2020) introduced by Hon. Gideon Keter, M.P seeks to amend the Central Bank of Kenya Act, Cap. 491 to safeguard the interest of consumers of services of digital mobile money lenders by expanding the role of Central Bank of Kenya so as to license and regulate all persons, institutions or firms lending money to Kenyans and prohibit any person from an institution or firm from lending money to Kenyans, unless licensed by the Central Bank of Kenya.

The Bill further proposes to allow Central Bank of Kenya to prescribe capital requirements and publicise in every quarter, the list of lenders in different categories that include banks, lending institutions or firms.

The Bills have undergone First Reading pursuant to Standing Order 127(3) and stand committed to the **Departmental Committee on Finance and National Planning** for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bills. The Bills can be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills.

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, or emailed to clerk@parliament.go.ke, to be received on or before Tuesday, 9th March, 2021 at 5:00pm.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

WEDNESDAY, MARCH 3, 2021 The Standard

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (FIFTH SESSION)
INVITATION FOR PUBLIC PARTICIPATION &
SUBMISSION OF MEMORANDA**

(Article 118 (1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders)

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MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

Kenya Development Fund

