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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

THE CONSIDERATION OF THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

VOLUME II: ANNEXTURES

Published by:

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

OCTOBER 2026

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 13 OCT 2026 DAY: TUESDAY
TABLED BY: HON. FCPA KURIA KIMANI, CBS, MP (CHAIRPERSON)
CLERK-AT THE-TABLE: IM20 FU MWATHE, HSC

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION - 2026
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ADOPTION LIST

REPORT ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, ***Tuesday, 13th October 2026.***

S/NO.	NAME	SIGNATURE
1.	HON. FCPA. KURIA KIMANI, CBS, MP - **CHAIRPERSON**	
2.	HON. FCPA (AMB). BENJAMIN KIPKIRUI LANGAT, MP – **VICE CHAIRPERSON**	
3.	HON. KALUMA PETER OPONDO, CBS, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. FCPA JOSEPH MAERO OYULA, OGW, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
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11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

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When replying, please quote
REF: NA/DDC/F&NP/2026/103

8th July 2026

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Treasury Buildings, Harambee Avenue
NAIROBI

Dr. Kamau Thugge, CBS
Governor
Central Bank of Kenya
Haile Selassie Avenue
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FCPA Nancy Gathungu, CBS
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Hon. Patrick Kiburi Kilemi
Principal Secretary
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24th floor NSSF Building, Bishop Road
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Ms. Regina Akoth Ombam
Principal Secretary
State Department for Trade
18th Floor, Telposta Towers, Kenyatta Avenue
NAIROBI

Dr. Abraham Korir Sing'Oei, Ph.D, EBS
Principal Secretary
State department for Foreign Affairs
Old Treasury Building, Harambee Avenue
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Principal Secretary
State Department for East African Community
Co-op Bank House -16th Floor
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Mr. Patrick Wanjuki
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Public Procurement Regulatory
Authority 6th Floor KISM Towers
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Mr. Wyckliffe M. Shamiah
Chief Executive Officer
Capital Markets Authority
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Director General
Competition Authority
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Mr. Naphtaly Kipchirchir Rono, MBS
Director General
Financial Reporting Centre
13th Floor, Old Mutual Tower, Upper Hill Road
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Mr. Godfrey Kiptum, MBS
Chief Executive Officer
Insurance Regulatory Authority
Zep-Re Place, Longonot Road
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NAIROBI

Dear

RE: STAKEHOLDER ENGAGEMENT ON THE COMPETITION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026), THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026) AND THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

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The Microfinance Bill, 2026 seeks to provide a comprehensive legal and regulatory framework for microfinance banking business in Kenya and to repeal and replace the existing microfinance legislation in order to respond to developments and changes in the microfinance sector.

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Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: **H.E. Dr. Hon Musalia Mudavadi, EGH**
Prime Cabinet Secretary and CS for Foreign and Diaspora Affairs
Kenya Railways Headquarters
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Cabinet Secretary
Ministry of National Treasury and Economic Planning
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Cabinet Secretary
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Attorney General of the Republic of Kenya
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Cabinet Secretary,
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8th July, 2026

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Secretary General
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Central Organisation for Trade Unions (Kenya)
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Ms. Jacqueline Mugo, EBS
Executive Director
Federation of Kenya Employers (FKE)
ACK Gardens, Bishop Road, Upper Hill
NAIROBI

Dear Mr Mutua

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Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

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8th July, 2026

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CPA Dr Grace Kamau
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Institute of Certified Public Accountants of Kenya
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Executive Chairman
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Chief Executive Officer
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President
Law Society of Kenya
Lavington, Opposite Valley Arcade
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Managing Partner
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FCPA Phillip Muema
Managing Partner
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Mr. Raimond Molenje
Chief Executive Officer
Kenya Bankers Association
13th Floor, International House,
Mama Ngina Street,
NAIROBI

Dear Mr Molenje

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Yours

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For: CLERK OF THE NATIONAL ASSEMBLY

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For: CLERK OF THE NATIONAL ASSEMBLY

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State Department for East African Community
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Chief Executive Officer
Insurance Regulatory Authority
Zep-Re Place, Longonot Road
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NAIROBI

Dear Mr. Rono

RE: STAKEHOLDER ENGAGEMENT ON THE COMPETITION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026), THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026) AND THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

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Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

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8th July, 2026

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Mr. Francis Atwoli
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Ms. Jacqueline Mugo, EBS
Executive Director
Federation of Kenya Employers (FKE)
ACK Gardens, Bishop Road, Upper Hill
NAIROBI

Dear Mr. Mutiga

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Ms. Caroline Kabui Karanja
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1st Floor, Methodist Ministries Centre, Oloitoktok
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NAIROBI

Dear Ms Muvangi

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President
Kenya National Chamber of Commerce
Telkom Plaza, Ralph Bunche
NAIROBI

Dear Mr Mokaya

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NAIROBI

Dear Mr Shah

RE:STAKEHOLDER ENGAGEMENT ON THE COMPETITION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026), THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026) AND THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to ***study and review all legislation referred to it;***

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Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY
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Nairobi, Kenya
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When replying, please quote
REF: NA/DDC/F&NP/2026/104

8th July, 2026

Mr. Kwame Owino
Chief Executive Officer
Institute of Economic Affairs
1st Ngong Avenue, ACK Garden House
NAIROBI

Mr. James Muraguri
Chief Executive Officer
Institute of Public Finance
Rosami Court. Fourth Floor
NAIROBI

CPA Dr Grace Kamau
Chief Executive Officer
Institute of Certified Public Accountants of Kenya
CPA Center, Ruaraka, Nairobi, Kenya.
NAIROBI

Charles Kanjama, SC
President
Law Society of Kenya
Lavington, Opposite Valley Arcade
NAIROBI

Ms. Edna Gitachu
Partner
PricewaterhouseCoopers
PWC Tower, Waiyaki way/Chiromo Road
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Mr. Daniel Ngumy
Managing Partner
Anjarwalla & Khanna
ALN House, Eldama Ravine Close,
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Mr. Kamal Shah
Executive Chairman
Grant Thorton Associates
Avocado Towers, Muthithi Road
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FCPA Phillip Muema
Managing Partner
Andersen Tax LLP
7th Floor Rhapta Heights, Rhapta Road
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Mr. Michael Murungi
Government Affairs & Public Policy Lead,
Eastern Africa
Google
The Promenade, 2nd Flr,
110 General Mathenge Drive
Westlands
NAIROBI

Mr. Raimond Molenje
Chief Executive Officer
Kenya Bankers Association
13th Floor, International House,
Mama Ngina Street,
NAIROBI

Ms. Caroline Kabui Karanja
Chief Executive Officer
1st Floor, Methodist Ministries Centre, Oloitoktok
Road Off Argwings Kodhek - Lavington
NAIROBI

Dear Mr Shah

RE:STAKEHOLDER ENGAGEMENT ON THE COMPETITION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026), THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026) AND THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

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For: CLERK OF THE NATIONAL ASSEMBLY

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7th Floor Rhapta Heights, Rhapta Road
NAIROBI

Mr. Raimond Molenje
Chief Executive Officer
Kenya Bankers Association
13th Floor, International House,
Mama Ngina Street,
NAIROBI

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Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

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When replying, please quote
REF: NA/DDC/F&NP/2026/103

8th July 2026

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Treasury Buildings, Harambee Avenue
NAIROBI

Dr. Kamau Thugge, CBS
Governor
Central Bank of Kenya
Haile Selassie Avenue
NAIROBI

Hon. Shadrack John Mose, CBS
Solicitor General
Office of the Attorney-General and
Department of Justice, Sheria House
Harambee Avenue
NAIROBI

FCPA Nancy Gathungu, CBS
Auditor-General
3rd Floor, Anniversary Towers
University Way
NAIROBI

Hon. Patrick Kiburi Kilemi
Principal Secretary
State Department for Cooperatives
24th floor NSSF Building, Bishop Road
NAIROBI

Ms. Regina Akoth Ombam
Principal Secretary
State Department for Trade
18th Floor, Telposta Towers, Kenyatta Avenue
NAIROBI

Dr. Abraham Korir Sing'Oei, Ph.D, EBS
Principal Secretary
State department for Foreign Affairs
Old Treasury Building, Harambee Avenue
NAIROBI

Amb. Dr. Caroline W. Karugu
Principal Secretary
State Department for East African Community
Co-op Bank House -16th Floor
Haile Selassie Avenue
NAIROBI

Mr. Patrick Wanjuki
Director General
Public Procurement Regulatory
Authority 6th Floor KISM Towers
Ngong Road
NAIROBI

Mr. Wyckliffe M. Shamiah
Chief Executive Officer
Capital Markets Authority
Embankment Plaza, 3rd Floor
NAIROBI

Mr. David Kibet Kemei
Director General
Competition Authority
CBK Pension Towers, 15th floor
NAIROBI

Mr. Naphtaly Kipchirchir Rono, MBS
Director General
Financial Reporting Centre
13th Floor, Old Mutual Tower, Upper Hill Road
NAIROBI

Mr. Godfrey Kiptum, MBS
Chief Executive Officer
Insurance Regulatory Authority
Zep-Re Place, Longonot Road
Upper Hill
NAIROBI

Dear Dr Kiptoo

RE: STAKEHOLDER ENGAGEMENT ON THE COMPETITION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026), THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026) AND THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

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Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: **H.E. Dr. Hon Musalia Mudavadi, EGH**
Prime Cabinet Secretary and CS for Foreign and Diaspora Affairs
Kenya Railways Headquarters
Off Haile Selassie Avenue
NAIROBI

Hon. FCPA John Mbadi Ng'ongo, EGH
Cabinet Secretary
Ministry of National Treasury and Economic Planning
Treasury Buildings
NAIROBI

Hon. Wycliffe Oparanya, EGH
Cabinet Secretary
Ministry of Co-operatives and Micro, Small and Medium Enterprises
NSSF Building, Bishop Road
NAIROBI

Hon. Lee Kinyanjui, EGH
Cabinet Secretary
Ministry for Investments, Trade, and Industry
18th Floor, Telposta Towers, Kenyatta Avenue,
NAIROBI

Hon, Dorcas Oduor, OGW, EBS, SC
Attorney General of the Republic of Kenya
Office of the Attorney General and Department of Justice
State Law Office
Sheria House, Harambee Avenue
NAIROBI

Hon. Beatrice Askul Moe
Cabinet Secretary,
Ministry of East African Community
Co-op Bank House -16th Floor, Haile Selassie Avenue
NAIROBI

H.E. Mwangi Wa Iria
The Chairperson
Public Procurement Regulatory Authority
6th Floor KISM Towers, Ngong Road
NAIROBI

Mr. Ugas S. Mohamed
Chairman
Capital Markets Authority
Embankment Plaza, Longonot Rd
NAIROBI

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When replying, please quote
REF: NA/DDC/F&NP/2026/110

28th July, 2026

Mr. Benard P. Mono
Acting Director General
East African Development Bank
The Oval Building, 7th Floor
Ring Road, Parklands
NAIROBI

Dear Mr. Mono

RE: INVITATION TO A MEETING ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026 AND THE STATUS OF KENYA'S SHAREHOLDING IN THE BANK.

The Departmental Committee on Finance and National Planning is established pursuant to Standing Order 216 of the National Assembly Standing Orders and is mandated, inter alia, to consider matters relating to public finance, monetary policies, public debt, financial institutions and national planning.

The Committee is currently considering the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026). The principal object of the Bill is to amend the East African Development Bank Act to strengthen parliamentary oversight over payments and other financial commitments made by the Government of Kenya to the East African Development Bank.

The Committee notes the judgment of the High Court in ***Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)***, which raised significant constitutional questions concerning the commitment of public funds to the Bank and the Bank's immunity from legal proceedings and the protection of its property and assets.

In this regard, the Committee invites you to appear before it on **Thursday, 6th August 2026** at **10.00 a.m.** at a venue to be communicated in due course within Parliament Buildings to present the Bank's views on the Bill and apprise the Committee on the following matters;-

a) the current shareholding structure of the East African Development Bank, including the respective shareholding of Kenya, Uganda, Tanzania and Rwanda, and that of the Class B institutional shareholders;

b) Kenya's current subscribed capital, paid up capital, callable capital and percentage ownership in the Bank;

c) the total amount contributed by the Government of Kenya to the Bank since its establishment, including any outstanding capital subscriptions, arrears or other financial obligations;

d) the voting rights attached to Kenya's shareholding and Kenya's representation on the Governing Council, Board of Directors and other decision making organs of the Bank;

e) the dividends, returns, development financing and other benefits that Kenya has received from its investment in the Bank;

f) the value and sectoral distribution of the Bank's current loan and investment portfolio in Kenya;

g) the legal and financial implications of the judgment in Nusu v National Assembly & 6 others on the Bank's operations, lending activities, assets and contractual arrangements in Kenya;

h) the status of any appeal, stay application or other proceedings arising from the judgment, including the specific orders that are currently in force;

i) the Bank's position on the proposed amendments relating to parliamentary approval, reporting to the National Assembly, creditor status, legal immunity and protection of the Bank's property and assets; and

j) any additional legislative amendments that the Bank considers necessary to align the East African Development Bank Act and Charter with the Constitution of Kenya, while preserving Kenya's obligations under the Treaty establishing the Bank.

You are requested to bring fifteen (15) hard copies of your submissions to the meeting. Soft copies may be sent to cna@parliament.go.ke and copied to the email addresses of the liaison officers indicated below prior to the meeting.

The Committee's liaison officers are **Ms. Tracy Chebet, Principal Clerk Assistant**, who may be contacted on **Tel. No. 0726-416-794** or email address: tracy.koskei@parliament.go.ke and **Mr. Benson Kamande, Clerk Assistant III** of **Tel. No. 0789-459-387** or email address: benson.kamande@parliament.go.ke.

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

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REF: NA/DDC/F&NP/2026/111

28th July, 2026

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Treasury Buildings
NAIROBI

Dear

RE: INVITATION TO APPEAR BEFORE THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING REGARDING THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026

The Departmental Committee on Finance and National Planning is established pursuant to Standing Order 216 of the National Assembly Standing Orders and is mandated, inter alia, to consider matters relating to public finance, monetary policy, financial institutions, public debt, national planning and development.

The Committee is currently considering the **East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)**, which seeks to amend the East African Development Bank Act to require the approval of the National Assembly prior to the Cabinet Secretary authorizing a charge or issuance of public funds from the Consolidated Fund to the East African Development Bank.

In the course of considering the Bill, the Committee has taken cognisance of the judgment of the High Court in ***Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)***, delivered on 20th March 2025.

The Committee notes that the Bill was published approximately one year after delivery of the judgment. The Committee has also noted that neither the existing Act nor the Bill expressly provide for the licensing, regulation or supervision of the East African Development Bank by the Central Bank of Kenya, notwithstanding that the Bank undertakes lending, investment and other financial activities in Kenya.

The Committee is further concerned about the exemptions granted to the Bank under the Banking Act, the privileges and immunities accorded to the Bank and its officers, and the absence of a clear framework for regulatory accountability, reporting and access to legal redress.

In this regard, the Committee invites you to appear before it on **Thursday, 6th August 2026** at **12.00 p.m.** at a venue to be communicated in due course within Parliament Buildings to apprise the Committee on the following matters; -

1. reasons for the delay in publishing the East African Development Bank (Amendment) Bill, 2026 *(approximately one year after the High Court delivered its judgment in **Nusu v National Assembly & 6 others**)* and the actions taken by the National Treasury during the intervening period;

2. whether the Bill fully addresses all the constitutional, legal, regulatory and accountability issues raised by the High Court and which matters, if any, remain to be addressed;

3. the institution to which the East African Development Bank reports regarding its operations in Kenya and the authority that is responsible for regulating, monitoring and supervising the Bank;

4. reasons why neither the existing Act nor the Bill provide for the supervision of the Bank by the Central Bank of Kenya, notwithstanding that the Bank undertakes lending, investment and other financial activities in Kenya;

5. whether the Bank is required to obtain a license or authorisation from the Central Bank of Kenya or any other Kenyan authority and the legal basis upon which it operates without a license under the Banking Act;

6. justification for exempting the Bank from the provisions of the Banking Act and whether the exemption, together with the absence of an alternative supervisory framework, creates a regulatory gap;

7. privileges and immunities enjoyed by the Bank, its directors, officers and employees, and what legal remedies are available to employees, borrowers, contractors and other persons who may have claims against the Bank;

8. Kenya's current shareholding in the Bank; how much capital has Kenya subscribed and paid since its establishment; the amount the country has received in dividends; and

9. The current directors and persons representing Kenya in the governance organs of the Bank.

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Cabinet Secretary
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THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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28th July, 2026

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Treasury Buildings
NAIROBI

Dear Dr. Kiptoo

RE: INVITATION TO APPEAR BEFORE THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING REGARDING THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026

The Departmental Committee on Finance and National Planning is established pursuant to Standing Order 216 of the National Assembly Standing Orders and is mandated, inter alia, to consider matters relating to public finance, monetary policy, financial institutions, public debt, national planning and development.

The Committee is currently considering the **East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)**, which seeks to amend the East African Development Bank Act to require the approval of the National Assembly prior to the Cabinet Secretary authorizing a charge or issuance of public funds from the Consolidated Fund to the East African Development Bank.

In the course of considering the Bill, the Committee has taken cognisance of the judgment of the High Court in ***Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)***, delivered on 20th March 2025.

The Committee notes that the Bill was published approximately one year after delivery of the judgment. The Committee has also noted that neither the existing Act nor the Bill expressly provide for the licensing, regulation or supervision of the East African Development Bank by the Central Bank of Kenya, notwithstanding that the Bank undertakes lending, investment and other financial activities in Kenya.

The Committee is further concerned about the exemptions granted to the Bank under the Banking Act, the privileges and immunities accorded to the Bank and its officers, and the absence of a clear framework for regulatory accountability, reporting and access to legal redress.

In this regard, the Committee invites you to appear before it on **Thursday, 6th August 2026** at **12.00 p.m.** at a venue to be communicated in due course within Parliament Buildings to apprise the Committee on the following matters; -

1. reasons for the delay in publishing the East African Development Bank (Amendment) Bill, 2026 *(approximately one year after the High Court delivered its judgment in **Nusu v National Assembly & 6 others**)* and the actions taken by the National Treasury during the intervening period;

2. whether the Bill fully addresses all the constitutional, legal, regulatory and accountability issues raised by the High Court and which matters, if any, remain to be addressed;

3. the institution to which the East African Development Bank reports regarding its operations in Kenya and the authority that is responsible for regulating, monitoring and supervising the Bank;

4. reasons why neither the existing Act nor the Bill provide for the supervision of the Bank by the Central Bank of Kenya, notwithstanding that the Bank undertakes lending, investment and other financial activities in Kenya;

5. whether the Bank is required to obtain a license or authorisation from the Central Bank of Kenya or any other Kenyan authority and the legal basis upon which it operates without a license under the Banking Act;

6. justification for exempting the Bank from the provisions of the Banking Act and whether the exemption, together with the absence of an alternative supervisory framework, creates a regulatory gap;

7. privileges and immunities enjoyed by the Bank, its directors, officers and employees, and what legal remedies are available to employees, borrowers, contractors and other persons who may have claims against the Bank;

8. Kenya's current shareholding in the Bank; how much capital has Kenya subscribed and paid since its establishment; the amount the country has received in dividends; and

9. The current directors and persons representing Kenya in the governance organs of the Bank.

The Committee's liaison officers are **Ms. Tracy Chebet, Principal Clerk Assistant**, who may be contacted on **Tel. No. 0726416794** or email address: tracy.koskei@parliament.go.ke and ddc@parliament.go.ke **and Ms. Winfred Kambua Kilonzo, Clerk Assistant III,** of **Tel. No. 0720 571 777** or email address: winfred.kilonzo@parliament.go.ke.

Yours

JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to **Hon. FCPA John Mbadi Ng'ongo, EGH**
Cabinet Secretary
Ministry of National Treasury and Economic Planning
Treasury Buildings
NAIROBI

THIRTEENTH PARLIAMENT- FIFTH SESSION (2026)

THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—

(1) THE CROP LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 30 OF 2026);
(2) THE REGIONAL DEVELOPMENT AUTHORITIES LAWS (REPEAL) BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2026);
(3) THE FILMS AND STAGE PLAYS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 32 OF 2026);
(4) THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026);
(5) THE WATER (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2026);
(6) THE IRRIGATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2026);
(7) THE INVESTMENT AND EXPORT PROMOTION AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 37 OF 2026);
(8) THE KENYA INTELLECTUAL PROPERTY BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2026);
(9) THE TOURISM (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2026); AND
(10) THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2025)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Crop Laws (Amendment) Bill (National Assembly Bill No. 30 of 2026); the Regional Development Authorities Laws (Repeal) Bill (National Assembly Bill No. 31 of 2026); the Films and Stage Plays (Amendment) Bill (National Assembly Bill No. 32 of 2026); the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026); the Water (Amendment) Bill (National Assembly Bill No. 34 of 2026); the Irrigation (Amendment) Bill (National Assembly Bill No. 35 of 2026); the Investment and Export Promotion Authority Bill (National Assembly Bill No. 37 of 2026); the Kenya Intellectual Property Bill (National Assembly Bill No. 40 of 2026); the Tourism (Amendment) Bill (National Assembly Bill No. 41 of 2026); and the Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 9 of 2025) were read a First Time and referred to the relevant Departmental Committees for consideration and reporting back to the House:

IT IS NOTIFIED that—

(1) **The Crop Laws (Amendment) Bill (National Assembly Bill No. 30 of 2026)** is a Bill sponsored by **the Leader of the Majority Party, the Hon. Kimani Ichung'wah, EGH, MP,** that seeks to amend the Kenya Agricultural and Livestock Research Act, Cap. 319, the Tea Act, Cap. 343, and the Sugar Act, 2024 to remove lending functions from sector specific agricultural bodies and to direct the relevant funds to the Kenya Agribusiness Development Corporation Limited (KADCO) for the purpose of agricultural lending.

(2) **The Regional Development Authorities Laws (Repeal) Bill (National Assembly Bill No. 31 of 2026)** is a Bill sponsored by **the Leader of the Majority Party,** that seeks to repeal the Regional Development Authority Laws and to provide for the transfer of the rights, obligations, assets and liabilities of the regional development authorities to the State Department for the National Treasury as designated by the Cabinet Secretary for finance. The Bill further seeks to dissolve the regional development authorities and align the National and County Government functions in tandem with the Fourth Schedule to the Constitution to reduce pressure for budgetary allocations, enhance efficiency, accountability and service delivery.

(3) **The Films and Stage Plays (Amendment) Bill (National Assembly Bill No. 32 of 2026)** is a Bill sponsored by the **Leader of the Majority Party,** that seeks to amend the Films and Stage Plays Act, Cap. 222 to provide for the dissolution of the Kenya Film Classification Board and revert the functions performed by the Board to the relevant Ministry. This seeks to align with the recommendations of the Cabinet on the restructuring of State Corporations with a view to addressing operational and financial inefficiencies, enhancing service delivery and reducing reliance on the Exchequer.

(4) **The East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)** is a Bill sponsored by the **Leader of the Majority Party,** that seeks to amend the East African Development Bank Act, Cap. 493A, to require the approval of the National Assembly prior to the Cabinet Secretary authorising a charge or issuance of public funds from the Consolidated Fund to the East African Development Bank. The purpose of the amendment is to enhance legislative oversight and accountability in line with the principles of public finance as set out in the Constitution.

(5) **The Water (Amendment) Bill (National Assembly Bill No. 34 of 2026)** is a Bill sponsored by the **Leader of the Majority Party,** that seeks to enhance the efficiency of water storage and harvesting in Kenya. In particular, the Bill seeks to repeal specified provisions in the Water Act, Cap. 372 to effect the merger of the National Water Harvesting and Storage Authority as established in in the Water Act, Cap. 372 and the National Irrigation Authority established under the Irrigation Act, Cap. 347. The amendment seeks to streamline and consolidate the functions of the two entities which shall be implemented by the National Irrigation and Water Harvesting Authority.

(6) **The Irrigation (Amendment) Bill (National Assembly Bill No. 35 of 2026)** is a Bill sponsored by the **Leader of the Majority Party,** that seeks to enhance the efficiency of water storage and harvesting in Kenya by merging the National Irrigation Authority established under the Irrigation Act, Cap. 347 and National Water Harvesting and Storage Authority established under the Water Act, Cap. 372. The Bill seeks to streamline the functions of the two entities by merging their mandates which shall be implemented by the National Irrigation and Water Harvesting Authority.

(7) **The Investment and Export Promotion Authority Bill (National Assembly Bill No. 37 of 2026)** is a Bill sponsored by the **Leader of the Majority Party,** that seeks to provide for the merger of Kenya Investment Authority and Kenya Export Promotion and Branding Agency to establish the Kenya Investment and Export Promotion Authority which is intended to modernise and strengthen Kenya's international trade and investment framework.

(8) **The Kenya Intellectual Property Bill (National Assembly Bill No. 40 of 2026)** is a Bill sponsored by the **Leader of the Majority Party,** that seeks to establish the Kenya Intellectual Property Authority as a single institution to administer all intellectual property law in Kenya. The Bill seeks to merge three existing State Corporations namely, the Kenya Industrial Property Institute, the Kenya Copyright Board, and the Anti-Counterfeit Authority into the Kenya Intellectual Property Authority. The Bill also seeks to consolidates into a single Act the substantive law on patents, utility models, industrial designs, copyright and related rights, and anti-counterfeiting, which is currently spread across three separate Acts of Parliament.

(9) **The Tourism (Amendment) Bill (National Assembly Bill No. 41 of 2026)** is a Bill sponsored by the **Leade of the Majority Party,** that seeks to amend the Tourism Act, Cap. 381 to streamline tourism managemen and enhance efficiency, accountability, and service delivery in the tourism sector. The Bill seeks to repeal th provisions relating to the Tourism Research Institute and transfers certain functions of the Institute to th Kenya Tourism Board. Further, the Bill also proposes to repeal the provisions relating to the establishment an functions of the Tourism Finance Corporation and its fund. The Bill also includes transitional provisions fo transferring the rights, obligations, assets, and liabilities of the Tourism Research Institute and the Tourisn Finance Corporation to the Kenya Tourism Board.

(10) **The Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 9 of 2025** is a Bill sponsored by **Member for Aldai Constituency, the Hon. Marianne Kitany, MP,** that seeks to amen the Kenya Information and Communications Act, Cap. 411A to provide for internet billing by internet servic providers for metered billing of internet use based on actual consumption to mitigate exploitation and t secure the economic interest of internet users. In particular, the Bill, among others provisions, seeks to requir Internet Service Providers (ISPs) to —

(a) develop and deploy quality metered billing systems capable of monitoring customer usage;
(b) convert to readable details, all internet consumption information;
(c) create invoices based on consumption; and
(d) align their metrics with the value customers obtain from various internet services.

NOW THEREFORE, in compliance with the provisions of Article 118(1)(b) of the Constitution and National Assembl Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submi memoranda on the Bills to the respective Departmental Committees as listed below—

	BILL	DEPARTMENTAL COMMITTEE
1.	Crop Laws (Amendment) Bill (National Assembly Bill No. 30 of 2026)	Agriculture and Livestock
2.	Regional Development Authorities Laws (Repeal) Bill (National Assembly Bill No. 31 of 2026)	Regional Development
3.	Film and Stage Plays (Amendment) Bill (National Assembly Bill No. 32 of 2026)	Sports and Culture
4.	East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)	Finance and National Planning
5.	Water (Amendment) Bill (National Assembly Bill No. 34 of 2026)	Blue Economy, Water and Irrigation
6.	Irrigation (Amendment) Bill (National Assembly Bill No. 35 of 2026)	Blue Economy, Water and Irrigation
7.	Investment and Export Promotion Authority Bill (National Assembly Bill No. 37 of 2026)	Trade, Industry and Cooperatives
8.	Kenya Intellectual Property Bill (National Assembly Bill No. 40 of 2026)	Trade, Industry and Cooperatives
9.	Tourism (Amendment) Bill (National Assembly Bill No. 41 of 2026)	Tourism and Wildlife
10.	Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 9 of 2025)	Communication, Information and Innovation

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building, and on **www.parliament go.ke/the-national-assembly/house-business/bills**.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand delivered to the **Office of the Clerk, Main Parliament Building, Nairobi;** or emailed to **cna@parliament.go.ke** to b received on or before **Tuesday, 21st July, 2026** at **5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
Tuesday, 7th July, 2026

EAST AFRICAN DEVELOPMENT BANK

REPORT ON THE OPERATIONS OF THE BANK AND COMMENTS ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

TABLED ON 25 AUGUST 2026

1. Introduction

This report is tabled to the Parliamentary Committee on Finance and National Planning of the Kenyan Parliament pursuant to an earlier request for the Bank Management to appear before it regarding the East African Development Bank (Amendment) Bill, 2026.

To provide context, the report provides broader historical and performance overview of the Bank before responding to specific issues raised in the invitation letter.

In addition, the Bank has attached its Treaty and Charter for reference by the members as well as its 2025 Annual Report which was approved by the Governing Council in May 2026.

2. Bank History, Governance and Performance

2.1 Establishment

East African Development Bank ("EADB" or "Bank") is a development finance institution established in 1967 under the Treaty for East African Co-operation (EAC) between its original member states of the Republic of Kenya, United Republic of Tanzania and Republic of Uganda. The Treaty further stipulated the original Bank Charter which formed Annex 6 of the original EAC Treaty.

Following the collapse of the Co-operation in 1977, the Bank weathered the uncertain times and was able to survive. The Bank was re-established in 1980 under its own Treaty and Charter approved by the original founding member states: the Treaty and Charter of East African Development Bank, 1980 with a broader, more robust mandate.

Following re-establishment of the East Africa Community in 1999, the Republic of Rwanda joined the Bank as Class A Shareholder in 2008. The Bank's membership consists of Class A shareholders, being the four member states that have an equal stake in the Bank, and Class B shareholders, these being non-state members with the African Development Bank holding the highest stake in this category.

The Treaty for the Establishment of the East African Community, 1999 acknowledges the Bank as an institution of the Community but given its nature, mandate and shareholding operates autonomously while collaborating with other institutions to promote regional integration.

Presently there are also ongoing discussions to have the rest of the East African Community member states join the Bank's shareholding. So far only the Republic of Burundi has applied to join the Bank's membership, but is yet to subscribe for shares despite having been given an offer following approval by the Bank's Governing Council in April 2015. Other countries have not yet applied but engagements are ongoing.

The Bank's Treaty and Charter is a fundamental document that sets the regulatory framework within which it operates; setting out the system by which the Bank is directed and controlled, regulating the Bank's internal and external dealings, prescribing its membership, rights of the members and capital stock structure, and the powers held by the various governance structures. The Bank's Charter is approved by each member state through the Governing Council, and whenever there is a change in the Charter, the EADB Act in the respective countries are amended.

Similar to other multilateral financial institutions, the Bank is self regulating through its Charter which, among other things, requires the Governing Council to appoint an external auditor from reputable audit firms (see articles 26(1)(d) ad article 35(1)). The Bank is currently being audited by KPMG and prior to that was audited by PWC.

EADB Act of Kenya

As mentioned earlier, the Bank Charter is enacted in each Member State. In the context of Kenya, this is the EADB Act of Kenya, Act No. 3 of 1984, as was subsequently amended. There are similar Acts of Parliament in each of the member states, which statutes reflect the position in the Charter, enabling the member states to meet their obligations under the Treaty and Charter.

Following an amendment to Bank Charter in 2013, there was amendment of EADB Act in Kenya. However, following a court case by certain persons, the amendments to the EADB Act as enacted in 2013 were nullified by a Judgment delivered by the High Court of Kenya on 20 March 2025. The said judgment also nullified Section 2(1) and (2) of the EADB Act. This is what triggered the current amendments being discussed by the Parliament of Kenya.

In line with the Treaty and Charter, the Bank is headquartered in Kampala, Uganda with country offices in each of the Member States (Uganda, Kenya, Tanzania and Rwanda).

2.2 Shareholding, Governance and Mandate

The Share capital of the Bank is comprised of paid-up capital which is the amount paid to the Bank for shares allotted and callable capital. Article 4 of the EADB Charter provides guidance on callable shares and for Class A shareholders is calculated as 5 shares for every 1 paid up share i.e every 6 subscribed shares, 1 is paid up.

The current shareholders of the Bank are listed below with Class A shareholders holding 92% and Class B shareholders holding 8% out of which African Development Bank holds 7.6%.

Table 1: Shareholding

	Paid in Capital	%	Callable Capital	Total
Class A Shareholders	**USD**		**USD**	**USD**
United Republic of Tanzania	69.1605	23.300%	345.8025	414.9630
Republic of Uganda	69.1605	23.300%	345.8025	414.9630
Republic of Kenya	69.1605	23.300%	345.8025	414.9630
Republic of Rwanda	65.5830	22.095%	327.9150	393.4980
Total Class A	**273.0645**	**91.995%**	**1,365.3225**	**1,638.3870**
Class B Shareholders				
African Development Bank	22.5720	7.604%	13.9995	36.5715
Yugoslavia Consortium	0.5130	0.173%	0.0000	0.5130
SBIC - Africa Holdings	0.4320	0.146%	0.0000	0.4320
NCBA Bank of Kenya Limited	0.0810	0.027%	0.0000	0.0810
Nordea Bank Sweden	0.0810	0.027%	0.0000	0.0810
Standard Chartered Bank Plc	0.0405	0.014%	0.0000	0.0405
Barclays Bank Plc London	0.0405	0.014%	0.0000	0.0405
Total Class B	**23.7600**	**8.005%**	**13.9995**	**37.7595**
Total Subscribed Capital	**296.8245**	**100.000%**	**1,379.3220**	**1,676.1465**

Apart from the capital invested by the Member States, the Bank does not receive annual subventions from the shareholders but rather operates commercially to generate enough revenue to cover operational costs and ensure returns to the shareholders.

Governance

The Bank charter guides on the governance structure of the Bank.

Governing Council

According to the Bank Charter, the Governing Council comprised of Ministers of Finance from the Member States is the highest governing body. The Governing Council meets at least once a year to receive reports and assess Bank performance. The role of the Governing Council is covered under article 26 of the Bank Charter.

Table 2: Members of the EADB Governing Council

	Name	Details
1	Mr. Yusuf Murangwa (Chairman)	Minister of Finance and Economic Planning, Republic of Rwanda
2	Hon. Ambassador. Khamis Mussa Omar	Minister of Finance and Planning, United Republic of Tanzania
3	Hon. CPA John Mbadi Ng'ongo EGH	Cabinet Secretary, The National Treasury and Economic Planning, Republic of Kenya
4	Hon. Henry Musasizi	Minister of Finance, Planning and Economic Development, Republic of Uganda

Board of Directors

The Board of Directors reports to the Governing Council and supervises Management of the Bank. Role of the Board is elaborated in Article 27 of the Bank Charter.

The Board of Directors is comprised of representatives of the Member States (usually Permanent Secretaries of the Ministry responsible for Finance), representatives of the private sector from Member States and a representative of the Class B shareholders, currently represented by the African Development Bank.

Table 3: Members of the EADB Board of Directors

	Name	Gender	Details
1	Dr. Ramathan Ggoobi (Chairman)	M	Permanent Secretary and Secretary to the Treasury, Ministry of Finance, Planning and Economic Development, Republic of Uganda
2	Dr. Chris Kiptoo	M	Principal Secretary, the National Treasury, Republic of Kenya
3	Mr. Reuben Karemera	M	Government Representative, Republic of Rwanda
4	Dr. Natu Mwamba	F	Permanent Secretary, Ministry of Finance and Planning, United Republic of Tanzania
5	Mr Francis N. Karuiru	M	Private Sector Representative, Republic of Kenya
6	Mrs Khadija I. Simba	F	Private Sector Representative, United Republic of Tanzania
7	Mr Faustin Mbundu	M	Private Sector Representative, Republic of Rwanda
8	Dr. James Tumusiime	M	Private Sector Representative, Republic of Uganda

	Name	Gender	Details
9	Mr. Patrick Kei-Boguinard	M	African Development Bank - Class B shareholders Representative
10	Mr. Benard P Mono	M	Ag. Director General, East African Development Bank

Management Team

Daily operations of the Bank are under the Director General appointed by the Member States. Article 30 of the Bank Charter provides guidance on the role of the Director General. Table 4 below list current members of the management team.

Table 4: Management Team

	Name	Position/Designation	Nationality
1	Bernard Mono	Acting Director General /Senior Director Finance & Treasury	Tanzanian
2	Andrew Asira	Senior Director Operations & Business Development	Kenyan
3	Nyamohanga Chacha	Manager Treasury	Kenyan
4	Peter Kyoma	Manager IT	Ugandan
5	Silas Omondi Ogada	Manager Risk & Compliance	Kenyan
6	Samuel Wasiche	Manager Internal Audit	Kenyan
7	Philip Sabwa	Manager Human Resources	Kenyan
8	Carol Luwaga	Acting Manager Litigations and Contracts	Ugandan

The Bank was led by a Kenyan national Ms Vivienne Yeda from 2008 to 2024 when she retired. Recruitment of the Director General is ongoing, and the Senior Director Finance and Treasury Mr. Benard Mono is acting in the capacity.

The Bank's mandate

The Bank is mandated to stimulate economic growth and social progress in the region by providing finance for enterprises and governments in member states, and consultancy services.

2.3 Bank's Strategic Plan

The Bank is implementing its 2024-2028 Strategic Plan with a tag line Let's Do It – which aim at increasing the relevance of the Bank to the Member States by increasing loan approvals and disbursements thereby increasing impact. The strategic plan is aligned with the national development plans of the Member States and the East Africa Community in general.

The following are the pillars of the Bank:

- Strategic Pillar 1: Improve development outcomes through growth of the balance sheet supported by adequate funding
- Strategic Pillar 2: Create an environment that fosters high performance through enhanced productivity of a highly skilled and experienced staff complement

- Strategic Pillar 3: Automation of systems and processes
- Strategic Pillar 4: Increase awareness of EADB services through branding, communication, and outreach
- Strategic Pillar 5: Proactive Enterprise Risk Management

In implementing the strategic plan, the Bank is focusing on the following sectors:

a. Infrastructure

EADB will play an important role in supporting infrastructure development as a catalyst for sustainable growth. Infrastructure will remain a key priority to promote resilient and sustainable social and economic development initiatives in the member states.

b. Manufacturing

The Bank will support manufacturing of goods, especially the use of inputs of domestic raw materials.

c. Social services

The Bank will seek interventions in social sectors working with respective national development authorities and private sector to finance economically viable projects that seek to improve and expand delivery of education, healthcare, affordable housing, tourism, and other social services especially those geared towards youth and women.

d. Agriculture, Agro Processing, Food Security and Rural Development

The region remains predominantly agriculture-based, and this explains why the sector remains a priority area for the Bank in this period. Apart from providing employment to majority of the population in the region, the agriculture sector is central in ensuring food security. The sector also remains rural based, and its improvement is expected to help rural development. The Bank will continue to work with national development agencies and private sector to promote agriculture, food security and rural development.

e. **Regional Integration**

As a trusted development partner, EADB will seek to integrate its expertise across sectors and themes to address more complex development challenges. EADB will add value to the member states by combining finance, knowledge, and partnerships that will support viable projects that foster regional integration.

2.4 Performance of the Bank

Performance of the Bank has been consistently excellent over the period with profitability growing where profit of USD 17 million was generated in 2025 recording growth of 54%. Loan disbursement has equally been growing and 2025 witnessed 140% growth in loan disbursements and 52% growth in loan exposure.

The Bank is one of the highest rated institutions in the region with investment grade rating from both the S&P Global rating at A with positive outlook and Baa3 by Moody's with positive outlook.

The table below summarizes the Bank performance over time.

Table 5: Summarized performance indicators

	2022	2023	2024	2025
Profit	6.44	13.05	11.20	16.93
Total Assets	416.00	454.38	505.99	520.22
Shareholders Equity	303.23	322.30	348.51	365.44
Loan Approvals	8.42	40.03	111.05	152.90
Loan Disbursements	6.00	26.44	38.23	91.59
Loan exposure (net)	126.63	114.51	128.52	194.83
NPL ratio	3.85%	0.88%	0.89%	0.51%
Cost to Income Ratio	40.67%	30.50%	34.07%	28.03%
Return on Equity	2.17%	4.05%	3.21%	4.62%

3. Detailed Presentation to the Committee

As part of the invitation to EADB through invitation letter dated 28 July 2026, the Committee indicated need for further insights into the Bank's governance and operations. This section of the report addresses the request of the Committee although some have already been explained in the introductory part of this paper.

3.1 The Bank Position on the EADB Act

The Bank supports the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026) dated 5 June 2026 (as published in the Kenya Gazette Supplement No. 137) in its current form. The Bill reinstates the provisions of the EADB Act that were nullified by the judgment of the High Court in the Constitutional Petition E 009 of 2023 between Paul Lihanda Nusu vs the National Assembly and others.

As to whether there are any additional legislative amendments that the Bank considers necessary to align the East African Development Bank Act and Charter with the Constitution of Kenya, the Bank consider the above cited Bill complete alignment with the Charter. The Bank respectively note that any proposed amendments outside the current Bill, may result in a mismatch with the provisions of the Charter.

We reiterate that it is important to note that the EADB Act in each member state reflects provisions of the Bank Charter already agreed between them through the Governing Council apart from some operational aspects unique in each country regarding how they approve and disburse their expenditure.

It is on that basis the Bank humbly request the Committee not to entertain some of the comments received during public participation which could have been informed by limited information to those who made comments, as adopting some of them will create disparity from the approved Bank Charter which Kenya already subscribes to.

3.2 Other Matters

(a) EADB Capital Structure

The Bank's capital structure is comprised of paid up capital and callable capital.

The formula for paid up and callable shares is clearly provided for in the Bank Charter (see article 4)

Table 6: Capital Structure as at 30th June 2026

	PAID UP CAPITAL			CALLABLE CAPITAL	
Shareholders Category	**Number**	**Amount - USD**		**Number**	**Amount - USD**
Class A Shareholders					
United Republic of Tanzania	5,123	69,160,500	23.30%	25,615	345,802,500
Republic of Uganda	5,123	69,160,500	23.30%	25,615	345,802,500
Republic of Kenya	5,123	69,160,500	23.30%	25,615	345,802,500
Republic of Rwanda	4,858	65,583,000	22.09%	24,290	327,915,000
Total Class A	**20,227**	**273,064,500**	**92.00%**	**101,135**	**1,365,322,500**
Class B Shareholders					
African Development Bank	1,672	22,572,000	7.60%	1,037	13,999,500
Yugoslavia Consortium	38	513,000	0.17%		
SBIC - Africa Holdings	32	432,000	0.15%		
NCBA Bank of Kenya Limited	6	81,000	0.03%		
Nordea Bank Sweden	6	81,000	0.03%		
Standard Chartered Bank Plc	3	40,500	0.01%		
Barclays Bank Plc London	3	40,500	0.01%		
Total Class B	**1,760**	**23,760,000**	**8.00%**	**1,037**	**13,999,500**
Total Class A & B	**21,987**	**296,824,500**	**100%**	**102,172**	**1,379,322,000**

(b) EADB Subscribed Capital

As shown above, Kenya's holding in the Bank stands at 23.3%, similar to Uganda and Tanzania but slightly above Rwanda, due to additional shares allotted in 2024 from profits generated. Table 7 below shows the details.

Table 7: Subscribed Capital as at 30th June 2026

Shareholders Category	Paid in Capital - USD	Callable Capital - USD	Total - USD
Class A Shareholders			
United Republic of Tanzania	69,160,500	345,802,500	414,963,000
Republic of Uganda	69,160,500	345,802,500	414,963,000
Republic of Kenya	69,160,500	345,802,500	414,963,000
Republic of Rwanda	65,583,000	327,915,000	393,498,000
Total Class A	**273,064,500**	**1,365,322,500**	**1,638,387,000**
Class B Shareholders			
African Development Bank	22,572,000	13,999,500	36,571,500
Yugoslavia Consortium	513,000	-	513,000
SBIC - Africa Holdings	432,000	-	432,000
NCBA Bank of Kenya Limited	81,000	-	81,000
Nordea Bank Sweden	81,000	-	81,000
Standard Chartered Bank Plc	40,500	-	40,500
Barclays Bank Plc London	40,500	-	40,500
Total Class B	**23,760,000**	**13,999,500**	**37,759,500**
Total Subscribed Capital	**296,824,500**	**1,379,322,000**	**1,676,146,500**

(c)Total amount contributed since establishment

The total amount contributed by the Republic of Kenya since establishment of the Bank is USD 69,160,500 as paid-up share capital. However, total committed by the

Government of Kenya is USD 414,963,000 comprising of USD 69,160,500 Paid-in Capital and USD 345,802,500 Callable Capital. The Government of Kenya is up to date on capital subscription to the Bank. There are no outstanding financial obligations. It may be important to note that the last payment from the Republic of Kenya to the Bank was done on 8th June 2015 where USD 777,546.22 was received to complete the agreed capital increase plan.

(d) EADB Governance Structure

1. The Governing Council comprising the Ministers of Finance of the Bank's Member States, is the highest decision-making body of the Bank. This is the shareholder body of the Bank. Kenya is well represented by Hon CPA John Mbadi Ng'ongo EGH, the Cabinet Secretary – The National Treasury Economic & Economic Planning.

2. The Board of Directors is comprised of representatives of government from Member States, private sector representatives from Member States, (each member state has one representative in each category), and the Director General. The non-sovereign shareholders (Class B shareholders) are represented on the Board by a representative from the African Development Bank.

   The Board of Directors is responsible for the strategic direction and control of the Bank and provides oversight to ensure the Bank achieves its objectives and fulfils its mission in the member states. Kenya is well represented by Dr. Chris Kiptoo, Principal Secretary, The National Treasury (sometimes represented by his alternate director Mr Jonah Orumoi), and Mr. Francis Karuiru – Private Sector Representative.

3. The Management team is led by the Director General who is the legal representative of the Bank and this position is currently filled in acting capacity by Mr. Benard Mono as recruitment of substantive DG continues. Prior to this, the position was held by Ms. Vivienne Yeda, a Kenyan national for 16 years from 2008 to 2024. The Director General oversees the operationalization of the Bank's strategy and conducts the day-to-day business of the Bank under the strategic direction of the Board of Directors.

(e) Voting Rights

Kenya is entitled to vote on all decisions through the Governing Council and Board of Director representatives based on the shareholding as provided for in the Bank Charter (see Article 29).

(f) Dividends, Returns, development financing and other benefits that Kenya has received

The Bank operates profitably for sustainability although profit maximization is not its objective. Given the need to increase the Bank capital and limited resources available to the Member States, the shareholders made a deliberate decision to plough back profits made each year to boost the Bank's capital.

There is therefore no cash dividend paid to Member States, but additional shares are allotted from profits re-invested. During the last two years (2024 and 2025) the Republic of Kenya has received 1,323 additional shares valued at USD 17.86 million[1] from re-investment of profit.

In addition to the monetary benefits received through additional shares, Kenya has significantly benefited from investments in the Bank including the following:

- Employment opportunities where its nationals have worked in the Bank – both at the Head office in Kampala and all country offices (Kenya, Uganda and Tanzania). It is also important to also note that the Bank was led by a Kenyan national, Ms. Vivienne Yeda who was the Director General during the period between 2008 and 2024. Equally important to note is that five out of eight Management team members in the Bank currently are Kenyan nationals.
- Loans to different sectors of the economy. The Bank has disbursed significant resources in Kenya since its inception and contributed to the economy. Some of projects that benefited from Bank's financing during formative years and have since grown and are no longer part of the Bank portfolio includes BIDCO, Mumias Sugar, Panafrican Paper Mills, ICDC, Kenya Power, Kenya Pipeline, Hyundai Kenya Motors Limited and many others. The Bank also provided equity for automation of the Nairobi Stock Exchange in addition to being a pioneer issuer of corporate bonds in 1996. The current loan exposure in Kenya is shown below.

Table 8: Portfolio in Kenya

Sector	Projects	Gross Exposure (USD)
Agriculture	2	3,086,082
Education	2	420,293
Energy	1	1,479,052
Financial Institution	6	5,310,834
Health	1	12,215,309
Housing	4	60,963,283
ICT	1	2,293,373

[1] Each share capital has nominal value of USD 13,500 although the actual value is higher

Sector	Projects	Gross Exposure (USD)
Printing	1	1,199,146
Total	**18**	**86,967,372**

Through lending, the Bank has generated development impact in the Kenya economy such as creation of decent jobs directly and/or indirectly, generation of renewable energy and provision of high-quality higher education and strong support to SMEs in agricultural value chains.

- Kenya has also benefitted from the Bank's Corporate Social Investment programs including Science Technology Mathematics and Science (STEMS) program where, out of 16 teachers sponsored by the Bank, 10 (62%) came from Kenya.
- Most consultancy services to the Bank including technology, Board Secretarial and legal services are offered by companies from Kenya and therefore creating employment and other benefits.

(g) The legal and financial implications if the judgment in Nusu vs. National Assembly & 6 Others on the Bank's operations and lending activities

The ruling creates a mismatch in the obligations of the Government of Kenya as committed to under the Charter and what is domesticated in the East African Development Bank Act. The ruling did not affect the Bank operations in the interim since only the amendments were halted but the original Act remained effective.

However, it is important to address the ruling because if left unattended, it is possible that there will be abuse by some activists and borrowers.

(h) Status of Appeal

The above judgment was stayed by High Court and Court of Appeal of Kenya. The Bank was not involved in the earlier case despite the fact that the decision affects its operations and therefore it applied to join the case and appealed the ruling. The court process is still ongoing.

4. Conclusion and Submission

Establishment of the East African Development Bank by the founding fathers was one of strategic decisions and its survival of the 1977 collapse of the original community reinforces its importance to the Member States.

Kenya has played a key role in the performance of the Bank and has immensely contributed through additional capital subscription and governance. In turn, the Bank operations in the country have equally created significant development impact including creation of employment and growth of both the public and private sector in the country.

The Bank continues to count on the support of the Republic of Kenya and therefore the work done by the Parliamentary Committee is highly appreciates and will contribute towards strengthening the Bank.

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NAIROBI, KENYA

DDC 28/7/26

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS
STATE DEPARTMENT FOR FOREIGN AFFAIRS

Ref. No. MFDA/SDFA/TCA/80 VOL.40(57)

Date 20TH JULY ,2026

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Office of the Clerk
The National Assembly
NAIROBI

Tracy chebet
for the DC on finance
28/7/26

Dear Sir,

MEMORANDA ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT BILL) 2026

Reference is made to the letter Ref:NA/DDC/F&NP/2026/103 dated 8th July 2026 requesting for submission of memoranda of various of Various bills including the East African Development Bank(Amendment) Bill 2026.

The East African Development Bank (EADB) is a treaty-based regional development finance institution established to promote economic development and regional integration within the East African Community (EAC). Kenya is a founding Member State of the Bank and has, over the years, benefited from its financing of strategic development projects in infrastructure, energy, agriculture, manufacturing, financial services and other productive sectors. The Bank therefore remains an important regional institution for the realization of Kenya's economic transformation agenda and the broader objectives of East African integration.

As observed, the principal objective of the Bill is to amend the East African Development Bank Act to strengthen Kenya's domestic legal framework governing its obligations under the EADB Charter. The proposed amendments seek to enhance parliamentary oversight over payments made from the Consolidated Fund, strengthen financial accountability through annual reporting to Parliament, update provisions relating to the Bank's creditor status and align domestic legislation with amendments to the EADB Charter relating to the Bank's privileges and immunities.

The State Department for Foreign Affairs supports the policy objectives underpinning the Bill. The proposed amendments promote constitutional principles of transparency, accountability, prudent public financial management and parliamentary oversight while

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facilitating Kenya's continued compliance with its international obligations under the EADB Charter.

The State Department herewith provides its observations and recommendations as per the attached Memorandum aimed at strengthening reporting obligations, preserving constitutional safeguards relating to public borrowing and ensuring an appropriate balance between the Bank's operational independence and constitutional accountability.

The recommendations contained in the Memorandum are intended to assist the Committee in enacting legislation that reinforces public financial accountability while preserving Kenya's obligations as a founding Member State of the East African Development Bank and supporting the country's regional integration and foreign policy objectives.

Yours sincerely,

DR. A KORIR SINGOEI
PRINCIPAL SECRETARY

Encl.

REPUBLIC OF KENYA

MINISTRY OF EAST AFRICAN COMMUNITY (EAC) AND REGIONAL DEVELOPMENT

STATE DEPARTMENT FOR EAST AFRICAN COMMUNITY

OFFICE OF THE PRINCIPAL SECRETARY

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REF : ADM.1/CONF/13/3 VOL.II **22nd July, 2026**

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Mr. Samuel Njoroge
Clerk National Assembly
P. O. Box 41842-00200
NAIROBI

Dear Mr. Njoroge

Tracy Chelat.
to note the comment and advise the Comm
28/7/26

RE: EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026

Background:

The State Department for EAC Affairs received an invitation from the State Department for Parliamentary Affairs vide their letter Ref No OPCS/SDPA/LPAD/27/1 Vol.IV(43) to appear before the National Assembly Committee on Finance & National Planning on the agenda of Stakeholder Engagement on various Bills, among them the ***East African Development Bank (Amendment) Bill (National Assembly No.33 of 2026).***

Introduction:

1. East African Development Bank (EADB) is a semi-autonomous institution of the EAC. The Bank offers structured financial products and services to organizations in the health, education, hospitality and tourism, infrastructure development, energy and utilities, and agriculture sectors.
2. EADB was established in 1967 under the Treaty of the then East African Cooperation
3. Initial member states were Kenya, Uganda and Tanzania, with Rwanda joining later
4. On 23rd July 1980, the Governments of the initial members (Kenya, Uganda and Tanzania) decided to confer legal force and existence of EADB

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independent of the then Treaty for East African Co-operation and to amend its Charter to make possible a wider membership of the Bank, emphasize its consulting and promotion functions. This was undertaken by the members concluding a 'Treaty Amending and Re-enacting the Charter of the East African Development Bank'

5. EADB Structure: Governing Council and Board of Directors – EADB does not operate within the established EAC hierarchical structure.

6. Governing Council – is the supreme governing body of EADB and composed of the Ministers of Finance of the Member States

7. Board of Directors – All powers of the Bank are vested in the Board of Directors. Comprises Finance Permanent Secretaries of the member states, a representative from Africa Development Bank (AfDB), and four representatives from the member states' private sectors

Observations:

The proposed amendments relate to the East African Development Bank Act CAP. 493A, which Act provides for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank.

The objectives of the proposed amendments are to effect the following:

1.Strengthen oversight –The proposed amendments seek to enhance legislative oversight and accountability in line with the national principles of public finance as set out under the Constitution.
The National Treasury`s Cabinet Secretary will be required to obtain advance approvals from both Parliament and the Controller of Budget prior to releasing any public funds from the Consolidated Fund to the East African Development Bank.

2. Enhance immunities for EADB – to accord the Bank a creditor status similar to the International Monetary Fund, the International Bank of Reconstruction and Development and the International Development Association. Further, to provide for immunity against legal action and to provide for immunity of the assets of the Bank against interference, search, requisition, confiscation, expropriation, nationalization or execution or any other form of taking or foreclosure by executive, legislative, judicial or administrative action.

Conclusion:

While the East African Development Bank (EADB) is an institution of the East African Community, the proposed amendments are purely national in character and therefore domestic in application.

They do not fall within the purview of this State Department, but rather lie squarely within the mandates of the National Treasury, the Office of the Attorney General, and the Ministry for Foreign and Diaspora Affairs.

Accordingly, ***this State Department has no substantive comments*** on the proposed Bill and may only offer ancillary observations, given that the subject matter pertains to an EAC institution.

Yours Sincerely,

DR. CAROLINE W. KARUGU, PhD
PRINCIPAL SECRETARY

cc.

Ms. Aurelia C. Rono, CBS
Principal Secretary for Parliamentary Affairs
Office of the Prime Cabinet Secretary
NAIROBI

REPUBLIC OF KENYA
MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
STATE DEPARTMENT FOR TRADE

MATRIX.
Competition (Amendment) Bill, 2026

Bill/Section (Clause)	Positive Impact	Negative Impact/ Concern	Proposed Amendment
Clause 2 Introduction of Digital Market Definitions ("Digital Activity", "Digital Market", "Strategic Market Position", etc.)	Modernizes Kenya's competition framework to regulate digital markets, promotes fair competition, protects consumers, and enhances confidence in the digital economy.	Some definitions are broad and may create uncertainty for businesses operating digital platforms or using digital channels, potentially discouraging innovation and investment.	Define objective thresholds for determining strategic market position, including market share, turnover, user base, and control of data, and exempt MSMEs where appropriate.
Clause 3 Strategic Market Position (New Section 4(4) and 4(5))	Establishes a legal framework for regulating dominant digital platforms, thereby promoting fair competition, innovation, and consumer welfare in digital markets.	The criteria for determining strategic market position are largely discretionary, which may create legal uncertainty and affect investor confidence.	Require the Competition Authority to apply objective assessment criteria, publish designation guidelines, undertake stakeholder consultations, and provide an appeal mechanism before designation.
Clause 4 Amendment relating to Abuse of Superior Bargaining Position	Protects MSMEs, suppliers, distributors, farmers and small traders from unfair commercial	The threshold for determining "superior bargaining position" is not sufficiently objective and may	Prescribe objective criteria for determining superior bargaining position, including market share,

	practices by dominant trading partners, thereby promoting equity in commercial transactions.	expose legitimate commercial negotiations to regulatory intervention	dependency, duration of commercial relationship, availability of alternative trading partners and economic dependence.
Clause 5 Factors for Determining Abuse of Superior Bargaining Position	Provides guidance to the Competition Authority when assessing unfair business conduct, thereby enhancing consistency in enforcement.	Some assessment factors are subjective and may result in inconsistent decisions and increased commercial disputes.	Require the Authority to publish enforcement guidelines and provide measurable indicators for assessing abuse to improve predictability and legal certainty.
Clause 9 Data Use and Interoperability Requirements	Encourages competition through interoperability, facilitates market entry and reduces barriers for new digital businesses.	Mandatory data-sharing and interoperability obligations may expose commercially sensitive information and increase cybersecurity risks.	Limit interoperability requirements to proportionate circumstances and require adequate safeguards for confidential business information, personal data and cybersecurity.
Clause 12 Commitments and Settlement Procedures	Promotes efficient resolution of competition matters without lengthy litigation and encourages voluntary compliance.	Lack of clear criteria for accepting commitments may result in inconsistent application.	Develop transparent regulations prescribing the circumstances under which commitments and settlement agreements may be accepted.
Clause 13 Appeals and Review Mechanisms	Strengthens procedural fairness and enhances confidence in the competition	Lengthy appeal processes may delay implementation of important competition remedies.	Introduce statutory timelines for determining appeals while safeguarding due process.

	enforcement framework.		

Microfinance Bill, 2026

Bill/Section (Clause)	Positive Impact	Negative Impact / Concern	Proposed Amendment
Clause 4 Prohibition from Carrying Out Microfinance Bank Business without a Licence	Protects consumers by ensuring that only licensed institutions undertake deposit-taking microfinance business, thereby enhancing confidence in the financial sector.	Strict licensing requirements may limit market entry and reduce competition, particularly for innovative MSME-focused financial service providers.	Provide a proportionate licensing framework that accommodates different categories of institutions while maintaining prudential safeguards.
Clause 5 Application for Licence	Establishes a transparent licensing process and promotes accountability in market entry.	Lengthy approval procedures may delay investment and discourage new entrants into the microfinance sector.	Prescribe statutory timelines for processing licence applications and provide an electronic application platform to improve efficiency.
Clause 6 Issuance of Licence	Enhances regulatory certainty by establishing the legal basis for licensing qualified institutions.	The Bill should provide greater transparency regarding licensing criteria to reduce uncertainty for investors.	Require publication of licensing criteria and reasons for approval or refusal to enhance transparency and investor confidence.
Clause 10 Revocation of Licence	Protects depositors and preserves confidence in the financial system where institutions fail to comply with legal requirements.	Immediate licence revocation may disrupt financial services to MSMEs and low-income customers.	Provide graduated enforcement measures, including corrective action plans and reasonable compliance periods before licence revocation, except where immediate action is necessary

			to protect depositors.

East African Development Bank (Amendment) Bill, 2026

Bill/Section (Clause)	Positive Impact	Negative Impact / Concern	Proposed Amendment
Clause 2 Amendment of Section 2 (Financial Provisions)	Strengthens parliamentary oversight over Kenya's financial commitments to the East African Development Bank by requiring National Assembly approval before the Cabinet Secretary raises loans or issues securities. Enhances transparency through mandatory annual reporting to the National Assembly and reinforces accountability in the use of public resources.	Requiring prior parliamentary approval for raising funds may delay Kenya's ability to meet its financial obligations to the Bank or respond promptly to regional financing requirements. The deemed approval period may also create uncertainty where urgent financing is required.	Retain parliamentary oversight but provide an expedited approval procedure for urgent financial obligations under the Treaty. Clarify timelines for consideration by the National Assembly and provide exceptions where delays may prejudice Kenya's treaty obligations or the Bank's operations.
Clause 3(a) Amendment to Article 24 (Creditor Status)	Aligns the Bank's creditor status with other major international financial institutions, thereby strengthening investor confidence, improving the Bank's creditworthiness and enhancing its capacity to mobilize development finance for regional	Granting preferential creditor status may affect the treatment of other creditors under domestic insolvency or debt recovery processes if not clearly harmonized with Kenyan law.	Clarify that the enhanced creditor status shall be implemented in accordance with Kenya's Constitution, applicable financial legislation and Kenya's international obligations to avoid legal uncertainty.

	trade and infrastructure.		
Clause 3(c) Amendment to Articles on Privileges and Immunities (including Articles 45–47 and related provisions)	Preserves the Bank's operational independence by protecting its assets, archives and official functions, consistent with international practice applicable to multilateral development banks.	Broad privileges and immunities should not undermine domestic regulatory oversight or accountability where the Bank undertakes activities within Kenya.	Clarify that privileges and immunities shall be exercised only to the extent necessary for the fulfilment of the Bank's official functions and shall not exempt the Bank from compliance with applicable Kenyan laws where immunity has been waived or is not required by the Charter.

CAPITAL MARKETS AUTHORITY

Promoting the Integrity and Growth of the Capital Markets

Capital Markets Authority Comments on the Microfinance Bill, 2026 and The East Africa Development Bank (Amendment) Bill 2026

1. **The Microfinance Bill, 2026**

	Provision	Explanation	Gap
1.	Section 12 (9)(b) -**Transfer of registered assets, rights and securities following an approved amalgamation or acquisition of a microfinance institution.**	The provision requires that where one microfinance institution is merged into or acquired by another, the Registrar of Companies, Registrar of Titles, deeds registries and other relevant registries would be required, upon presentation of the relevant documents, to update their records to reflect the transfer of share, stock, debenture or other marketable security.	The provision is silent on the role of other Competent Authorities. The provisions need to highlight the role of other competent authorities where the transaction may affect the mandate of those relevant Authorities.

2. **The East Africa Development Bank (Amendment) Bill 2026**

	Provision	Explanation	Gap	Recommendation

1.	**2.5 Amendment to Article 44, 45 — Immunity of Assets**	**The proposed new** Article 45(1) provides comprehensive immunity for the Bank's property and assets from interference, search, requisition, confiscation, expropriation, nationalization, execution, foreclosure, and any other form of taking by executive, legislative, judicial, or administrative action. Article 45(3) expands the definition of "property and assets of the Bank" to include deposits and funds entrusted to the Bank in the ordinary course of fulfilling its mandate.	**Expansion of Asset Definition - Capital Markets Implications.** The expansion of the definition of "property and assets of the Bank" under the proposed Article 45(3) to include deposits and funds entrusted to the Bank in the ordinary course of its mandate is of particular significance to the capital markets. Where the Bank holds or manages funds raised through capital markets instruments - for instance, proceeds of bond issuances or pooled investment funds. These funds would attract the same immunity from execution and judicial process. This creates a risk that investors who have entrusted funds to	The Bill to introduce an express provision clarifying that the immunity of assets under Article 45 shall not apply so as to defeat or prejudice the rights of investors in respect of capital markets instruments issued by or through the Bank, and that in such instances, the enforcement framework under the Capital Markets Act shall remain applicable. **New Sub-Article — Article 45(4)** *"Notwithstanding the provisions of paragraphs 1 and 3 of this Article, the immunity conferred upon the property and assets of the Bank shall not extend to, or be construed so as to defeat, limit, or prejudice:* *(a) the rights and remedies of investors* *(b) the enforcement of any judgment, award, or order of a competent court or tribunal obtained by an investor.*

			the Bank through capital markets channels may have no practical enforcement mechanism in the event of default or dispute.	
2.	**General Comment**	The Bill aligns with Kenya's capital markets legal framework and is consistent with good governance, fiscal accountability, and investor protection principles. In addition, the Bill is generally consistent with the objectives of the Capital Markets Act, particularly regarding strengthening transparency, improving public accountability in public financial commitments and promoting investor confidence through enhanced governance. However, the Bill does not address whether EADB should increasingly mobilise capital through regional capital markets. From a capital market development perspective, Kenya could encourage provisions supporting regional bond issuances which would include local currency bonds, sustainability-linked bonds, infrastructure bonds. These would deepen regional capital markets.		

The Chairperson, The National Assembly Departmental Committee on Finance and National Planning, Hon. FCPA Kimani Francis Kuria, MP, CBS

A. INTRODUCTION

Appreciation Note

1. I thank the Finance and National Planning Committee for according my Office this opportunity to present my submission and comments on the **Competition (Amendment) Bill (National Assembly Bill No. 4 of 2026), The East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026) and The Microfinance Bill (National Assembly Bill No. 9 of 2026)**. This is in furtherance of your role under Article 118 (1) (b) of the Constitution of Kenya and Standing Order 127 (3), that requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. My Office plays a complementary role of advisory in the legislative process concerning bills, primarily by ensuring that proposed legislation particularly regarding public finance management, adheres to constitutional principles of accountability and financial prudence.
2. I also appreciate Parliament for the support accorded to the Office of the Auditor-General, not only through consideration of our audit reports, but also advocating for strengthening the independence and adequate resourcing of the Office.

B. IMPORTANCE OF THE BILLS

I. Competition (Amendment) Bill (National Assembly Bill No. 4 of 2026

Honourable Chair

Honourable Committee Members

3. The Bill seeks to broaden the Mandate of the Competition Authority in addressing anti-competitive conduct in digital markets and unfair market conduct arising from abuse of superior bargaining position. This will go a long way in protecting the citizens of Kenya from exploitative practices.

4. By expanding the functions of the Authority to include fostering strategic partnerships with National, Regional and International bodies, the bill seeks to

ensure that the Authority can achieve seamless information sharing that is crucial in detection of anti-competitive practices in the various sectors of the economy and also adoption of international best practice in matters pertaining to competition.

5. Ultimately, if the Authority performs its role of detecting and eliminating restrictive trade practices, superior bargaining position and abuse of buyer power, the benefits will be to the Kenyan people and the Authority will all have contributed in making Kenya a prosperous Country.

II. The East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)

Honourable Chair

Honourable Committee Members

6. The core principles of public finance as enshrined in our Constitution require public participation and accountability. This bill seeks to strengthen legislative oversight and accountability in line with the Principles of Public Finance under the Constitution of Kenya by ensuring that any disbursements to the Bank are approved by the National Assembly and withdrawals approved by the Controller of Budget. It is therefore a positive step in enhancing our financial oversight and governance aspects.

III. The Microfinance Bill (National Assembly Bill No. 9 of 2026).

Honourable Chair

Honourable Committee Members

7. The banking sector has seen an increase in players offering credit facilities to our public. These include the banks, microfinance, digital lenders and even infomal money lenders. This has resulted in challenges in regulation and at times untold suffering to the public.
8. The bill seeks to provide a safe and sound environment for the Microfinance banks including licensing provisions, operations and minimum capital requirements and ratios, risk management measures, restrictions on insider loans, corporate

governance structures, accounts and audit and the role of Central Bank of Kenya (CBK) in supervision of these institutions.

9. The proposal to increase the core capital for the microfinance institutions to Kshs.250 million will ensure that only those institutions that can mobilize adequate capital operate. This will go a long way in safeguarding the interest of the public.
10. The persistent outcry on high interest on non-performing loans will be addressed by the strict enforcement of the duplum rule and the benefits will be immense to the borrowers. Additionally, real time monitoring the CBK on the activities of the microfinance institutions will protect depositors and provide early warning mechanisms.

C DISCUSSION ON THE BILLS

Honourable Chair

Honourable Committee Members

11. My Office has subjected the provisions of the Bills to scrutiny. I wish to bring the attention of the Committee to the following key provisions of the Bills for discussion:

CLAUSES OF THE BILL	OBSERVATIONS
Competition Amendment Bill 2026	
Clause 3 para 4-Defines a person who has strategic market position	The bill defines a person who has strategic market position as one who influences market prices, quality service, output or innovation to an appreciable extent. **Recommendation** There is a need to define what amounts an appreciable extent and how it is measured.
Clause 9-Introduces Part IIIA on unfair conduct	The proposed new section 40A (1) provides that a person shall not engage in any conduct that amounts to abuse of buyer power in a market in Kenya, or a substantial part of Kenya. The definition of substantial part of Kenya in the principal Act means, a part of Kenya which constitutes of a district, a town council, a municipal council or city council. **Recommendation**

CLAUSES OF THE BILL	OBSERVATIONS
	The definition of substantial part of Kenya should be amended in the bill to align with the administrative units as defined in the Constitution of Kenya, 2010.
Clause 10 –On insertion of a new paragraph i under Section 41 of the Principal Act	Section 41 outlines instances where mergers may occur; the proposed amendment seeks to include privatization of Government agencies and state corporation under the definition of mergers. **Recommendation** There is a need for clarity on how privatization of Government agencies would result in mergers.
The East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)	
Clause 2 –Financial Provisions	Clause 2(1) and (2) provides how payments may be made to the bank by Government from the Consolidated Fund. The clauses provide that the sums payable to the bank shall be as provided by the Appropriation Act and as approved by Controller of Budget. Clause 2(7) provides how funds received by Government from the bank should be accounted for. **Recommendation** • We propose deletion of clause 2(5) and 2(6) as amounts payable to the bank would have been approved as provided in clause 2(1). • We propose introduction of a new paragraph immediately after paragraph 7 to indicate that the Auditor-General shall audit and report on the funds paid to the Bank from the Consolidated Fund and Funds received from the Bank within six months after the end of each financial year. This will provide an assurance to the National Assembly on utilization of the funds paid to the Bank and received from the Bank.

CLAUSES OF THE BILL	OBSERVATIONS
Clause 3(a)-Amendment of Article 24	The proposed deleted paragraph in the Primary Act and the proposed substituting paragraph are the same. **Recommendation** We recommend deletion of clause 3(a) as it does not result in an amendment.
Clause 3(b)- Amendment of Article 44	The proposed deleted paragraph in the Primary Act and the proposed substituting paragraph are the same. **Recommendation** We recommend deletion of clause 3(b) as it does not result in an amendment.
Clause 3(c)- Amendment of Article 45(1) and 45(3)	The proposed deleted paragraphs in the Primary Act and the proposed substituting paragraphs are the same. **Recommendation** We recommend deletion of clause 3(c) as it does not result in an amendment.
The Microfinance Bill (National Assembly Bill No. 9 of 2026).	
Clause 31 (1) -Appointment of External Auditor	The bill provides that an institution shall in each year appoint an external auditor and who shall be approved by the CBK. However, no provision has been made for appointment of external auditors where the Government of Kenya or its Agencies has a shareholding of more than fifty percent (50%). **Recommendation**. We propose insertion of a clause immediately after clause 31 (1) to provide that for institutions where Government of Kenya or its Agencies owns more than fifty percent (50%) of shareholding, the audit shall be conducted by the Auditor-General in accordance with provisions of Article 229(6) and the Public Audit Act, Cap 412B.

D. CONCLUSION

Honorable Chair

Honorable Committee Members

1. In conclusion, my audits show that prosperity for our country will depend more on fixing addressing controls and governance structures within our institutions. I urge the committee to consider the above recommendations as they seek to enrich the bills to ensure safeguarding of public finances and institutions and protection citizen welfare. My office remains available to provide further technical support during the legislative process.

I thank you

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL
21 July, 2026

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Directorate of Departmental Committees

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21st July 2026

The Clerk of the National Assembly,
Main Parliament Building,
P.O. BOX 41842 - 00100,
Nairobi.

(2) Chebet Koskei HOD
Place before the Comm. on Finance.
Date 22/7/26

(1) DOC
& 22/7/26

RE: Memorandum on the East African Development Bank (EADB) Amendment Bill 2026.

This memorandum specifically refers to the provisions of the so-called diplomatic immunity extended to the EADB which this bill fails to address. From the outset I request to be granted audience by the committee to make oral submissions.

1. Your proposed amendment bill fails to address the matter of diplomatic immunity which could be inadvertent. Yet here in lies the mischief of immunity for impunity as currently claimed by EADB. There is no country among the 195 members of the United Nations that gran blanket immunity with respect to criminal acts by the staff of any international body. Kenya would be the first to grant such immunity in the whole world.

2.Currently, there is a criminal case at the Nairobi Magistrates Court against EADB and parliament should take due notice so as not fall into the trap of abetting criminality.
Apart from bringing your attention to the above, the diplomatic immunity should be governed by an appropriate Host Country Agreement (HCA) through the Ministry of Foreign Affairs and take cognizance of the Vienna Conventions on diplomatic immunity.

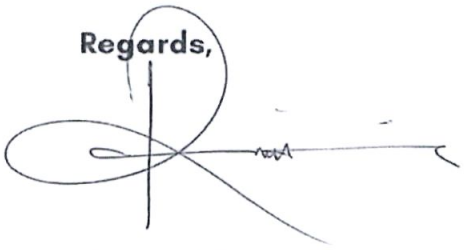
3. There is in place a USA Supreme Court ruling on World Bank, IMF and the IFC that the parliamentary committee should find relevant and should be acquainted with before proceeding with this legislation. EADB may not have immunity that is not enjoyed by the Bretton Woods Institutions.

4. The mischief with respect to access to tax payers' money has been smoked out. That is only a first step. In the fullness of time, the architects of the 2014 EADB Act scheme will face the law.

The committee must not allow itself to be manipulated into adopting a bill that has a simmilar loophole with respect to tax payers' money. For example, the provision that parliament has to approve the funds to EADB within 30 days or else the funds are considered approved is to say the least a taradiddle. What happens when parliament is on recess? If that is allowed to pass, it will be nothing but legalizing another loophole and defending the loophole through an Act of parliament. Making the situation worse. Are the drafters of the bill working for the Kenyan tax payers or they are working for the EADB?

Thank you and I hope to receive a positive response to my request to be granted audience to make oral submissions.

Regards,



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Private & Confidential

The Clerk
National Assembly
Parliament Buildings
Parliament Road
PO Box 41842 - 00100
Nairobi, Kenya

23 July 2026

Dear Sir,

KPMG Kenya
Memorandum for Consideration by the Departmental Committee on Finance and National Planning in the Matter of the Competition (Amendment) Bill, 2026, the East Africa Development Bank (Amendment) Bill, 2026, and the Microfinance Bill, 2026

We refer to the invitation issued by the Clerk of the National Assembly on 8 July 2026 requesting stakeholder comments on the **Competition (Amendment) Bill, 2026**, the **East African Development Bank (Amendment) Bill, 2026** and the **Microfinance Bill, 2026** (collectively, the "**Bills**").

KPMG Advisory Kenya Limited is pleased to submit its comments and proposed amendments on the Bills for the Committee's consideration.

Our comments are informed by our experience advising businesses, financial institutions, investors, regulators and development organisations across East Africa, as well as our review of the proposed legislative amendments and their potential legal, regulatory, operational and economic implications. In particular, we have considered the potential impact of the proposed measures on financial services, competition regulation, consumer protection, investment, innovation, financial inclusion and the broader business environment.

We support the Government's objective of strengthening market regulation, enhancing consumer protection, promoting financial stability and improving public accountability. Our recommendations are intended to assist the Committee in achieving these objectives while preserving regulatory certainty, encouraging investment, supporting innovation and avoiding unintended consequences for businesses, consumers and regulated institutions.

In formulating our recommendations, we have focused on provisions that may have significant implications for regulated institutions, investors, consumers, development finance institutions and the wider economy. Our submissions seek to support the development of a legislative framework that promotes market efficiency, regulatory certainty, prudent oversight, financial stability and sustainable economic growth.

We appreciate the opportunity to contribute to this legislative process and would welcome the opportunity to provide any further clarification or engage with the Committee on any aspect of our submissions.

Yours sincerely,

Clive Akora
Partner– Tax & Regulatory Services

A. COMPETITION (AMENDMENT) BILL, 2026

Item	Clause	Issue with the clause	Proposed amendment	Justification
1.	Clause 2(a) of the Competition (Amendment) Bill, 2026. **Definition of "person".**	The proposed expansion of the definition of "person" significantly enlarges the scope of entities that may be subject to investigation and enforcement under the Competition Act. The concern is that the provision may inadvertently capture organizations whose activities are not commercial in nature and do not affect competition, such as: • professional associations; • industry representative bodies; • charitable organizations; and • other non-commercial entities.	We recommend clarifying that the application of the Act to a person should be limited to persons engaged in economic or commercial activities that have an actual or potential impact on competition, consumer welfare or market conduct.	While the amendment strengthens enforcement against anti-competitive conduct coordinated through associations, partnerships and informal arrangements, the broad constitutional definition may unintentionally expose professional bodies, industry associations and other non-commercial organisations to regulatory scrutiny even where their activities do not have a demonstrable impact on competition or consumer welfare. Limiting the application of the provision to persons engaged in economic or commercial activities would preserve the intended enforcement objective while reducing the risk of regulatory uncertainty and unintended application to non-commercial entities.
2.	Clause 2(b) of the Competition (Amendment) Bill, 2026. **Definition of "undertaking".**	The proposed amendment expands the definition of "undertaking" to expressly include natural persons. The concern is that the amendment may unintentionally subject: • small traders; • sole proprietors; • freelancers; • consultants; • independent professionals; and	We recommend clarifying that a natural person shall constitute an undertaking only to the extent that he or she engages in economic or commercial activities capable of having an actual or potential effect on competition, market conduct or consumer welfare.	While the amendment strengthens the Competition Authority's ability to regulate anti-competitive conduct irrespective of the legal form through which business activities are undertaken, the inclusion of natural persons without qualification may create regulatory uncertainty for sole proprietors, independent professionals, freelancers and small businesses. The provision may unintentionally subject individuals with limited market presence to investigations, compliance obligations and penalties that were primarily designed for larger market participants with the ability to influence

		• micro-enterprises to the full weight of competition law enforcement, even where they lack the market presence or economic influence typically associated with anti-competitive conduct. As currently drafted, the provision does not distinguish between: • a dominant market participant operating as a natural person; and • a small entrepreneur with minimal market impact.		market outcomes. Limiting the application of the provision to natural persons engaged in economic activities capable of materially affecting competition, market conduct or consumer welfare would preserve the policy objective of the amendment while reducing unintended compliance burdens and encouraging entrepreneurship, innovation and participation in the formal economy.
3.	Clause 3 of the Competition (Amendment) Bill, 2026 **Introduction of "superior bargaining position"**	The provision significantly expands competition law intervention into ordinary commercial relationships by removing the traditional requirement to establish dominance or market power before regulatory action can be taken. The concepts of "imbalance", "viable alternative" and "satisfactory alternative" are not objectively defined and may be interpreted broadly.	*Consider redrafting the clause as follows:* *(4) A person has a strategic market position in a market if the person influences market prices, quality, service, output or innovation to an appreciable extent independent of competitors, suppliers, users or consumers.* *In determining whether a superior bargaining position exists, the Authority shall consider objectively verifiable factors including:* *(a) the extent of economic dependence of one undertaking on another;* *(b) the availability of reasonable and practical alternative trading partners within a reasonable period and at commercially viable*	Commercial relationships frequently involve differing levels of bargaining power arising from factors such as size, purchasing volumes, technical expertise, brand strength, market experience and commercial sophistication. The existence of unequal bargaining power is therefore a normal feature of competitive markets and should not, by itself, warrant intervention under competition law. As drafted, the provision may blur the distinction between legitimate commercial negotiation and genuinely abusive conduct, encouraging the escalation of ordinary contractual disputes into competition investigations. This may increase compliance costs, regulatory uncertainty and litigation risk while discouraging efficient procurement arrangements, investment and innovation. Introducing objective assessment criteria and requiring evidence of economic dependence, unfair conduct and demonstrable harm to

			terms; *(c) the relative negotiating position of the parties;* *(d) industry practice and commercial justification for the conduct;* *(e) whether the conduct results in unfair, unreasonable or discriminatory trading conditions;* *(f) whether the conduct has the object or effect of materially restricting competition, limiting market access or reducing consumer welfare; and* *(g) whether the conduct has caused, or is likely to cause, appreciable economic harm that outweighs any legitimate business justification for the conduct.*	competition, market access or consumer welfare would preserve the policy objective of protecting weaker trading parties while reducing the risk of regulatory overreach into ordinary commercial arrangements.
4.	Clause 13 of the Competition (Amendment) Bill, 2026. **Penalty for failure to comply with order.**	The Bill proposes that a person who fails to comply with a lawful order of the Authority shall be liable, upon conviction, to a fine of up to **10% of the undertaking's gross annual turnover of the preceding year**. The proposed amendment introduces a substantial turnover-based penalty without prescribing the factors that should guide the determination of the penalty. As drafted, the provision may result in disproportionate penalties for procedural, technical or inadvertent non-compliance, including circumstances where there is a genuine dispute regarding the	*Retain the penalty provision but require the Authority to consider the gravity of the breach, duration of non-compliance, whether the breach was deliberate, previous conduct of the undertaking, cooperation with the Authority and economic harm caused before determining the penalty.* *Consider amending as follows:* ***"Any person who contravenes or fails to comply with a lawful order of the Authority commits an offence and shall be liable,***	We acknowledge the need for effective enforcement mechanisms and deterrent penalties to promote compliance with lawful orders of the Authority. However, the proposed turnover-based penalty is significant and should be subject to clear statutory criteria to ensure consistency, predictability and proportionality in its application. As currently drafted, the provision may expose undertakings to substantial financial penalties regardless of the nature or severity of the non-compliance. This could create uncertainty for businesses and may discourage investment, particularly where non-compliance arises from procedural lapses or bona fide disputes

		interpretation or implementation of an order.	***upon conviction, to a fine not exceeding ten percent of the undertaking's gross annual turnover in Kenya for the preceding financial year.*** ***In determining the appropriate penalty, the Court or Authority shall take into account:*** *(a) the nature, gravity and duration of the non-compliance;* *(b) whether the contravention was deliberate, reckless or negligent;* *(c) the actual or likely harm caused to competition, consumers or the market;* *(d) any economic benefit derived from the non-compliance;* *(e) previous contraventions by the undertaking;* *(f) the level of cooperation demonstrated by the undertaking during investigations;* *(g) any remedial measures taken by the undertaking; and* *(h) any other relevant mitigating or aggravating factors."*	regarding the interpretation of regulatory obligations. Introducing objective factors to guide the determination of penalties would align the provision with principles of fair administrative action and proportional enforcement while preserving the Authority's ability to impose meaningful sanctions in cases of serious or deliberate non-compliance.
5.	Clause 10 **Privatization Treated as a Merger**	The Bill expands merger control to include: Privatization of Government agencies and state corporations that engage in trade. However it does not clarify:	Clarify that privatization transactions shall only be notifiable where the applicable merger notification thresholds under the Competition Act are met.	This avoids unnecessary merger filings for small privatization transactions and improves transaction certainty.

		• whether all privatizations require notification; • what thresholds apply; • timing requirements; or • whether existing merger thresholds apply.		

B. THE MICROFINANCE BILL, 2026

Item	Clause	Issue with the clause	Proposed amendment	Justification
6.	Clause 9 of the Microfinance Bill, 2026. **Central Bank's Power to Examine**	The Bill empowers the Central Bank of Kenya (CBK) to enter premises and examine books, records, systems and equipment without prior judicial authorization where it reasonably believes that a person is carrying out microfinance bank business contrary to the provisions of the Act. This represents a departure from the current position, which requires judicial oversight before such intrusive powers may be exercised.	Amend Clause 9(1) as follows: *"The Central Bank may, **with a warrant issued by a court of competent jurisdiction**, enter any premises and examine the books, accounts, records, equipment, computer systems, software or fixtures of any person whom the Central Bank, on reasonable grounds, believes to be carrying out microfinance bank business contrary to the provisions of this Act."*	The provision may raise constitutional concerns relating to the right to privacy, protection of property and fair administrative action. While effective regulatory oversight is necessary, the exercise of such intrusive investigative powers should be subject to appropriate safeguards and judicial oversight to prevent arbitrary interference with business operations. Requiring a warrant issued by a court of competent jurisdiction would strike an appropriate balance between effective supervision and the protection of constitutional rights.
7.	Clause 13; and First Schedule of the Microfinance Bill, 2026. **Minimum Capital**	The Bill increases the minimum core capital requirement from KES 60 million under the current regulatory framework to KES 250 million within five years, representing a substantial increase that may have significant implications for smaller microfinance institutions.	*Amend paragraph (d) of the First Schedule to provide for a phased implementation framework:* *"A core capital of at least two hundred and fifty million shillings to be achieved progressively as follows:*	While strengthening the resilience of the microfinance sector is an important policy objective, the proposed increase may accelerate market consolidation, increase barriers to growth for smaller institutions and reduce competition. It may also disproportionately affect community-based and rural-focused institutions that play a key role in

	Requirements	The proposed increase may disproportionately affect community-focused and smaller microfinance institutions operating in underserved and rural markets, potentially reducing access to credit and financial services for low-income households and SMEs.	*(a) KES 100 million within two years of commencement;* *(b) KES 150 million within three years of commencement;* *(c) KES 200 million within four years of commencement; and* *(d) KES 250 million within five years of commencement."*	advancing financial inclusion. A phased implementation approach would support prudential objectives while preserving access to financial services for underserved communities and promoting an orderly transition within the sector.
8.	Clause 21(4) of the Microfinance Bill, 2026. **Appeals to the High Court by an Aggrieved Director**	The Bill provides for direct appeals to the High Court in respect of decisions and directions issued by the CBK. However, the Bill confers extensive supervisory, licensing, enforcement and intervention powers on the CBK without establishing a specialized mechanism for resolving disputes arising from the exercise of those powers.	Introduce a specialist appeals mechanism through either: *"The establishment of a Microfinance Appeals Tribunal to hear disputes arising under this Act;"* or *"The designation of an existing financial services appeals framework to hear disputes arising under this Act prior to appeal to the High Court."*	Given the technical and specialized nature of microfinance regulation, dispute resolution would benefit from a forum equipped with expertise in banking, finance, accounting and regulation. A specialist appeals mechanism would enhance procedural fairness, improve regulatory certainty, reduce litigation costs and align the sector with other regulated industries that benefit from specialized tribunals. The establishment of a Microfinance Appeals Tribunal would: • provide an efficient and specialized forum for resolving disputes involving microfinance institutions; • reduce reliance on protracted High Court litigation; • enhance procedural fairness and transparency; • ensure disputes are heard by individuals with expertise in finance, accounting, banking and financial regulation; • improve investor confidence and

				regulatory predictability; and • align the microfinance sector with other regulated sectors in Kenya that benefit from specialist tribunals such as the Capital Markets Tribunal, Competition Tribunal and Micro and Small Enterprises Tribunal.
9.	Clause 22 of the Microfinance Bill, 2026. **Restriction on Shares**	The Bill reduces the regulatory approval threshold for share transfers from 10% to 5% and requires prior approval before a person becomes a significant shareholder. The lower threshold may subject a broader range of investment transactions to regulatory approval.	Consider retaining the existing 10% approval threshold, or alternatively limit the approval requirement to transactions that result in significant influence or control over the institution.	The proposed reduction may impede capital raising, strategic investment and legitimate restructuring transactions by increasing transaction costs and regulatory timelines. Prudential risks generally arise where an investor acquires significant influence or control over an institution rather than through passive shareholdings. Maintaining the existing threshold would preserve regulatory oversight while avoiding unnecessary compliance burdens and encouraging investment in the sector.
10.	Clause 42 of the Microfinance Bill, 2026. **Online Access by Central Bank**	The Bill requires institutions to provide the CBK with secure remote online access to their information technology infrastructure and information management systems and permits access to customer and operational data. The provision does not expressly provide safeguards relating to data protection, confidentiality, cybersecurity or access controls	Insert a new subsection under clause 42 providing: *"In exercising its powers under this section, the Central Bank shall implement appropriate safeguards relating to data protection, cybersecurity, confidentiality, audit trails, access controls, purpose limitation and data retention, and shall comply with the provisions of the Data Protection Act."*	While the provision enhances supervisory oversight, unrestricted access to systems may create concerns relating to customer confidentiality, cybersecurity risks and institutional system integrity. Explicit safeguards would enable the CBK to effectively discharge its supervisory mandate while protecting sensitive information, preserving public confidence and minimizing operational and legal risks for regulated institutions.

11.	Clause 54 of the Microfinance Bill, 2026 **Approval of Products and Fees**	The Bill requires prior approval from the CBK before a microfinance institution may introduce a new product or service, make substantial changes to an existing product or impose or increase charges relating to a product or service.	Amend the provision to require: ▪ Prior notification for routine product introductions and amendments; and ▪ Prior approval only for products, services or pricing changes that raise material prudential, consumer protection or systemic risk considerations.	Microfinance institutions operate in an increasingly dynamic financial environment characterized by digital lending, mobile-based financial services and innovative consumer products. Requiring prior approval for every new product, service or fee adjustment may reduce market responsiveness, slow innovation and increase compliance costs. A risk-based approach would preserve regulatory oversight while promoting innovation, competition and financial inclusion

C. EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026 (EADB)

Item	Request	Issue with the clause	Proposed amendment	Justification
12.	Section 2(6) **Deemed Parliamentary Approval**	The proposed provision provides that where the National Assembly fails to pass a resolution within thirty (30) days of a request for approval, the approval shall be deemed to have been granted. While the Bill seeks to enhance Parliamentary oversight over payments and financial commitments made to the East African Development Bank, the deemed approval mechanism may undermine that objective by allowing approvals to take effect through Parliamentary inaction rather than active scrutiny and approval.	We propose deletion of Section 2(6) or, alternatively, amendment of the provision as follows: *"If, after expiry of the period specified in subsection (5), the National Assembly has not passed a resolution, the Speaker shall, within seven days thereafter, cause the matter to be scheduled for priority debate and determination by the National Assembly, and the proposed approval shall remain pending until a resolution of the National Assembly is passed."*	The primary purpose of the amendment is to strengthen accountability, transparency and Parliamentary oversight over the commitment and disbursement of public funds to the East African Development Bank. However, the deemed approval mechanism may defeat that objective by permitting approvals to be obtained through the absence of Parliamentary action rather than through deliberate consideration and approval by elected representatives. Further, the High Court in **Nusu v National Assembly & 6 Others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)** emphasized the importance of

Item	Request	Issue with the clause	Proposed amendment	Justification
				Parliamentary oversight and accountability in matters involving commitments of public resources. Retaining the deemed approval provision may therefore weaken the very accountability safeguards that the Bill seeks to introduce. Requiring express Parliamentary approval would promote transparency, strengthen legislative oversight and ensure that commitments of public funds are subjected to meaningful scrutiny before approval is granted.
13.	**Clause 3(b)** Judicial Proceedings and Immunity	The Bill proposes that: The Bank shall enjoy immunity from every form of legal process except where it has expressly waived immunity in writing. The proposed amendment strengthens the Bank's immunity from legal proceedings and restricts the circumstances under which claims may be brought against it. While immunity is necessary to enable international financial institutions to perform their mandate independently, the provision may limit access to legal remedies by counterparties, creditors and other persons dealing with the Bank.	Consider clarifying by inserting an additional sub clause to the effect that: The immunity granted under the Act shall not prevent access to dispute resolution mechanisms expressly provided under contracts entered into by the Bank, including arbitration and other agreed dispute resolution procedures.	International financial institutions require a degree of immunity to discharge their functions effectively. However, legal certainty is equally important for private-sector counterparties, suppliers, contractors and lenders who transact with the Bank. Clarifying the interaction between immunity provisions and contractual dispute-resolution mechanisms would promote confidence in commercial dealings with the Bank while preserving the institutional protections intended by the Charter.
14.	Clause 3(c) **Immunity of Assets**	The Bill expands asset protection by providing that Bank property and assets shall be immune from interference, confiscation, execution, foreclosure and similar actions by administrative,	Consider clarifying that: The immunity afforded to the Bank's assets shall not prejudice the enforcement of dispute-	While protection of the Bank's assets is necessary to safeguard its developmental mandate and operations, legal certainty is required to ensure that parties engaging with the Bank understand the extent of available

Item	Request	Issue with the clause	Proposed amendment	Justification
		legislative or judicial authorities.	resolution mechanisms expressly agreed to by the Bank or otherwise provided under the Charter.	remedies and the enforceability of contractual rights. Greater clarity would support investor confidence and commercial certainty while preserving the intended protection of EADB assets

Chebet Koskei, HoD
Finance Committee
Date 22/7/26

TO:

CLERK OF THE NATIONAL ASSEMBLY,

MAIN PARLIAMENT BUILDING,

P.O. BOX 41842 – 00100,

NAIROBI.

MEMORANDUM ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 33 OF 2026), SUBMITTED PURSUANT TO ARTICLE 118(1)(b) OF THE CONSTITUTION OF KENYA, 2010 AND STANDING ORDER 127(3) OF THE NATIONAL ASSEMBLY STANDING ORDERS

1. This Memorandum is submitted pursuant to Articles 1, 3(1), 10, 22(1), 118(1)(b) and 232(1)(d) of the Constitution of Kenya, 2010, in response to the Invitation to Submit Memoranda published by the Clerk of the National Assembly in the Kenya Gazette on Tuesday, 7th July 2026, inviting public and stakeholder memoranda on, among other Bills, the East African Development Bank (Amendment) Bill, 2026 (National Assembly Bill No. 33 of 2026) ("the Bill").

2. The Memorandum is presented solely out of the abiding commitment to constitutionalism, the rule of law, and the protection of public funds held in the Consolidated Fund of the Republic of Kenya, and is offered to assist the Departmental Committee on Finance and National Planning ("the Committee") in its consideration and reporting on the Bill under Standing Order 127(3).

3. Further, the Memorandum is submitted within the timelines fixed by the Clerk of the National Assembly, being on or before Tuesday, 21st July 2026 at 5.00 p.m.

4. The Bill, sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, EGH, MP, seeks to amend the East African Development Bank Act, Cap. 493A, Laws of Kenya ("the EADB Act") by:

   (a) deleting and replacing section 2 of the EADB Act to require the approval of the National Assembly, through its relevant Committee, before the Cabinet Secretary for the National Treasury charges, pays or issues public funds from the Consolidated Fund to the East African Development Bank ("EADB" or "the Bank"), including an annual reporting obligation to the National Assembly; and

   (b) amending Articles 24, 44 and 45 of the Charter of the Bank contained in the Schedule to the EADB Act, touching on creditor status, judicial immunity, and immunity of assets respectively.

5. The Memorandum of Objects and Reasons appended to the Bill correctly identifies the mischief that the Bill seeks to cure, namely that "Section 2 of the Act currently authorizes the Cabinet Secretary for the National Treasury to commit and disburse funds from the Consolidated Fund to the East African Development Bank without the approval of the National Assembly," and that the amendment "seeks to enhance legislative oversight and accountability in line with the principles of public finance as set out under the Constitution."

6. The Committee's attention is specifically drawn to the judgment of the High Court of Kenya at Machakos (Olel, J.) in ***Paul Lihanda Nusu v. The National Assembly, The Senate, The Cabinet Secretary for the National Treasury, The Cabinet Secretary for Foreign Affairs, The Hon. Attorney-General, The Auditor-General and The Central Bank of Kenya, Constitutional Petition No. E009 of 2023*** which was delivered on the 20th March 2025. This is a decision of a court of competent jurisdiction directly and specifically concerning the very

statute the Bill purports to amend, and it is submitted that Parliament is obliged, as a matter of constitutional propriety and the rule of law under Article 2(1) and 2(4) of the Constitution, to legislate in a manner that gives full effect to it.

7. The material findings of the Nusu Decision, binding unless and until set aside on appeal, are as follows:

(a) Section 2(1) and (2) of the EADB Act was declared unconstitutional for violating Articles 10, 95(4)(b), 201, 206, 228(5) and 232 of the Constitution, the Court finding that it unilaterally bestowed upon the Cabinet Secretary for the National Treasury the sole responsibility, to charge on and issue public funds out of the consolidated fund, without parliamentary oversight and/or accountability, in a manner that definitely offends the principles of public finance as espoused under Article 201 as read with Article 206 of the constitution and also the values and principles of governance as espoused under Articles 10 and 232 of the constitution. The Court further found, as a matter of fact, that the National Assembly's Public Debt and Privatization Committee did not in practice exercise any real oversight over disbursements to EADB.

(b) The amendments introduced to the Schedule of the EADB Act by section 30 of the Finance Act, 2013 were declared illegal, null, and void ab initio for want of genuine public participation contrary to Articles 10 and 118(1)(b) of the Constitution.

(c) An order of mandamus was issued directing the Cabinet Secretary for the National Treasury to produce, within sixty (60) days of the judgment, records of all payments made from the Consolidated Fund to EADB from the year 2014 for tabling before Parliament, the Court having noted that EADB's audit arrangements under Article 35 of the Bank's Charter fall outside the constitutional mandate of the Auditor-General under Article 229(4)(b), (5) and (6) as read with section 7 of the Public Audit Act, 2015.

(d) The declarations of unconstitutionality were suspended for one (1) year from the date of judgment, that is, to on or about 20th March 2026, to allow parliament and the Attorney General to consider appropriate amendments to the EADB Act.

(e) Notably, the Court declined to find Articles 44, 45 and 46 of the Bank's Charter unconstitutional, applying the reasonable and justifiable limitation test in *Karen Njeri Kandie v. Alassane Ba & Another [2017] eKLR* by analogy to diplomatic immunity. This finding was made without the benefit of evidence of the practical abuse of that immunity to shield individual EADB personnel from Kenyan criminal process, and ought therefore to inform, rather than foreclose, Parliament's independent constitutional duty to legislate consistently with Articles 48 and 50 of the Constitution.

8. It is of considerable and unavoidable significance to the Committee that the one-year suspension window fixed by the Court lapsed on or about 20th March 2026, some two and a half months before this Bill was even gazetted on 5th June 2026. On a plain reading of the Nusu Decision, section 2(1) and (2) of the EADB Act stood as declared void for all purposes from that date, absent any recorded extension of the suspension by the High Court or the Court of Appeal.

9. The reintroduction of a National Assembly approval mechanism in the proposed new section 2 of the EADB Act is timely. However, the following specific defects in the drafting require the Committee's urgent attention:

(a) The proposed subsection 2(6) of the bill provides that if the National Assembly has not passed a resolution within thirty (30) days of the notification for approval, the approval shall be deemed to have been given. This defeats the very purpose of the amendment. A deeming provision of this kind effectively re-creates, by the back door and after only a fixed lapse of time, the exact opaque, unaccountable disbursement regime that the High Court struck down. It is recommended that subsection 2 (6) be deleted

and replaced with a requirement of affirmative resolution, failing which no payment shall be authorised.

(b) The proposed section 2(3) requires only that the Cabinet Secretary report to the National Assembly on payments made but it does not require that such payments, once made, be subject to audit by the Auditor-General or an equivalent independent auditor answerable to Parliament. Given the Court's express finding that EADB's own audit arrangements under Article 35 of its Charter are not accountable to any Kenyan constitutional oversight body, a bare reporting obligation, without independent verification, is inadequate. The Committee should consider an amendment requiring that all sums paid to EADB from the Consolidated Fund be subject to periodic independent audit, with the audit report tabled before the National Assembly, in fulfilment of Articles 201(d)-(e) and 229 of the Constitution.

(c) The Bill is silent on the core structural, licensing and governance defects at EADB set out in Part V below, several of which long pre-date, and are independent of, the funding-approval question. A Bill that addresses only the funding gateway while leaving untouched the institution's unlicensed banking operations, its governance capture, and its misuse of immunity to shield criminal conduct, is not a complete or honest legislative response to the problem Parliament itself has acknowledged.

10. Section 4(1) of the Banking Act, Cap. 488, Laws of Kenya, provides that no person shall in Kenya transact banking business, financial business or the business of a mortgage finance company except with the written authority of the Central Bank of Kenya ("CBK"), such authority to be signified by a licence. Section 2 of the same Act defines banking business broadly to include, among other things, the acceptance of deposits and lending. EADB, on its own governing instruments, engages extensively in lending, deposit-taking, and mortgage/development finance within the territory of Kenya, yet holds no licence issued by the CBK, and is not subject to the prudential supervision,

capital adequacy rules, or consumer-protection oversight that the Banking Act imposes on every other institution transacting such business in Kenya.

11. It is submitted, with respect, that Article 2(6) domesticates ratified treaties as part of the laws of Kenya, it does not and cannot exempt a treaty-based entity from a separate, validly enacted statute of general application such as the Banking Act, absent an express and specific exemption enacted by Parliament.

12. Article 231(2) of the Constitution charges an institution of the character of the Central Bank of Kenya with the regulation of the country's monetary system, and section 4(1) of the Banking Act operationalises that constitutional function for all deposit-taking and lending institutions. The continued, unlicensed conduct of banking business by EADB in Kenya, without CBK supervision, exposes Kenyan borrowers and depositors dealing with the Bank to unregulated risk, and represents a standing contravention of the Banking Act that the Bill leaves wholly untouched. The Committee should require the Central Bank of Kenya to table, within a fixed period, a formal position on whether EADB's Kenyan lending and deposit operations constitute banking business within the meaning of section 2 of the Banking Act, and, if so, what steps CBK has taken, or intends to take, to bring the Bank within the licensing and prudential supervision framework of that Act, or, in the alternative, why an express statutory exemption is necessary.

13. Article 44(1) of the Charter confers on the Bank immunity from every form of legal process, waivable only in writing and never extending to any measure of execution. Article 48(1) of the Charter extends comparable civil-process immunity to all directors, alternates, officers and employees of the bank with respect to acts performed by them in their official capacity.

14. It is a matter of direct and current concern, evident from ongoing criminal proceedings before courts of competent jurisdiction in Kenya, that this immunity regime is being invoked, or its existence is being relied upon as a shield, in relation to allegations of criminal conduct by individuals associated

with the Bank, and not merely in respect of the Bank's legitimate treaty-mandated commercial or lending functions.

15. It is submitted that diplomatic immunity under the Vienna Convention on Diplomatic Relations, 1961, is expressly and narrowly circumscribed, and even then, does not extend to acts wholly outside a diplomat's official functions, still less to criminal conduct. No immunity recognised under customary or treaty international law, and no immunity permissible under Article 24 of the Constitution, can be reasonable and justifiable in an open and democratic society to the extent that it is used, or capable of being used, to place individuals beyond the reach of Kenya's criminal justice system for personal criminal wrongdoing merely because they are, or were, officers or employees of EADB. Clause 3(b) of the Bill, amending Article 44 of the Charter, should be expanded, and a corresponding amendment made to Article 48, to place beyond doubt that no immunity under the Charter shall extend to acts of criminal conduct by any director, officer, employee, or agent of the Bank, whether or not committed in the course of the Bank's business and the Bank and its personnel remain fully subject to the criminal jurisdiction of the Courts of Kenya in respect of offences under Kenyan law.

16. It is a matter of serious public concern, presently the subject of investigation, that the governance architecture of EADB permits, or has in practice permitted, directors to access credit facilities from the Bank and thereafter to participate, directly or through Board processes they control, in decisions to write off, restructure, or forgive such facilities. This is a textbook conflict of interest and self-dealing arrangement that no institution accountable, even in part, to Kenyan public funds ought to be permitted to operate under.

17. No provision of the current EADB Act, its Charter, or the Bill under consideration requires, as a condition of Kenya's continued financial contribution to the Bank under section 2 of the EADB Act, that the Bank maintain and publish a conflict-of-interest policy prohibiting insider lending and self-approved write-offs, of the kind mandated for Kenyan public and

private financial institutions generally under, among others, the Banking Act, the Public Finance Management Act, 2012, and the Mwongozo Code of Governance for State Corporations. The Bill should be amended to make continued disbursement of Kenyan public funds to EADB under the new section 2 conditional upon the Bank adopting and publishing, and periodically certifying compliance with, a conflict-of-interest and insider-lending policy consistent with Kenyan standards of corporate governance, and to require the Cabinet Secretary's annual report under proposed section 2(3) to specifically disclose any credit facilities extended by the Bank to its own directors, alternates, officers or their associates, and the status and justification of any write-off, restructuring or forgiveness of such facilities.

18. Neither the EADB Act nor the Charter contained in its Schedule prescribes any maximum term of office, term limit, or mandatory rotation for Board directors. It is a matter of documented public record and concern that certain Board members have remained in office for periods reported to be as long as seventeen (17) years, a state of institutional entrenchment inconsistent with basic principles of corporate governance applicable to institutions handling public and quasi-public funds, and one that, in combination with the insider-lending concerns set out in Part V(C) above, is alleged to have entrenched a self-dealing cabal operating with impunity against ordinary borrowers and customers of the Bank.

19. This is directly analogous to, and indeed a more severe version of, the entrenchment and impunity concerns that animate Kenya's own constitutional and statutory term-limit regime for public office. There is no principled basis upon which Kenyan taxpayers should be asked, through the mechanism the Bill proposes, to continue funding an institution whose governing board is not subject to any term limit at all. Kenya should, through its representatives on the Board and Council of Governors of EADB, and through the diplomatic and treaty-amendment channels available to it, formally propose an amendment to the Charter introducing a fixed, renewable-once term of office for all Board

directors and alternates, and, pending such Charter amendment, the Bill should require the Cabinet Secretary to certify, as a condition precedent to any further disbursement under section 2, that Kenya has formally raised and pursued this reform at the Bank's governing organs, with a report of progress to be included in the annual report to the National Assembly.

20. It is a matter of concern that EADB, in its standard-form lending and commercial contracts with Kenyan borrowers and counterparties, is understood to routinely exclude or oust the jurisdiction of the Courts of Kenya, whether through arbitration clauses seated outside Kenya, choice-of-law and choice-of-forum clauses favouring foreign or supranational fora, or reliance on Article 54 of its own Charter, while simultaneously relying on Articles 44 and 45 of that same Charter to resist the jurisdiction of Kenyan courts when sued by aggrieved Kenyan counterparties.

21. The result, respectfully submitted, is a one-sided and fundamentally unfair arrangement where the Bank enjoys the benefit of Kenya's constitutional and statutory guarantee of unimpeded access to the Consolidated Fund, while denying ordinary Kenyan citizens, borrowers and litigants' meaningful access to their own courts to vindicate their rights against the Bank. An institution that will not submit its own contractual disputes to Kenyan courts has no proper claim to unconditional, unaudited access to Kenyan public funds without Parliament first requiring reciprocal accountability.

The Bill should require, as a condition of continued funding under the new section 2, that EADB's standard-form contracts with Kenyan citizens, residents and entities include an option, at the election of the Kenyan counterparty, to resolve disputes before the Courts of Kenya, or in the alternative, before an arbitral tribunal seated in Kenya under the Arbitration Act, 1995, and that the Cabinet Secretary report annually to the National Assembly on the number and nature of disputes between the Bank and Kenyan counterparties and the fora in which they were, or are being, resolved.

22. For ease of reference, the following provisions of law are engaged by this Memorandum and are commended to the Committee's attention:

- Constitution of Kenya, 2010

  Articles 1, 2, 3, 10, 22, 23, 24, 25, 27, 35, 43, 46, 48, 50, 94, 95(4)(b) and (c), 118(1)(b), 159, 165, 201, 206, 209, 213, 214, 225, 226, 228, 229, 231, 232.

- East African Development Bank Act and the Charter of the Bank contained in the Schedule thereto, in particular Articles 24, 42, 43, 44, 45, 46, 47, 48, 49, 51 and 54.
- Banking Act.
- Public Finance Management Act and the Public Finance Management (National Government) Regulations, 2015.
- Public Audit Act.
- Treaty-Making and Ratification Act.
- Arbitration Act.
- Paul Lihanda Nusu v. The National Assembly & 5 others, Constitutional Petition No. E009 of 2023.
- Cabinet Secretary for National Treasury and Planning & 4 others v. Okiya Omtatah Okoiti, Petition No. E031, E032 & E033 of 2024.
- Karen Njeri Kandie v. Alassane Ba & Another [2017] eKLR.

23. For the foregoing reasons, the undersigned respectfully urges the Departmental Committee on Finance and National Planning to:

(a) Note and give full effect to the findings of the High Court in *Paul Lihanda Nusu v. The National Assembly & 5 others, Constitutional Petition No. E009 of 2023*, in its report on the Bill, and specifically verify and disclose the current status of the one-year suspension of the declarations of unconstitutionality made therein;

(b) Amend proposed section 2(6) of the EADB Act to remove the deemed approval default and replace it with a requirement of affirmative resolution of the National Assembly as a condition precedent to any disbursement;

(c) Amend proposed section 2(3) to require independent audit of all sums disbursed to EADB, in addition to the Cabinet Secretary's reporting obligation;

(d) Require the Central Bank of Kenya to report to the Committee on the licensing status of EADB's banking operations in Kenya under section 4(1) of the Banking Act;

(e) Amend Articles 44 and 48 of the Charter, as proposed to be amended by Clause 3(b) of the Bill, to expressly exclude criminal conduct by any director, officer, employee or agent of the Bank from the scope of any immunity;

(f) Introduce, as a condition of continued Kenyan funding under section 2, requirements addressing insider lending and loan write-offs by Board directors, absence of Board tenure limits, and the Bank's avoidance of Kenyan courts in its own contracts, as more particularly set out in Part V above; and

(g) Invite the undersigned, or such other public participation forum as the Committee may direct, to make oral representations on this Memorandum, and grant such other or further directions as the Committee may deem just and expedient in the public interest.

24. The East African Development Bank performs a legitimate and potentially valuable developmental function within the East African Community, and this Memorandum is not directed at obstructing Kenya's participation in regional development finance. It is, however, directed at ensuring that such participation is conducted, as the Constitution of Kenya requires, with openness, accountability, public participation, and appropriate legal and

prudential safeguards for public funds and for the rights of Kenyan citizens who deal with the Bank.

25. A Bill that restores parliamentary approval over the funding gateway, while leaving unaddressed unlicensed banking activity, misuse of immunity to shield criminal conduct, governance capture through insider lending, board entrenchment, and the Bank's own forum-avoidance in its dealings with Kenyans, is, with respect, only half a remedy.

Respectfully submitted.

.....

Peter Agoro

Chairperson, Consortium of Kenya Civil Societies

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Date: 17th July 2026

FEDERATION OF KENYA EMPLOYERS

The Voice of Employers

TO: THE CLERK -THE NATIONAL ASSEMBLY

FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)

FKE MEMORANDUM ON THE PROPOSED COMPETITION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026); THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026); AND THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2026)

1. BACKGROUND

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation's members employ more than 70% of formal private sector wage employees in Kenya. The role of the Federation is to build the capacity of employers and to influence the business environment through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, Confederation of IGAD Employers (CIE), BUSINESSAfrica-Employers Confederation, the International Organization of Employers (IOE), and the International Labour Organization (ILO), and other global forums.

In taking a policy position, FKE is guided by the need to ensure a balanced and sustainable policy environment that promotes:

- Constitutionalism
- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair Labour practices
- Resilient and competitive businesses
- Harmonious industrial relations
- Social Justice
- Feasibility and affordability of the costs associated with implementation of the policy

The above mandate guided FKE comments on the proposed Competition (Amendment) Bill (National Assembly Bill No. 4 of 2026); the Microfinance Bill (National Assembly Bill No. 9 of 2026); and the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026). Specific comments on each Bill are as follows:

FEDERATION OF KENYA EMPLOYERS
The Voice of Employers

The Competition (Amendment) Bill, 2026

Section/Clause	Proposed change/Amendment	Justification/Rationale
Section 9 of the Bill on investigative powers	The Bill extends the Authority's investigative powers to cover the newly introduced offence of abuse of superior bargaining position. However, as is the case under section 31 of the Competition Act, the Bill does not prescribe clear timelines for the issuance of notices of investigation by the Authority or for the submission of evidence by the affected undertaking. We propose to amend Section 31 (4) (a) – (d) of the Act to insert the phrase ***'within 21 days'*** immediately after the words notice.	Businesses should be afforded adequate notice of investigations and an opportunity to respond before enforcement action is taken. This will align with Article 47 of the Constitution on fair administrative action.
Section 13 of the Bill seeks to amend Section 89 of the Act on failure to comply with an order from the Authority	Amend the Bill by deletion of the following phrase *'and shall be liable on conviction to a fine of up to ten percent of the undertaking's gross annual turnover of the preceding year'* and replacing it with the following phrase ***'and shall be liable to such administrative action provided for in Section 91 A of the Act'***	The Bill proposes a range of administrative enforcement powers that may be exercised by the Authority. Accordingly, enforcement should not be limited solely to the imposition of monetary penalties.

FEDERATION OF KENYA EMPLOYERS
The Voice of Employers

The Microfinance Bill, 2026

Section/Clause	Proposed change/Amendment	Justification/Rationale
Section 6 (2) of the Bill on issuance of the license	Amend the Clause as follows; Insert the phrase ***'within 60 days'*** immediately after the words prescribed fee.	Prescribing a statutory timeline for the issuance of licenses promotes administrative efficiency. It enables applicants to plan their business operations with certainty and reduces unnecessary delays in the licensing process. This will in turn enhance accountability in the decision making process.
Section 35 (2) of the Bill prescribes submission of information or documentation to the Central Bank of Kenya	Amend the Section to read as follows; Insert the following phrase immediately after the words under this Act; ***"Unless where similar information has already been submitted to the Central Bank or other regulators."***	This would reduce regulatory costs and administrative burden and promote coordinated regulation between the entities.

FEDERATION OF KENYA EMPLOYERS
The Voice of Employers

The East African Development Bank (Amendment) Bill, 2026

Section/Clause	Proposed Change/Amendment	Justification/Rationale
Section 2(6) (6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given	Amend section as follows: (6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval is **not granted**.	The "deemed approval" clause completely undermines the principle of robust oversight and accountability which is the objective of the amendment of ensuring that the Act is in line with the principles of public finance as set out under the Constitution.
Section 2(6) New clauses proposed immediately after subsection (6)	Add a new subsections (6A) and (6B) immediately after subsection (6) as follows: *(6A) If the committee of the National Assembly fails to act within thirty days, the proposal defaults directly to the floor of the entire National Assembly for an emergency vote within next sitting.*	
	*(6B) If the National Treasury requires an emergency capital injection into the East Africa Development Bank to prevent a regional treaty breach, the Cabinet Secretary shall table a **Certificate of National Interest** alongside the request.*	This will legally reduce the review window down to 7 days, but will still require an explicit, recorded vote from the House.

FEDERATION OF KENYA EMPLOYERS

The Voice of Employers

2. EMPLOYERS ASK AND PROPOSED WAY FORWARD

The Federation of Kenya Employers requests that employers' views be taken into consideration and the Bills amended to incorporate them.

Signed for and on behalf of the

FEDERATION OF KENYA EMPLOYERS

Jacqueline Mugo (MRS), EBS, MBS, OGW *22/07/2026*

EXECUTIVE DIRECTOR & CEO

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MEMORANDUM

TO

THE NATIONAL ASSEMBLY OF KENYA

ON

THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026.

JULY, 2026

Charles Kanjama, SC, President Law Society of Kenya

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Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Charles Kanjama, SC
- Vice President, Teresia Wavinya
- General Membership Representatives, Tom K'opere, Vivienne Eyase, Wanjohi Wambugu
- Nairobi Representatives, Effie Sheila Achieng, Muthoni Gachara, Wycklife Oyoo
- Up-country Representatives, Hiram Kirimi, Faith Jappann, Hezekiah Aseso, Sharon Oyoko
- Coast Representative, Titus Mukanzi
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration of justice and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes a presentation on the **East African Development Bank (Amendment) Bill, 2026.**

GENERAL COMMENTS

The Law Society of Kenya supports the proposed East African Development Bank (Amendment) Bill, 2026, as it seeks to strengthen legislative oversight and accountability in the management of public funds by requiring the approval of the National Assembly before the Cabinet Secretary authorizes a charge or the issuance of public funds from the Consolidated Fund to the East African Development Bank. The Bill aligns with the principles of public finance under the Constitution by reinforcing Parliament's oversight role over public expenditure. In addition, the proposed amendments to the Schedule seek to introduce measures to safeguard the assets of the East African Community and its institutions, thereby strengthening the legal framework governing Kenya's participation in the East African Development Bank.

However, the Bill contains a number of procedural and accountability gaps that may undermine the effective implementation of its objectives. While it introduces the requirement for parliamentary approval, it does not prescribe the procedure for obtaining such approval. The annual reporting obligation lacks minimum reporting requirements, the deemed approval mechanism may weaken the National Assembly's oversight role by allowing significant financial commitments to proceed without an express parliamentary decision, and the Bill does not require the publication of approved financial commitments. In addition, certain proposed amendments appear to duplicate provisions that already exist in the Principal Act, creating uncertainty as to the necessity and effect of the proposed substitutions.

The Law Society therefore supports the Bill in principle, subject to the proposed amendments and recommendations set out below.

SPECIFIC COMMENTS

NO.	PROVISION	ISSUE	PROPOSAL	JUSTIFICATION
1.	Clause 2(3) – provides for the submission of an annual report to the National Assembly.	The annual reporting obligation is broadly drafted. While the clause requires the Cabinet Secretary to report on payments made out of the Consolidated Fund	Amend this clause to require the annual report to the National Assembly to prescribe the level of details to be	This will enable parliament to exercise meaningful oversight and enhance transparency and

		to the Bank, it does not prescribe the level of detail to be provided, such as the amounts to be paid, the purpose of the payments, or any outstanding financial obligations etc. This may limit transparency and accountability in the management of public funds.	provided. This would strengthen parliamentary oversight by ensuring that it receives comprehensive and consistent information on Kenya's financial obligations under the Act.	accountability in public expenditure.
2.	Clause 2(4) – provides for the raising of loans or other financial arrangements to meet payments under this clause.	The Bill requires he approval of the National Assembly before the Cabinet Secretary may make the necessary financial arrangements or raise loans. However, it does not prescribe the procedure for obtaining that approval. The absence of a clear approval process may create uncertainty in the implementation of the provision and affect the efficiency and transparency of parliamentary oversight.	Amend this clause to include a simple approval process setting out the documents to be submitted to the National Assembly, the information to accompany the request, and the decision-making process for considering and granting approval.	This promotes consistency in implementation, and make it easier to administer while supporting effective parliamentary oversight.
3.	Clause 2(6) – provides for the deemed approval by the National Assembly.	The clause provides that the approval of the National Assembly shall be deemed to have been given if it does not pass a resolution within the specified period. Given that the approval relates to borrowing and financial obligations	Delete this clause entirely.	This ensures that significant financial commitments are subject to explicit parliamentary scrutiny and accountability.

		chargeable to the Consolidated Fund, deemed approval may undermine the National Assembly's oversight role by allowing significant financial commitments to proceed without an express parliamentary decision.		
4.	Clause 3 – provides for the proposed amendments to the Schedule of the Principal Act.	The Bill proposes to delete and substitute various provisions of the Principal Act. However, a review of the Principal Act indicates that the provisions proposed for substitution already exist. This creates uncertainty as to whether the amendment is intended to introduce substantive changes or merely restate the existing law, and may result in unnecessary legislative duplication.	The Bill should be reviewed to identify the specific amendments intended to be made and ensure that only provisions requiring substantive changes are deleted and substituted. Where no change is intended, the proposed amendment should be omitted.	This promotes legislative clarity, avoid unnecessary duplication, and ensure that the amendment accurately reflects the intended changes to the Principal Act.
5.	Publication of approved financial commitments.	The Bill does not require the publication of approved borrowing arrangements, financial commitments or payments made under the Act. While the Bill provides for parliamentary approval and annual reporting, it does not ensure that approved financial commitments are made publicly available. This	The Bill does not require the publication of approved borrowing arrangements, financial commitments or payments made under the Act. This limits transparency and makes it difficult for the public and other	This promotes transparency, strengthen public accountability, and enhance public confidence in the management of public funds.

		limits transparency and makes it difficult for the public and other stakeholders to monitor Kenya's financial obligations to the Bank.	stakeholders to monitor Kenya's financial obligations to the Bank.	

CONCLUSION

This Bill is a positive step towards strengthening parliamentary oversight and accountability in the management of public funds committed to the East African Development Bank. With the proposed amendments, the Bill will provide clearer procedures, strengthen oversight, enhance public accountability, and ensure prudent management of public resources while supporting Kenya's obligations under the East African Development Bank framework.

We humbly submit that our comments and recommendations be considered before enacting the Bill.

Yours faithfully,

CHARLES KANJAMA, SC
PRESIDENT, LAW SOCIETY OF KENYA

MEMORANDUM

SUBMITTED TO:

THE CLERK OF THE NATIONAL ASSEMBLY

THROUGH:

THE CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

AND THROUGH:

THE CHAIRPERSON, DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS

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GREGORY NDEGE
& ASSOCIATES

Our ref: PET/E009/2023
Your ref: TBA

21/07/2026

THE CHAIRPERSON
THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE CHAIRPERSON
THE DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN RELATIONS

RE: PET E009 OF 2023, PAUL LIHANDA NUSU VS. THE NATIONAL ASSEMBLY & 5 OTHERS; SUBMISSION OF MEMORANDUM ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 33 OF 2026) PURSUANT TO ARTICLES 10, 35 AND 118 OF THE CONSTITUTION OF KENYA.

The above refers.

We act for Mr. Paul Lihanda Nusu, the successful Petitioner in Machakos High Court Constitutional Petition No. E009 of 2023, wherein the Honourable Justice Francis Olel Rayola rendered Judgment declaring several provisions of the East African Development Bank Act unconstitutional and issued consequential declaratory and mandatory orders.

Our client has carefully reviewed the East African Development Bank (Amendment) Bill, 2026 and appreciates Parliament's efforts to implement the Judgment of the High Court. However, it is our considered view that the proposed Bill only partially implements the Judgment and Decree of the Court and leaves several constitutional, governance and accountability concerns unresolved.

Accordingly, our client respectfully submits the enclosed Memorandum containing detailed observations and proposed amendments for consideration during the Committee Stage of the Bill and the public participation process under Articles 118 of the Constitution.

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GREGORY NDEGE
& ASSOCIATES

The principal concerns raised in the Memorandum include, inter alia: -

1. The Bill only partially implements the declarations and consequential orders issued by the High Court.
2. The Bill does not comprehensively address the legal consequences arising after the expiry of the one-year suspension granted by the Court.
3. The Bill does not fully implement the constitutional requirements relating to accountability, transparency and public finance.
4. The Bill does not adequately define or limit the scope of immunity enjoyed by the East African Development Bank while undertaking commercial activities within the Republic of Kenya.
5. The Bill ought to expressly preserve the jurisdiction of Kenyan Courts over commercial contracts, banking transactions, employment disputes, consumer protection matters, land disputes, constitutional petitions, enforcement of securities and all disputes arising from commercial activities undertaken by the Bank within Kenya.
6. The Bill should strengthen Parliamentary oversight, governance, integrity, accountability, audit and reporting mechanisms consistent with the Constitution.

Our client particularly proposes that immunity should not extend to ordinary commercial activities undertaken within Kenya. Where the Bank establishes offices, owns or acquires property, executes contracts, advances loans, creates charges, provides financial services or undertakes commercial transactions within Kenya, disputes arising therefrom ought to fall within the jurisdiction of Kenyan Courts while preserving immunity only in respect of official institutional functions expressly contemplated under the Treaty and consistent with the Constitution of Kenya.

Further, in view of the Judgment of the High Court and the constitutional principles of transparency, accountability and access to information under Articles 10, 35, 201 and 232 of the Constitution, our client respectfully requests that the National Assembly furnishes him with copies of all reports, records, payment schedules, accounts, statements and any other documents presently in the custody of Parliament relating to payments made by the Government of Kenya from the

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GREGORY NDEGE
& ASSOCIATES

Consolidated Fund to the East African Development Bank pursuant to the Judgment in Machakos High Court Constitutional Petition No. E009 of 2023.

In particular, we request to be supplied with the partial accounts, reports and records already received by Parliament, together with any accompanying correspondence, committee reports, Hansard extracts, recommendations or other documentation, to enable our client to meaningfully participate in the legislative process, assess the extent of compliance with the Judgment and Decree of the High Court, and submit comprehensive proposals aimed at ensuring full constitutional compliance.

We further respectfully request to be notified of any Committee sittings, stakeholder engagements or public participation forums concerning the East African Development Bank (Amendment) Bill, 2026, to enable our client, either personally or through counsel, to make oral representations before the relevant Parliamentary Committee.

We trust that the enclosed Memorandum shall receive your favourable consideration in keeping with the constitutional principles of public participation, accountability, openness and the rule of law.

Kindly acknowledge receipt.

Yours Faithfully,

Gregory K

Gregory Ndege,
Advocate

C.C: - *The Rt. Hon. Speaker of the National Assembly*
Chairperson, Departmental Committee on Finance and National Planning
Leader of the Majority Party, National Assembly
The Honourable Attorney-General

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4





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TO:

CLERK OF THE NATIONAL ASSEMBLY,

MAIN PARLIAMENT BUILDING,

P.O. BOX 41842 – 00100,

NAIROBI.

MEMORANDUM ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 33 OF 2026), SUBMITTED PURSUANT TO ARTICLE 118(1)(b) OF THE CONSTITUTION OF KENYA, 2010 AND STANDING ORDER 127(3) OF THE NATIONAL ASSEMBLY STANDING ORDERS

1. This Memorandum is submitted pursuant to Articles 1, 3(1), 10, 22(1), 118(1)(b) and 232(1)(d) of the Constitution of Kenya, 2010, in response to the Invitation to

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ICPAK SUBMISSION

ON

THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026

INTRODUCTION

The Institute of Certified Public Accountants of Kenya (ICPAK) is the statutory body of Accountants established in 1978 and draws its mandate from the Accountants Act No.15 of 2008. The Institute is mandated to regulate and promote standards of professional competence and practice among its members.

The principal objective of the Bill is to amend the East African Development Bank Act, Cap. 493A, to require the approval of the National Assembly prior to the Cabinet Secretary authorizing a charge or issuance of public funds from the Consolidated Fund to the East African Development Bank. Section 2 of the Act currently authorizes the Cabinet Secretary for the National Treasury to commit and disburse funds from the Consolidated Fund to the East African Development Bank without the approval of the National Assembly. The proposed amendment therefore seeks to enhance legislative oversight and accountability in line with the principles of public finance as set out under the Constitution.

A. Background

The High Court of Machakos in the Nusu v National Assembly & 6 Others case considered two key issues arising from the amendments to the East African Development Bank (EADB) Act introduced vide the Finance Act, 2013. The first issue concerned the powers granted to the Cabinet Secretary for the National Treasury to charge and issue public funds from the Consolidated Fund without parliamentary approval and oversight. The Court held that these provisions were unconstitutional, finding that they violated Articles 10, 95(4)(b), 201, 206, 228(5) and 232 of the Constitution by bypassing Parliament's oversight role over public finances. It is this constitutional misalignment that the East African Development Bank (Amendment) Bill, 2026 seeks to address. ICPAK was listed among the institutions that participated in the public participation process leading to the enactment of the Finance Act, 2013.

The second issue related to the legal immunity accorded to the East African Development Bank. Unlike the provisions on the management of the Consolidated Fund, the Court dismissed the challenge to the Bank's immunity, holding that such protections are consistent with the legal frameworks governing comparable international financial institutions, including the African Development Bank and the International Monetary Fund. Nevertheless, judicial decisions such as Okoiti & 8 Others v H.E. (Former) President Uhuru Muigai Kenyatta & 33 Others and Dari Limited v East African Development Bank (EACJ) illustrate the broad scope of this immunity, which has, in practice, insulated the Bank from legal proceedings. Against this backdrop, the immunity provisions continue to warrant careful consideration to ensure an appropriate balance between safeguarding the Bank's operational independence and upholding the constitutional principles of accountability and access to justice.

B. ICPAK'S Proposals

The Institute has reviewed the bill and proposes the following for consideration:

#	CLAUSE	ISSUE OF CONCERN	ICPAK RECOMMENDATION	JUSTIFICATION
1.	Clause 2, In amendment of Article 2 of the EADB Act *2(5) Subject to subsection (4), the relevant Committee of the National Assembly shall consider and table its report for debate within thirty days from the date on which the notification for approval was sought.*	Although the proposed clause is meant to promote efficiency, it could potentially dilute Parliament's constitutional oversight role over borrowing and public finance.	Amend the proposed section 2(5) to read; *5a. Subject to subsection (4), the relevant Committee of the National Assembly shall consider and table its report for debate within thirty days from the date on which the notification for approval was sought.* *5b. Within the period specified in subsection 5a, the Speaker shall ensure the matter is accorded priority for consideration in the sittings of the National Assembly, and shall approve the proposal by resolution before the Cabinet Secretary may proceed.*	Given the approval is tied to the national public debt and debt sustainability being a core issue of today's governance, requiring an affirmative resolution would better uphold the principles of accountability and separation of powers.
2.	Clause 3(b) amending article 44 of the EADB Act to; *"1. The Bank shall enjoy immunity from every form of legal process except in any case where it has expressly waived its immunity in writing, when it may be sued in a court of competent jurisdiction in a Member State in which the Bank has an office, and has appointed an agent for the purpose of accepting service or notice of process.."*	While legal immunity is a standard feature of international financial institutions such as the IMF, IDA and ADB, the provision confers broad discretion on the EADB to determine when legal proceedings may be instituted (by waiving its immunity in writing). Unlike the African Development Bank Agreement, the Bill does not provide an express exception for disputes arising from the Bank's borrowing powers.	Amend the provision to read as follows, aligned with the African Development Bank Act. *'The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers or where it has expressly waived its immunity in writing, when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has an office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members'*	Adoption of the ADB standard preserves the Bank's immunity but allows legal proceedings in matters arising from its borrowing powers. This approach enhances legal certainty for shareholders and counterparties involved in the Bank's commercial financing activities, while maintaining the operational independence.

COMPARATIVE ANALYSIS WITH REGIONAL BLOCKS

a. Common Market for Eastern and Southern Africa

The Eastern and Southern African Trade and Development Bank, formerly known as the PTA Bank, operates under the Preferential Trade Area (Implementation) Act and is granted legal status, privileges and immunities similar to those granted to the EADB. Contributions to TDB are ordinarily appropriated through each member state's domestic budgetary and public finance management processes.

While member states are obligated to meet their capital subscriptions and other financial commitments, the Trade and Development Bank Agreement does not give authority to finance ministers to withdraw funds directly from consolidated funds outside the constitutional and legislative budget approval framework of member states.

b. East Africa Community

The East African Community converge with the East African Development Bank, which enjoys privileges and immunities necessary for the independent discharge of its mandate, including immunity from legal process and protection of its assets. The Act, which the bill being deliberated is sought to amend, empowered the Cabinet Secretary for the National Treasury to charge and issue funds directly from the Consolidated Fund without parliamentary approval for settlement of obligations to it within Kenya.

c. ECOWAS

West Africa's equivalent to the EADB is the ECOWAS Bank for Investment and Development (EBID). The Bank enjoys privileges and immunities comparable to those of other multilateral development banks, protecting its assets, officials and operations from domestic legal proceedings.

Financial contributions by member states are appropriated and disbursed in accordance with each country's constitutional and public financial management laws, reinforcing the principle that international treaty obligations do not supersede domestic requirements for legislative authorization of public expenditure.

Overally, the comparative analysis reveals that egal immunity is a universally accepted feature of regional development finance institutions, intended to safeguard their independence to ensure they perform their developmental mandates and that financing of these obligations require legislative approval serving as the principal mechanism for authorizing withdrawals from consolidated or public funds.

CONCLUSION

ICPAK acknowledges the East African Development Bank (Amendment) Bill, 2026 and its efforts to strengthen the alignment of the East African Development Bank Act with constitutional principles, particularly those relating to accountability and parliamentary oversight. Notwithstanding these proposed amendments, the proposed borrowing powers of the Cabinet Secretary, while subject to legislative approval, may have implications for public debt levels and the broader fiscal consolidation and debt sustainability agenda and might therefore, require fiscal safeguards.

Submit Memoranda published by the Clerk of the National Assembly in the Kenya Gazette on Tuesday, 7th July 2026, inviting public and stakeholder memoranda on, among other Bills, the East African Development Bank (Amendment) Bill, 2026 (National Assembly Bill No. 33 of 2026) ("the Bill").

2. The Memorandum is presented solely out of the abiding commitment to constitutionalism, the rule of law, and the protection of public funds held in the Consolidated Fund of the Republic of Kenya, and is offered to assist the Departmental Committee on Finance and National Planning ("the Committee") in its consideration and reporting on the Bill under Standing Order 127(3).

3. Further, the Memorandum is submitted within the timelines fixed by the Clerk of the National Assembly, being on or before Tuesday, 21st July 2026 at 5.00 p.m.

4. The Bill, sponsored by the Leader of the Majority Party, Hon. Kimani Ichung'wah, EGH, MP, seeks to amend the East African Development Bank Act, Cap. 493A, Laws of Kenya ("the EADB Act") by:

   (a) deleting and replacing section 2 of the EADB Act to require the approval of the National Assembly, through its relevant Committee, before the Cabinet Secretary for the National Treasury charges, pays or issues public funds from the Consolidated Fund to the East African Development Bank ("EADB" or "the Bank"), including an annual reporting obligation to the National Assembly; and

   (b) amending Articles 24, 44 and 45 of the Charter of the Bank contained in the Schedule to the EADB Act, touching on creditor status, judicial immunity, and immunity of assets respectively.

5. The Memorandum of Objects and Reasons appended to the Bill correctly identifies the mischief that the Bill seeks to cure, namely that "Section 2 of the Act currently authorizes the Cabinet Secretary for the National Treasury to

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commit and disburse funds from the Consolidated Fund to the East African Development Bank without the approval of the National Assembly," and that the amendment "seeks to enhance legislative oversight and accountability in line with the principles of public finance as set out under the Constitution."

6. The Committee's attention is specifically drawn to the judgment of the High Court of Kenya at Machakos (Olel, J.) in ***Paul Lihanda Nusu v. The National Assembly, The Senate, The Cabinet Secretary for the National Treasury, The Cabinet Secretary for Foreign Affairs, The Hon. Attorney-General, The Auditor-General and The Central Bank of Kenya, Constitutional Petition No. E009 of 2023*** which was delivered on the 20th March 2025. This is a decision of a court of competent jurisdiction directly and specifically concerning the very statute the Bill purports to amend, and it is submitted that Parliament is obliged, as a matter of constitutional propriety and the rule of law under Article 2(1) and 2(4) of the Constitution, to legislate in a manner that gives full effect to it.

7. The material findings of the Nusu Decision, binding unless and until set aside on appeal, are as follows:

   (a) Section 2(1) and (2) of the EADB Act was declared unconstitutional for violating Articles 10, 95(4)(b), 201, 206, 228(5) and 232 of the Constitution, the Court finding that it unilaterally bestowed upon the Cabinet Secretary for the National Treasury the sole responsibility, to charge on and issue public funds out of the consolidated fund, without parliamentary oversight and/or accountability, in a manner that definitely offends the principles of public finance as espoused under Article 201 as read with Article 206 of the constitution and also the values and principles of governance as espoused under Articles 10 and 232 of the constitution. The Court further found, as a matter of fact, that the National Assembly's Public Debt and Privatization Committee did not in practice exercise any real oversight over disbursements to EADB.

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(b) The amendments introduced to the Schedule of the EADB Act by section 30 of the Finance Act, 2013 were declared illegal, null, and void ab initio for want of genuine public participation contrary to Articles 10 and 118(1)(b) of the Constitution.

(c) An order of mandamus was issued directing the Cabinet Secretary for the National Treasury to produce, within sixty (60) days of the judgment, records of all payments made from the Consolidated Fund to EADB from the year 2014 for tabling before Parliament, the Court having noted that EADB's audit arrangements under Article 35 of the Bank's Charter fall outside the constitutional mandate of the Auditor-General under Article 229(4)(b), (5) and (6) as read with section 7 of the Public Audit Act, 2015.

(d) The declarations of unconstitutionality were suspended for one (1) year from the date of judgment, that is, to on or about 20th March 2026, to allow parliament and the Attorney General to consider appropriate amendments to the EADB Act.

(e) Notably, the Court declined to find Articles 44, 45 and 46 of the Bank's Charter unconstitutional, applying the reasonable and justifiable limitation test in ***Karen Njeri Kandie v. Alassane Ba & Another [2017] eKLR*** by analogy to diplomatic immunity. This finding was made without the benefit of evidence of the practical abuse of that immunity to shield individual EADB personnel from Kenyan criminal process, and ought therefore to inform, rather than foreclose, Parliament's independent constitutional duty to legislate consistently with Articles 48 and 50 of the Constitution.

8. It is of considerable and unavoidable significance to the Committee that the one-year suspension window fixed by the Court lapsed on or about 20th March 2026, some two and a half months before this Bill was even gazetted on 5th June 2026. On a plain reading of the Nusu Decision, section 2(1) and (2) of the EADB Act

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stood as declared void for all purposes from that date, absent any recorded extension of the suspension by the High Court or the Court of Appeal.

9. The reintroduction of a National Assembly approval mechanism in the proposed new section 2 of the EADB Act is timely. However, the following specific defects in the drafting require the Committee's urgent attention:

(a) The proposed subsection 2(6) of the bill provides that if the National Assembly has not passed a resolution within thirty (30) days of the notification for approval, the approval shall be deemed to have been given. This defeats the very purpose of the amendment. A deeming provision of this kind effectively re-creates, by the back door and after only a fixed lapse of time, the exact opaque, unaccountable disbursement regime that the High Court struck down. It is recommended that subsection 2 (6) be deleted and replaced with a requirement of affirmative resolution, failing which no payment shall be authorised.

(b) The proposed section 2(3) requires only that the Cabinet Secretary report to the National Assembly on payments made but it does not require that such payments, once made, be subject to audit by the Auditor-General or an equivalent independent auditor answerable to Parliament. Given the Court's express finding that EADB's own audit arrangements under Article 35 of its Charter are not accountable to any Kenyan constitutional oversight body, a bare reporting obligation, without independent verification, is inadequate. The Committee should consider an amendment requiring that all sums paid to EADB from the Consolidated Fund be subject to periodic independent audit, with the audit report tabled before the National Assembly, in fulfilment of Articles 201(d)-(e) and 229 of the Constitution.

(c) The Bill is silent on the core structural, licensing and governance defects at EADB set out in Part V below, several of which long pre-date, and are

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independent of, the funding-approval question. A Bill that addresses only the funding gateway while leaving untouched the institution's unlicensed banking operations, its governance capture, and its misuse of immunity to shield criminal conduct, is not a complete or honest legislative response to the problem Parliament itself has acknowledged.

10. Section 4(1) of the Banking Act, Cap. 488, Laws of Kenya, provides that no person shall in Kenya transact banking business, financial business or the business of a mortgage finance company except with the written authority of the Central Bank of Kenya ("CBK"), such authority to be signified by a licence. Section 2 of the same Act defines banking business broadly to include, among other things, the acceptance of deposits and lending. EADB, on its own governing instruments, engages extensively in lending, deposit-taking, and mortgage/development finance within the territory of Kenya, yet holds no licence issued by the CBK, and is not subject to the prudential supervision, capital adequacy rules, or consumer-protection oversight that the Banking Act imposes on every other institution transacting such business in Kenya.

11. It is submitted, with respect, that Article 2(6) domesticates ratified treaties as part of the laws of Kenya, it does not and cannot exempt a treaty-based entity from a separate, validly enacted statute of general application such as the Banking Act, absent an express and specific exemption enacted by Parliament.

12. Article 231(2) of the Constitution charges an institution of the character of the Central Bank of Kenya with the regulation of the country's monetary system, and section 4(1) of the Banking Act operationalises that constitutional function for all deposit-taking and lending institutions. The continued, unlicensed conduct of banking business by EADB in Kenya, without CBK supervision, exposes Kenyan borrowers and depositors dealing with the Bank to unregulated risk, and represents a standing contravention of the Banking Act that the Bill leaves wholly untouched. The Committee should require the Central Bank of Kenya to

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table, within a fixed period, a formal position on whether EADB's Kenyan lending and deposit operations constitute banking business within the meaning of section 2 of the Banking Act, and, if so, what steps CBK has taken, or intends to take, to bring the Bank within the licensing and prudential supervision framework of that Act, or, in the alternative, why an express statutory exemption is necessary.

13. Article 44(1) of the Charter confers on the Bank immunity from every form of legal process, waivable only in writing and never extending to any measure of execution. Article 48(1) of the Charter extends comparable civil-process immunity to all directors, alternates, officers and employees of the bank with respect to acts performed by them in their official capacity.

14. It is a matter of direct and current concern, evident from ongoing criminal proceedings before courts of competent jurisdiction in Kenya, that this immunity regime is being invoked, or its existence is being relied upon as a shield, in relation to allegations of criminal conduct by individuals associated with the Bank, and not merely in respect of the Bank's legitimate treaty-mandated commercial or lending functions.

15. It is submitted that diplomatic immunity under the Vienna Convention on Diplomatic Relations, 1961, is expressly and narrowly circumscribed, and even then, does not extend to acts wholly outside a diplomat's official functions, still less to criminal conduct. No immunity recognised under customary or treaty international law, and no immunity permissible under Article 24 of the Constitution, can be reasonable and justifiable in an open and democratic society to the extent that it is used, or capable of being used, to place individuals beyond the reach of Kenya's criminal justice system for personal criminal wrongdoing merely because they are, or were, officers or employees of EADB. Clause 3(b) of the Bill, amending Article 44 of the Charter, should be expanded, and a

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corresponding amendment made to Article 48, to place beyond doubt that no immunity under the Charter shall extend to acts of criminal conduct by any director, officer, employee, or agent of the Bank, whether or not committed in the course of the Bank's business and the Bank and its personnel remain fully subject to the criminal jurisdiction of the Courts of Kenya in respect of offences under Kenyan law.

16. It is a matter of serious public concern, presently the subject of investigation, that the governance architecture of EADB permits, or has in practice permitted, directors to access credit facilities from the Bank and thereafter to participate, directly or through Board processes they control, in decisions to write off, restructure, or forgive such facilities. This is a textbook conflict of interest and self-dealing arrangement that no institution accountable, even in part, to Kenyan public funds ought to be permitted to operate under.

17. No provision of the current EADB Act, its Charter, or the Bill under consideration requires, as a condition of Kenya's continued financial contribution to the Bank under section 2 of the EADB Act, that the Bank maintain and publish a conflict-of-interest policy prohibiting insider lending and self-approved write-offs, of the kind mandated for Kenyan public and private financial institutions generally under, among others, the Banking Act, the Public Finance Management Act, 2012, and the Mwongozo Code of Governance for State Corporations. The Bill should be amended to make continued disbursement of Kenyan public funds to EADB under the new section 2 conditional upon the Bank adopting and publishing, and periodically certifying compliance with, a conflict-of-interest and insider-lending policy consistent with Kenyan standards of corporate governance, and to require the Cabinet Secretary's annual report under proposed section 2(3) to specifically disclose any credit facilities extended by the Bank to its own directors, alternates, officers or their associates, and the status and justification of any write-off, restructuring or forgiveness of such facilities.

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18. Neither the EADB Act nor the Charter contained in its Schedule prescribes any maximum term of office, term limit, or mandatory rotation for Board directors. It is a matter of documented public record and concern that certain Board members have remained in office for periods reported to be as long as seventeen (17) years, a state of institutional entrenchment inconsistent with basic principles of corporate governance applicable to institutions handling public and quasi-public funds, and one that, in combination with the insider-lending concerns set out in Part V(C) above, is alleged to have entrenched a self-dealing cabal operating with impunity against ordinary borrowers and customers of the Bank.

19. This is directly analogous to, and indeed a more severe version of, the entrenchment and impunity concerns that animate Kenya's own constitutional and statutory term-limit regime for public office. There is no principled basis upon which Kenyan taxpayers should be asked, through the mechanism the Bill proposes, to continue funding an institution whose governing board is not subject to any term limit at all. Kenya should, through its representatives on the Board and Council of Governors of EADB, and through the diplomatic and treaty-amendment channels available to it, formally propose an amendment to the Charter introducing a fixed, renewable-once term of office for all Board directors and alternates, and, pending such Charter amendment, the Bill should require the Cabinet Secretary to certify, as a condition precedent to any further disbursement under section 2, that Kenya has formally raised and pursued this reform at the Bank's governing organs, with a report of progress to be included in the annual report to the National Assembly.

20. It is a matter of concern that EADB, in its standard-form lending and commercial contracts with Kenyan borrowers and counterparties, is understood to routinely exclude or oust the jurisdiction of the Courts of Kenya, whether through arbitration clauses seated outside Kenya, choice-of-law and choice-of-forum clauses favouring foreign or supranational fora, or reliance on Article 54 of its

own Charter, while simultaneously relying on Articles 44 and 45 of that same Charter to resist the jurisdiction of Kenyan courts when sued by aggrieved Kenyan counterparties.

21. The result, respectfully submitted, is a one-sided and fundamentally unfair arrangement where the Bank enjoys the benefit of Kenya's constitutional and statutory guarantee of unimpeded access to the Consolidated Fund, while denying ordinary Kenyan citizens, borrowers and litigants' meaningful access to their own courts to vindicate their rights against the Bank. An institution that will not submit its own contractual disputes to Kenyan courts has no proper claim to unconditional, unaudited access to Kenyan public funds without Parliament first requiring reciprocal accountability.

The Bill should require, as a condition of continued funding under the new section 2, that EADB's standard-form contracts with Kenyan citizens, residents and entities include an option, at the election of the Kenyan counterparty, to resolve disputes before the Courts of Kenya, or in the alternative, before an arbitral tribunal seated in Kenya under the Arbitration Act, 1995, and that the Cabinet Secretary report annually to the National Assembly on the number and nature of disputes between the Bank and Kenyan counterparties and the fora in which they were, or are being, resolved.

22. For ease of reference, the following provisions of law are engaged by this Memorandum and are commended to the Committee's attention:

- Constitution of Kenya, 2010

  Articles 1, 2, 3, 10, 22, 23, 24, 25, 27, 35, 43, 46, 48, 50, 94, 95(4)(b) and (c), 118(1)(b), 159, 165, 201, 206, 209, 213, 214, 225, 226, 228, 229, 231, 232.

- East African Development Bank Act and the Charter of the Bank contained in the Schedule thereto, in particular Articles 24, 42, 43, 44, 45, 46, 47, 48, 49, 51 and 54.

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- Banking Act.
- Public Finance Management Act and the Public Finance Management (National Government) Regulations, 2015.
- Public Audit Act.
- Treaty-Making and Ratification Act.
- Arbitration Act.
- Paul Lihanda Nusu v. The National Assembly & 5 others, Constitutional Petition No. E009 of 2023.
- Cabinet Secretary for National Treasury and Planning & 4 others v. Okiya Omtatah Okoiti, Petition No. E031, E032 & E033 of 2024.
- Karen Njeri Kandie v. Alassane Ba & Another [2017] eKLR.

23. For the foregoing reasons, the undersigned respectfully urges the Departmental Committee on Finance and National Planning to:

(a) Note and give full effect to the findings of the High Court in ***Paul Lihanda Nusu v. The National Assembly & 5 others, Constitutional Petition No. E009 of 2023***, in its report on the Bill, and specifically verify and disclose the current status of the one-year suspension of the declarations of unconstitutionality made therein;

(b) Amend proposed section 2(6) of the EADB Act to remove the deemed approval default and replace it with a requirement of affirmative resolution of the National Assembly as a condition precedent to any disbursement;

(c) Amend proposed section 2(3) to require independent audit of all sums disbursed to EADB, in addition to the Cabinet Secretary's reporting obligation;

(d) Require the Central Bank of Kenya to report to the Committee on the licensing status of EADB's banking operations in Kenya under section 4(1) of the Banking Act;

(e) Amend Articles 44 and 48 of the Charter, as proposed to be amended by Clause 3(b) of the Bill, to expressly exclude criminal conduct by any director, officer, employee or agent of the Bank from the scope of any immunity;

(f) Introduce, as a condition of continued Kenyan funding under section 2, requirements addressing insider lending and loan write-offs by Board directors, absence of Board tenure limits, and the Bank's avoidance of Kenyan courts in its own contracts, as more particularly set out in Part V above; and

(g) Invite the undersigned, or such other public participation forum as the Committee may direct, to make oral representations on this Memorandum, and grant such other or further directions as the Committee may deem just and expedient in the public interest.

24. The East African Development Bank performs a legitimate and potentially valuable developmental function within the East African Community, and this Memorandum is not directed at obstructing Kenya's participation in regional development finance. It is, however, directed at ensuring that such participation is conducted, as the Constitution of Kenya requires, with openness, accountability, public participation, and appropriate legal and prudential safeguards for public funds and for the rights of Kenyan citizens who deal with the Bank.

25. A Bill that restores parliamentary approval over the funding gateway, while leaving unaddressed unlicensed banking activity, misuse of immunity to shield criminal conduct, governance capture through insider lending, board entrenchment, and the Bank's own forum-avoidance in its dealings with Kenyans, is, with respect, only half a remedy.

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Respectfully submitted.

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Peter Agoro

NATIONAL SECRETARY OPERATION LINDA JAMII

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Email: Justicealliance1000@gmail.com

Date: 20th July 2026

Prof. Fredrick Onyango Ogola

President Operation Linda Jamii

National ID No. 28568562

Postal Address 59857- 00200, Nairobi

Email: fredotbs@gmail.com

20th July 2026

Yours faithfully,
FOR: OPERATION LINDA JAMII

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PROF. FREDRICK ONYANGO OGOLA

Contact No: **0708400457**, Email address: **fredotbs@gmail.com**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS COUNTY

COURT NAME: MACHAKOS LAW COURT

CASE NUMBER: HCCHRPET/E009/2023

CITATION: PAUL LIHANDA NUSU VS THE NATIONAL ASSEMBLY AND THE SENATE AND 4 OTHERS

DECREE

CLAIM FOR

a) A declaration that the petitioner's rights as aforementioned have been breached, infringed, and threatened by the Respondents actions as referred to in the petition

b) A declaration that in management of public funds the 3rd Respondent by dint of the East African Development Act has violated the principles enshrined in articles 10 of the constitution.
c) A declaration that the said East African Development Act CAP493a was ratified by the National Assembly of Kenya un-procedurally without regard to the Rule of law, supremacy of the constitution and in a manner that offends the Constitution of Kenya 2010 and in particular Article 118(1)(b)
d) A DECLARATION THAT BY PROVIDING IMMUNITY FROM JUDICIAL PROCEEDINGS TO THE EADB, Article 44 of the EADB Charter contained in the schedule to the EADB Act, contravenes Article 50 as read with Article 25 of the constitution on the right to fair trial and is therefore unconstitutional.
e) A Declaration that by providing immunity from judicial proceedings to the AEDB, Article 44 of the EADB Charter contained in the schedule to the EADB Act, contravenes Article 48 of the constitution on access to justice and is therefore unconstitutional.
f)A declaration that by providing immunity from judicial proceedings to the EADB, Article 44 and 55 of the EADB Charter contained in the schedule to the EADB Act contravenes Article 1,2,1o, 22,23,25,48,& 50 of the constitution and therefore unconstitutional
g) A declaration that by providing immunity of assets to the EADB, particularly of deposits and funds, Article 45 of the EADB Charter contained in the schedule to the EADB Act, contravenes Article 46 of the constitution.
h) A declaration that sections 2(1), (2) of the EADB Act and Articles 44(1),(2) contained in the

schedule respectively of the East African Development Act CAP 493A are inconsisted with the constitution of Kenya, undermine the spirit of the constitution and therefore the said act is unconstitutional as far as the said clauses are concerned.
i) A declaration that section 2(1)& (2) of the EADB Act is unconstitutional and violates Articles 10, 95(4)(b), 201, 206, 228 of the constitution.
j) A declaration that the 1st, 2nd and 4th respondents have acted in violation of article 35 of the constitution by failing to provide access to information on the public participation conducted pursuant to article 118(1) (b) of the constitution prior to the East African Development Bank Act No. 38 of 2013
k) A declaration that in enacting the East African Development Bank Act No. 38 of 2013 without conducting public participation as mandated by Article 118(1) (b) of the constitution the 1st &2nd respondent violated Article 94(4) and article 95(4) (c) of the constitution.
l) A declaration that the East African Development Bank Act No. 38 of 2013 is unconstitutional for having passed without public participation as required by Article 118(1) (b) of the constitution.
m) That an order by way of judicial review of certiorari be hereby be issued by this court to quash the decision of the National assembly of ratifying the EAST SFRICAN DEVELOPMENT BANK ACT.
n)A declaration that section 2 (1) & (2) of the EADB Act is unconstitutional to the extend that it provides for payment of public funds out of the consolidated fund by the 3rd respondent in an opaque manner, without the participation of the public and in violation of Article 10 (2) (a) and 118 (1) (b) of the constitution.
o) An order of mandamus directing the 3rd respondent to produce records of all payments made from the consolidated fund pursuant to the EADB Act since the year 2014 and avail the same to the auditor General for audit purposes.
p)An order of prohibition prohibiting the 3rd respondent from withdrawing public funds from the consolidated fund under section 2(1) & (2) of the EADB Act until such time as the EADB Act is amended to provide a parliamentary process for such withdrawal.
q) A declaration that the any private entity that receives public funds and other state resources is obliged to account for the utilization of the same to the public and Auditor General is mandated to investigate the same and report to parliament for appropriate action.
r) A declaration that by conducting banking business any/or mortgage finance in Kenya without having obtained a license, the entity created by the EADB Act is operating in Kenya in a manner contrary to section 4(1) of the banking Act.
s) A declaration that the 7th respondent has acted in contravention of Article 231(2) of the constitution by failing to regulate the entity created by the EADB Act which conducts banking business in Kenya in a manner contrary to section 4(1) of the Banking Act.
t) Any further relief, writs, directions as the honourable court may consider appropriate.

THIS MATTER coming up for Judgment before Hon.Justsice F.Rayola Olel on 22nd April, 2024 on the virtual platform, teams in the presence of Counsel for the 2nd ,3rd Respondents, and in the absence for the petitioner and 3rd to 5th Respondents AND UPON delivery of the same,

IT IS HEREBY ORDERED AND DECREED;

a)THAT a declaration be and is hereby issued that the petitioner's rights as aforementioned has been breached, infringed, by the 1st , 2nd , 3rd ,4th & 5th Respondent's actions as referred to in the petition.
b)THAT a declaration be and is hereby issued that to the extent that there are no checks and balance mechanism placed under section 2(1) and (2) of the East African Development Act as to undertake his obligations to EADB, the same violates the principles enshrined in Articles 10,95,(4)(b), 201, 206,228(5) and 232 of the Constitution as the process of funding East African development Bank, lacks transparency, good governance, and accountability.

c)THAT a declaration be and is hereby issued that section 2(1) & (2) of the EADB Act is unconstitutional and violates provisions of Articles 10,95 (4)(b),201, 206, 228 (5) of the constitution.
d) THAT a declaration be and is hereby issued that amendments effected to the said East African development Act CAP 493A,through clause 29/30 of the finance bill,2013 as ratified by the National Assembly of Kenya on 25th September,2013, were un-procedurally enacted without regard to the Rule of law, and in a manner that offends Article 10 &118(1)(b) of the Constitution of Kenya 2010.
e) THAT an order of mandamus be and is hereby issued directing the 3rd Respondent to produce records of all payments made from the consolidated Fund to East African development Bank from 2014 to date and the same be availed to parliament within the next 60 days of delivery of this judgment.
f) THAT a declaration be and is hereby issued that any private entity that receives public funds and other state resources is obliged to account for the utilization of the same to the public through appropriate legislation to be put by parliament.
g) In the interest of justice, the declarations made in (c) & (d) above are suspended for one (1) year to allow parliament and the Attorney General to consider appropriate amendments to EADB Act Cap 493A.
2) THAT this being a public interest litigation, each party will bear their own costs.

SIGNED BY: HON. MR. JUSTICE FRANCIS RAYOLA OLEL



THE JUDICIARY OF KENYA.
MACHAKOS HIGH COURT
HIGH COURT DIV
DATE: 2025-04-07 15:04:02+03



DCI ECCU

REPUBLIC OF KENYA
CHARGE SHEET

POLICE 5

O.B NO: .....

POLICE CASE NO: 145 / 11 /2025

COURT FILE NO. EDH 0 /2025

DATE TO COURT: 28 / 1 /2025

Christian Names in full or Name	Surname	Identity Cert. No.	Sex	Nationality or tribe	Apparent Age	ADDRESS / CONTACTS
1. ISAAC NYONGESA	OKWARA	----------	M	KENYAN	ADULT	C/O EADB, 4TH NILE AVENUE, KAMPALA UGANDA +256417112900

COUNT 1	GIVING FALSE INFORMATION TO A PERSON EMPLOYED IN THE PUBLIC SERVICE CONTRARY TO SECTION 129 (a) OF THE PENAL CODE.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.) See other counts overleaf	ISAAC NYONGESA OKWARA: On the 8th of August 2023 at DCI Headquarters, Nairobi within Nairobi City County, you gave information to No. 240454 IP DUNCAN MAINA, a person employed in the public service, serving as a Police Officer and stationed at the Directorate of Criminal Investigations that one Hon. Raphael Tuju has committed criminal offences, to wit, making false statement by director of a company, illegal transfer of a mortgaged property and making unlawful receipts, which information you knew or believed to be false, intending thereby to cause the said No. 240454 IP DUNCAN MAINA, to commence criminal investigations against the named Hon Raphael Tuju, which he ought not to have done if the true state of facts in respect to such information had been known to him.

If Accused Arrested	Date of Arrest	Without or with warrant	Date Apprehension Report to Court	Bond or Bail and Amount/	Is Application made for Summons to Issue //////////

Remanded or Adjourned to	
Complainant and Address	REPUBLIC THROUGH THE DCI HQRS NAIROBI
Witnesses	1. Hon. Raphael Tuju 2. Washington Barnabas 3. IP Duncan Maina 4. Others to be stated
Sentence	.....
Court and Date	CM'S COURTS AT MILIMANI ..... If fine paid.....

ODPP Station ..... Police Station

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
28 JAN 2025
MILIMANI Law Court
P.O. Box 30701 - 00100, NAIROBI

NATIONAL POLICE SERVICE
POLICE REGISTRY
28 JAN 2025
MILIMANI LAW COURTS

22

FILED ELECTRONICALLY ON
Date: 10.2.25 Time: 5.02Am

EPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.056OF 2025

IN THE MATTER OF: **ARTICLES 2, 22, 23, 40(1), (3), AND 47(1) OF THE CONSTITUTION OF KENYA, SECTION 4 (1), SECTIONS 9 (1) 11 (1) (B) (F)((I) FAIR ADMINISTRATIVE ACTION ACT)**

BETWEEN

EAST AFRICAN DEVELOPMENT BANK_____ FIRST PETITIONER
ISAAC NYONGESA OKWARA_____ SECOND PETITIONER

VERSUS

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS_____ FIRST RESPONDENT

CHIEF MAGISTRATES COURT AT NAIROBI_____ SECOND RESPONDENT

TO: - THE HIGH COURT OF KENYA

The Humble Petition of the East African Development Bank and Isaac Nyongesa Okwara (the "**Petitioners**") whose address for service for purposes of this Petition is care of **Kaplan & Stratton Advocates, Williamson House, 9th Floor, 4th Ngong Avenue, and P.O. Box 40111-00100 Nairobi** is as follows:

PARTIES

1. East African Development Bank, the First Petitioner, is a development bank established by the **Treaty Amending and Re-enacting the Charter of the East African Development Bank, 1980** among its member countries. Following the collapse of the original East African Community, the three (3) East African governments (Kenya Uganda and the United Republic of Tanzania) entered into a **Further Treaty Amending and Re-enacting the Charter** of the 1st Defendant which was signed and entered into on 23rd June 1980. The Charter is annexed to the **Treaty for East African Co-operation of 1967** as amended on 23rd July 1980.

2. In order for the Republic of Kenya to fulfil its obligations under the Charter, the Parliament of Kenya enacted the **East African Development Act Cap. 493A Laws of**

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Kenya to give effect to certain Articles of the Charter and the Treaty, and which Act came into force on 18th May 1984. **Section 3** of the Act in particular incorporates the provisions of the Charter in the following terms: ***"the provisions of the Charter annexed to the Treaty for East African Co-operation, 1980 and set out in the Schedule to the Act shall have force in law in Kenya"***. It is this Schedule to the Act that sets out the provisions of the Charter annexed to the Treaty which have the force of law in Kenya.

3. Isaac Nyongesa Okwara, the Second Petitioner, is an official and employee of the East African Development Bank.

4. The First Respondent is a constitutional office established under Article 157(1) of the Constitution of Kena 2010. Its functions include, inter alia, to institute and undertake criminal proceedings against any person before any Court in respect of any offence alleged to have been committed. **Service of summons shall be through the Petitioners' advocates.**

5. The Second Respondent is a subordinate Court established under Article 169 of the Constitution of Kenya 2010. **Service of summons shall be through the Petitioners' advocates.**

6. The First Respondent has instituted **Nairobi Criminal Case NRB E042 of 2025 Republic v Isaac Nyongesa Okwara** (the "**Criminal Case**") against the Second Petitioner.

7. The Petitioners aver that the institution of the Criminal Case is a violation of the Constitution and an abrogation of the First Petitioner's "*immunity **from every form of legal process** except in cases arising out of the exercise of its borrowing powers*".

LEGAL FOUNDATIONS OF THE PETITION

Constitution of Kenya, 2010.

8. **Article 2** of the Constitution establishes the binding nature of the Constitution on all individuals and state institutions across all levels of governance, emphasizing its supremacy. No one may claim or exercise State authority except as permitted by the Constitution. Any legislation, action, or failure to act that contravenes the Constitution is rendered null and void to the extent of the inconsistency.

9. **Article 2** further provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.

10. **Article 3 [1]** of the Constitution states that every person, including the Respondents in this case, is required to honour, uphold, and safeguard the Constitution.

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11. **Article 19** of the Constitution underscores the Bill of Rights as a cornerstone of Kenya's democratic framework. It recognizes and safeguards fundamental freedoms and human rights.

12. **Article 21** of the Constitution mandates that it is a fundamental duty of the state and all governmental bodies to observe, respect, defend, promote, and uphold the rights and fundamental freedoms enshrined in the Bill of Rights. The article also imposes an affirmative obligation to ensure that these rights are realized and enjoyed.

13. **Article 23** of the Constitution empowers this Honourable Court to hear and determine applications seeking redress for denials, violations, infringements, or threats to basic freedoms or rights, in accordance with **Article 165**. It also outlines the remedies that the court may grant in its efforts to uphold the Bill of Rights.

14. **Article 25** of the Constitution ensures the inherent rights and fundamental freedoms detailed in the Bill of Rights, including the right to a fair trial.

15. **Article 47** of the Constitution, in alignment **with Section 4(1) of the Fair Administrative Action Act, 2015,** guarantees every individual the right to prompt, effective, lawful, reasonable, and procedurally fair administrative action.

Privileges and Immunities Act, Cap 179 of the Laws of Kenya.

16. Section 9 of the **Privileges and Immunities Act** provides for the conferral of privileges and immunities to certain international organisations and persons connected therewith. It empowers the Minister, by order, to *inter alia* provide that officers of an organisation to which the section applies shall have the privileges set out in Part III of the Fourth Schedule to the Act.

17. The **Privileges and Immunities (East African Development Bank) Order, 1999 (Legal Notice 147/1999)** in turn declares the First Petitioner to be an organization to which section 9 of the act shall apply.

East African Development Bank Act Chapter 493A Laws of Kenya (the **EADB Act**).

18. The EADB Act provides that certain provisions in the Bank's charter, set out in the schedule, shall have the force of law in Kenya.

19. For present purposes, these provisions include the following:

    a) **Article 42** – *"To enable the Bank effectively to fulfil its objectives and carry out the functions with which it is entrusted, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in territories of each of the Member States."*

    b) **Article 45 (1)** – *"The Bank shall enjoy immunity **from every form of legal process** except in cases arising out of the exercise of its borrowing powers, in which cases*

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it may be sued only in a court of competent jurisdiction in a Member State in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

c) **Article 51(1)** – *"The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Charter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank."*

FACTUAL BASIS OF THE PETITION

20. On 10th April 2015, the First Petitioner entered into a Facility Agreement with Dari Coffee Gardens and Restaurant Limited for the sum of USD 9,300,000. One of the directors of Dari Limited is Raphael Tuju.

21. Following a failure to pay the loan, the First Petitioner filed suit and obtained judgment in the United Kingdom against Dari and its directors. This judgment has been recognised by the High Court of Kenya and confirmed by the Court of Appeal and Supreme Court.

22. In the course of the enforcement proceedings, the First Petitioner became aware that Dari Limited and its director may have committed criminal offences in relation to the lending.

23. As an East African institution with the mandate to safeguard the funds of its members, the First Petitioner had an obligation and a civil duty to report the suspected criminal offences to the Directorate of Criminal Investigations ("**DCI**") for further investigation.

24. Accordingly, the First Petitioner filed a complaint dated 8th August 2023 with the DCI.

25. The Second Petitioner as an employee of the First Petitioner and on its behalf attended the offices of the DCI and recorded a statement as required in support of the above complaint.

26. Despite following up, the First Petitioner is unaware of any progress made on its criminal complaint.

27. Surprisingly, on or about 31st January 2025, the Second Petitioner became aware that a criminal charge has been laid against him in the Criminal Case. The case is directly connected with the criminal complaint and is a retaliatory measure. It is therefore an abuse of process.

28. The only reasonable deduction is that the charge relates to the Second Petitioner's actions on behalf of the First Petitioner in recording a statement in the above complaint. There is no reason to charge the Second Petitioner as he was acting in his official capacity on behalf of the First Petitioner.

29. The Second Petitioner has never been summoned to record a statement in regard to the Criminal Case nor accorded an opportunity to respond to the allegations thereof.

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30. The decision to charge the Second Petitioner in the Criminal Case for acts done on behalf of the First Petitioner is a violation of the First Petitioner's immunity from all forms of legal process. It is thus a violation of Article 2 of the Constitution of Kenya.

31. The First Petitioner, as a crucial element of East African co-operation, can only function through its officers, employees, and agents. They are therefore allowed the above immunities to enable the First Petitioner function effectively and to fulfil its mission without being impeded in any way by the adverse actions of states.

32. The Criminal Case is filed in violation of **Section 9** of the **Privileges and Immunities Act** and **Article 45 of the Schedule** the **EADB Act.**

33. There is therefore a manifest legal bar against the institution or continuance of the Criminal Case against the Second Petitioner as an employee and officer of the First Petitioner.

34. In performing his duties, the First Respondent must be guided by the provisions of the Constitution. In addition, he ought to be guided by the principles of natural justice, prevention of abuse of the legal process and constitutionalism among others, as provided for under Section 4 of the Office of the Director of Public Prosecution Act, 2013.

35. Further, **Article 157(11)** requires the First Respondent, in exercising his powers, to have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

36. The **Office of the Director of Public Prosecutions Act** has been enacted to give effect to the above constitutional provisions. Section 4 requires the First Respondent, in fulfilling its mandate, to be guided by principles including:

    a) the rules of nature justice;
    b) the need to serve the cause of justice, prevent abuse of the legal process and public interest;
    c) the promotion of constitutionalism.

37. The First Respondent's decision to charge the Second Petitioner whereas he was a complainant on behalf of the First Petitioner is a violation of his obligations under Article 157 of the Constitution.

38. It is further a violation of the First Respondent's **Guidelines on the Decision to Charge, 2019.**

39. Unless the Respondents are restrained from proceeding with the Criminal Case, the continuance will be a violation of the Petitioners' Constitutional rights.

40. The Petition is supported by the annexed affidavit of **Carol Luwaga**.

Your Petitioner Humbly prays for:

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(a) a **declaration** do issue that the institution of **Nairobi Criminal Case NRB E042 of 2025 Republic v Isaac Nyongesa Okwara** before the Chief Magistrate's Court at Nairobi is a violation of the First Petitioner's immunity from all forms of legal process under **Article 2** of the Constitution, **Section 9** of the **Privileges and Immunities Act** and **Article 45 of the Schedule** the **EADB Act.**;

(b) a **declaration** do issue that the decision to charge the Second Petitioner is in contravention of Articles 47(1) and 157 of the Constitution.

(c) a **declaration** do issue that the Respondents have violated the Petitioners' rights;

(d) an order of **certiorari to** remove into this court and quash the decision of the First Respondent to institute criminal proceedings against the Second Petitioner in Criminal **Case NRB E042 of 2025** before the Chief Magistrate's Court at Nairobi;

(e) an order of **certiorari to** remove into this court and quash the proceedings in **Criminal Case NRB E042 of 2025** before the Chief Magistrate's Court at Nairobi;

(f) an order of prohibition to prohibit the Second Respondent court from hearing and determining the matter in **Criminal Case NRB E042 of 2025;**

(g) Costs of this petition;

(h) Such other or further orders as this Honourable Court shall deem just.

DATED at **NAIROBI** this 7th day of February 2025

KAPLAN & STRATTON
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY
Kaplan & Stratton
Advocates
Williamson House, 9th Floor
4th Ngong Avenue
P.O. Box 40111-00100,
NAIROBI
TEL: 0726-624819/0719-250441
Email: KSLitigation@kapstrat.com

TO BE SERVED UPON
Director of Public Prosecutions
NSSF Building, 19th Floor, Wing A
Bishops Road
NAIROBI

28

Chief Magistrates Court
Milimani Court
NAIROBI

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
CONSTIUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 056 OF 2025

IN THE MATTER OF: ARTICLES 2, 22, 23, 40(1), (3), AND 47(1) OF THE CONSTITUTION OF KENYA, SECTION 4 (1), SECTIONS 9 (1) 11 (1) (B) (F)((I) FAIR ADMINISTRATIVE ACTION ACT)

BETWEEN

EAST AFRICAN DEVELOPMENT BANK_____ FIRST PETITIONER
ISAAC NYONGESA OKWARA_____ SECOND PETITIONER

VERSUS

OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS_____ FIRST RESPONDENT

CHIEF MAGISTRATES COURT AT NAIROBI_____ SECOND RESPONDENT

SUPPORTING AFFIDAVIT
(In support of the Petition)

I, **CAROL LUWAGA** an adult female of sound mind, residing in Kampala and of Post Office Address 7128 Kampala do hereby make oath and solemnly state as follows.

1. **THAT** I am presently employed by the First Petitioner (the "**Bank**") as the Senior Legal Officer. I have been authorised by the Petitioners to swear this affidavit on their behalf.

2. **THAT** there is now produced and shown to me true copies of documents on which I rely annexed hereto and marked "**CL-1**".

3. **THAT** I am aware that the First Petitioner, is a development bank established by the **Treaty Amending and Re-enacting the Charter of the East African Development Bank, 1980** among its member countries. Following the collapse of the original East African Community, the three (3) East African governments (Kenya Uganda and the United Republic of Tanzania) entered into a **Further Treaty Amending and Re-enacting the Charter** of the 1st Defendant which was signed and entered into on 23rd June 1980. The Charter is annexed to the **Treaty for East African Co-operation of 1967** as amended on 23rd July 1980.

4. **THAT** in order for the Republic of Kenya to fulfil its obligations under the Charter, the Parliament of Kenya enacted the **East African Development Act Cap. 493A Laws of**

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Kenya to give effect to certain Articles of the Charter and the Treaty, and which Act came into force on 18th May 1984. **Section 3** of the Act in particular incorporates the provisions of the Charter in the following terms: "***the provisions of the Charter annexed to the Treaty for East African Co-operation, 1980 and set out in the Schedule to the Act shall have force in law in Kenya***". It is this Schedule to the Act that sets out the provisions of the Charter annexed to the Treaty which have the force of law in Kenya.

5. **THAT** I swear this affidavit in support of the Petitioners' petition seeking constitutional relief.

6. **THAT** the Second Petitioner, is an official and employee of the East African Development Bank. **A copy of his contract of employment is attached at pages 1 – 24 of "CL-1".**

7. **THAT** I am aware that on 10th April 2015, the First Petitioner entered into a Facility Agreement with Dari Coffee Gardens and Restaurant Limited ("Dari Limited" or "Dari") for the sum of USD 9,300,000. One of the directors of Dari Limited is Raphael Tuju.

8. **THAT** following a failure to pay the loan, the First Petitioner filed suit and obtained judgment in the United Kingdom against Dari and its directors. This judgment has been recognised by the High Court of Kenya and confirmed by the Court of Appeal and Supreme Court. **Copies of the decisions in the High Court, Court of Appeal, and Supreme Court are attached at pages 25-66 of "CL-1".**

9. **THAT** in the course of the enforcement proceedings, the First Petitioner became aware that Dari Limited and its director may have committed criminal offences in relation to the lending.

10. **THAT** as an East African institution with the mandate to safeguard the funds of its members, the First Petitioner had an obligation to report the criminal offences to the Directorate of Criminal Investigations ("**DCI**").

11. **THAT** accordingly, the First Petitioner filed a complaint dated 8th August 2023 with the DCI. **A copy of the complaint is attached at pages 67 – 74 of "CL-1".**

12. **THAT** I am further aware that the First Respondent filed a further complaint against one of its former staff, Amos Apudo Oketch, on 12th October 2023 in relation to theft of internal documents. **A copy of the complaint is attached at pages 75 – 77 of "CL-1".**

13. **THAT** I am aware that the Second Petitioner as an employee of the First Petitioner and on its behalf attended the offices of the DCI and recorded a statement in support of the above complaints.

14. **THAT** despite following up, the First Petitioner is unaware of any progress made on the criminal complaint.

15. **THAT** surprisingly, on or about 31st January 2025, the Second Petitioner became aware that a criminal charge has been laid against him in the Criminal Case. The case is directly connected with the criminal complaint and is a retaliatory measure. It is therefore an abuse of process. **A copy of the witness summons is attached at page 78 of "CL-1".**

16. **THAT** it is obvious that the charge relates to the Second Petitioner's actions on behalf of the First Petitioner in recording a statement in the above complaint. There is no reason to charge the Second Petitioner as he was acting in his official capacity on behalf of the First Petitioner.

17. **THAT** on 3rd February 2025, the First Respondent received a letter from the DCI informing it that its complaint against Amos Apudo had been closed. **A copy of the letter is attached at page 79 of "CL-1".**

18. **THAT** the Second Petitioner has never been summoned to record a statement in regard to the Criminal Case.

19. **THAT** the decision to charge the Second Petitioner in the Criminal Case for acts done on behalf of the First Petitioner is a violation of the First Petitioner's immunity from all forms of legal process. It is thus a violation of Article 2 of the Constitution of Kenya.

20. **THAT** the First Petitioner, as a crucial element of East African co-operation, can only function through its officers. They are therefore allowed the above immunities to enable the First Petitioner function effectively and to fulfil its mission without being impeded in any way by the adverse actions of states.

21. **THAT** the Criminal Case is filed in violation of the **Privileges and Immunities Act** and the **EADB Act.**

22. **THAT** there is therefore a manifest legal bar against the institution or continuance of the Criminal Case against the Second Petitioner as an employee and officer of the First Petitioner.

23. **THAT** in performing his duties, the First Respondent must be guided by the provisions of the Constitution. In addition, he ought to be guided by the principles of natural justice, prevention of abuse of the legal process and constitutionalism among others, as provided for under Section 4 of the Office of the Director of Public Prosecution Act, 2013.

24. **THAT** further, **Article 157(11)** requires the First Respondent, in exercising his powers, to have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

25. **THAT** the First Respondent's decision to charge the Second Petitioner whereas he was a complainant on behalf of the First Petitioner is a violation of his obligations under Article 157 of the Constitution.

26. **THAT** unless the Respondents are restrained from proceeding with the Criminal Case, the continuance will be a violation of the Petitioners' Constitutional rights.

27. **THAT** what is stated hereinabove is true to the best of my knowledge, information and belief.

Sworn by the said **CAROL LUWAGA**)
at Kampala on this 7th day of February 2025)
)
)
BEFORE ME)
)
)
)
COMMISSIONER FOR OATHS)

DRAWN AND FILED BY:-
Kaplan & Stratton
Advocates
9th Floor, Williamson House
4th Ngong Avenue
P.O. Box 40111 – 00100
NAIROBI [FNO/EA/39/47]

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCCHRPET/E056/2025

EAST AFRICA DEVELOPMENT BANK AND ISAAC NYONGESA OKWARA VS OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND CHIEF MAGISTRATE COURT AT NAIROBI

ORDERS(COURT DOCUMENT)

BEFORE HON. JUSTICE E.C. MWITA

THIS MATTER coming up on 11.02.2025 for directions on the Notice of Motion dated 07.02.2025 before Honourable Justice E.C. Mwita in the presence of counsel for the Petitioners and counsel for the Respondents **UPON HEARING** the Counsel present;

IT IS HEREBY ORDERED:

1. **THAT** the Respondents do file and serve responses to the application and petition within 14 days from the date hereof.

2. **THAT** once served, the Petitioner will have 14 days to file and serve a supplementary affidavit, if need be, together with submissions not exceeding 10 pages.

3. **THAT** the Respondents will thereafter have 14 days after service, to file and serve written submissions not exceeding 10 pages each.

4. **THAT** highlighting of submissions on 11.06.2025

5. **THAT** in the meantime, a conservatory order is hereby issued staying proceedings in **NAIROBI CRIMINAL CASE NO. E042 OF 2025; REPUBLIC** =VERSUS= **ISAAC NYONGESA OKWARA** until **11.06.2025.**

Penal Notice: *Take notice that any disobedience or non-observance of the order of the court served herewith will result in penal consequences to you and any other person(s) disobeying and not observing the same*

SIGNED BY: HON. NDUKE BEJA

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THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
DATE: 2025-02-11 14:38:45+03

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCCHRPET/E056/2025

EAST AFRICA DEVELOPMENT BANK AND ISAAC NYONGESA OKWARA VS OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND CHIEF MAGISTRATE COURT AT NAIROBI

ORDERS(COURT DOCUMENT)

BEFORE HON. JUSTICE E.C. MWITA

THIS MATTER coming up on 11/6/2025 for directions on the Notice of Motion dated 30/5/2025 before **Honourable Justice E. C. Mwita AND UPON HEARING** the Counsel for the Petitioners, Counsel for the 1st Respondent, Counsel for the Intesrested Parties and in the absence for the 2nd Respondent;

IT IS HEREBY ORDERED:

1. **THAT** the Application dated7/2/2025 is marked as withdrawn.
2. **THAT** the Respondent and Interested Party do file and serve a response to the Petition within 14 days from the date thereof.
3. **THAT** once served, the Petitioners will have **14** days after service to file and serve a supplementary affidavit if need be together with written submissions not exeeding 10 pages.
4. **THAT** the Respondents and Interested Parties will then have **14** days after service to file and serve written submissions to the Petition not exeeding 10 pages each.
5. **THAT** highlighting submissions on **10/11/2025**.
6. **THAT** interim Orders issued on 11/2/2025 are hereby extended until the hearing and determination of this Petition.

GIVEN under my hand and seal of the Honourable court this **11th** day of **June, 2025**.

Penal Notice: Take notice that any disobedience or non-observance of the order of the court served herewith will result in penal consequences to you and any other person(s) disobeying and not observing the same

SIGNED BY: HON. NDUKE BEJA

THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
DATE: 2025-06-16 12:03:16+03

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When replying please quote Ref. No. and date



HARAMBEE AVENUE
P.O. Box 30551-00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS
STATE DEPARTMENT FOR FOREIGN AFFAIRS

Ref. No.....MFA.TCA/12/58.VOL. 31 (15) Date.....23 April 2025

Okatch & Partners Advocates
Lowerhill Duplex Apartments,
2nd Floor, Suite 18, Upperhill Road
P.O Box 34651-00100
NAIROBI

RE: REQUEST FOR A COPY OF THE HOSTING AGREEMENT BETWEEN KENYA AND THE EAST AFRICAN DEVELOPMENT BANK

We acknowledge receipt of your letter ref. O&P/1571(D)/2025 of 16th April 2025 in response to ours under even reference of 4th March 2025 as further response to yours under ref. O&P/1571 of 19th February 2025 regarding the above subject matter.

While reaffirming our earlier conveyed information, kindly note that the Ministry does not have a Host Country Agreement between the Government of Kenya and the East African Development Bank.

C. Nyakoe
FOR: PRINCIPAL SECRETARY

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(2) Laureen Wesonga, HOD
For the Trade Committee to consider.
22/7/26

DD 22/7/26

NATIONAL ASSEMBLY
RECEIVED
22 JUL
DEPUTY CLERK
J.W.N
P. O. Box 41842 -00100, NAIROBI

COMMENTARY ON THE INVESTMENT AND EXPORT PROMOTION AUTHORITY BILL, 2026

A. Introduction

As per its long title, this Bill seeks to provide for the promotion, coordination and facilitation of investment, exports, nation brand and business environment reforms, to provide for the establishment of the Kenya Investment and Export Promotion Authority, and for connected purposes.

B. Clause by Clause Analysis

The following issues are noted-

Serial No.	Clause	Issue & Recommendation	Justification for CRA Position
1.	**Clause 5** Headquarters of the Authority.	Under sub clause 5(2) which reads- *(2) The Authority may establish offices in other county as it deems fit in the discharge of its mandate.* ***Recommendation:*** substitute the word ***"county"*** appearing immediately after the word ***"öther"*** with ***"counties"***	To correct an editorial error.
2.	**Clause 7** Board of the Authority.	Outlines the Board membership for the Authority to include under paragraphs (e) and (f)- *(e) a County Chief Officer responsible for matters relating to trade and investment, appointed in writing by the Chairperson of the Council of Governors;* *(f) four members representing the private sector, appointed by the Cabinet Secretary; and* ***Recommendations:*** i. Increase the county representative under paragraph (e) from the current **one Chief Officer** to **two.**	i. To enhance county representation and provide clarity on appointment. ii. To correct an editorial numbering error. iii. For transparency and to curtail abuse of appointment powers.

DIRECTOR
RECEIVED
22 JUL 2026
Directorate of Departmental Committees

		ii. Provide a mode of selection of the chief officers noting that all counties have the position. iii. Under **paragraph (f)**, reduce the private sector membership from **four to three** to cater for the additional county representative in paragraph (e). iv. Add the phrase ***'nominated by a recognized private sector organization"*** after the phrase ***'Cabinet Secretary'***.	
3.	**Clause 14** Chief Executive Officer	Add a new sub clause requiring the Board to consider inclusivity of special interest groups such as PWDs, marginalized, gender parity in recruitment of the CEO.	To align with Articles 10, 27, 54,56 of the Constitution.
4.	**Clause 15** Corporation Secretary	**Provides under sub-clause 15 (6) as follows-** *Any functions under subsection (5) may be so delegated to such conditions or restrictions as the Board may either generally or specifically determine.* **Recommendations:** i. Substitute the sub-clause number indicated as **(6) to read as (5)** ii. Delete the phrase ***"sub section (5)"*** after the word ***'under'*** and substitute with "***sub section (3)"***	i. Sub-clause (5) does not exist. ii. The functions are indicated under sub-clause (3)
5.	**Clause 17** Staff of the Authority	Provides under paragraph ... as below- *(2) The Board shall, in the employment of staff, ensure-* *(a) equalization of* ***opportunity*** *for persons with disabilities;* ***Recommendation:*** Substitute the word ***opportunity"*** with ***"opportunities"***	To correct an editorial error

6.	**Clause 18** Investment Committee.	This clause provides under paragraph (h) as follows- *"(h) two county chief officers, appointed by the Chairperson of Council of Governors representing county' governments"* **Recommendation:** provide a mode of selection of the chief officer noting that each county has its own chief officer.	To provide clarity on appointment.
7.	**Clause 19** Functions of the Investment committee	This clause provides under **paragraph (a)** as follows- *(a) provide co -ordinated technical approvals from key government agencies to ensure timely implementation of priority investments;* ***Recommendation:*** Specify the nature of the approval to avoid conflict on mandate with other state agencies	For clarity.
		This clause provides under **paragraph (d)** as follows- d. *expedite the issuance of licenses, permits and leases that cannot be issued through the centralized facility, approve, and assign unique benefits to be issued under a Golden Certificate and other. regulatory approvals and decisions necessary for investment projects.* ***Recommendations:*** i. Specify the nature of "***unique benefits".*** ii. Add a proviso that the benefits issued should be in compliance with the law.	For clarity and to enhance legality.l
		This clause provides under **sub clause (2)** as follows- *(2) The Investment Committee shall approve strategic investment projects which shall qualify for additional incentives, as prescribed in regulations, if such projects-*	For clarity and to prevent abuse.

		Recommendation: The duration of incentives should be expressly stated.	
8.	**Clause 23** Registration of investors	Under sub clause (3) provides as follows- *(3) The Board shall prescribe the criteria for. registration requirements.* ***Recommendation:*** Substitute the word ***"Board"*** with ***"Authority"***	The Authority is the legal person clothed with such powers.
9.	**Clause 29** Review Decision of Authority	Under sub clause (6)- *(6) A panel shall have the same powers as a court to, make orders to secure the attendance of persons, or the production of documents or for the investigation and punishment of contempt.* ***Recommendation:*** Review this provision for legality and practicability e.g. does it mean the panel can make an order for imprisonment for contempt of its orders like a court of law as per this provision?	To avert an overreach by the panel.
10.	**Clause 35** Provision of government services at a centralized facility	This clause provides that in promoting and facilitating investment and exports, the Authority may establish and operationalize a centralized facility for purposes 'of providing government services and regulatory requirements for investors arid exporters. **Comment:** This is a positive and progressive provision that will enhance ease of doing business.	The provision will enhance ease of doing business in Kenya for investors which will positively impact the economy.

General Comments:

1. The Bill is a positive step towards ease of doing business in Kenya.

2. The Bill should expressly outline the benefits/incentives that an investor will be given for transparency and clarity.

A. Introduction

The Bill as per its long title seeks to give effect to the provisions of Articles 11, 40 (5) and 69 of the Constitution; to provide for the establishment of the Kenya Intellectual Property Authority; to provide for patents, utility models and industrial designs; to provide for copyrights and related rights; to regulate on anti-counterfeit measures and regulation of counterfeit goods; and for connected purposes.

B. Clause by Clause Analysis

The following issues are noted-

Serial No.	Clause	Issue & Recommendation	Justification for CRA's Position
1.	**Clause 6** Board	This clause states: **(a) Provides under sub-clause 6 (4) as follows-** *(4) A person shall be qualified for appointment under section 4 (1) (e) if such person-* **(a) Provides under sub-clause 6 (6) as follows -** *(6) The appointment of the chairperson and the members appointed under subsection (1) (e) shall be by name and by notice in the Gazette.* **Recommendations:** i. Delete the phrase '***section 4 (1) (e)***' after the word 'under" and substitute with '***section 6 (2)***'. ii. Delete the phrase '***subsection (1) (e)***' as substitute with '***subsection (2) (e)***' iii. Include a provision for the term of office of the Board.	i. Section 4 (1) (e) does not exist. ii. Sub-section (1) (e) does not exist.

2.	**Clause 18** Interpretation	**Part III- Patents, Utility Models and Industrial Designs** ***Recommendation:*** Provide for the definitions of a Patent and Industrial Design	For ease of interpretation.
3.	**Clause 103** Revocation or invalidation	**Provides under sub-clause 103 (1) as follows -** *Any interested person may in proceedings **Authority** by him...proceedings **Authority** against him by the owner...* ***Recommendation:*** Redraft. The sub-clause is in coherent.	For coherence.
4.	**Clause 111** Legal proceedings by a Licensee	**Provided under sub-clause 1 and 2 as follows-** (1) Any exclusive licensee....design to ***Authority*** legal proceedings... (2) The licensee may, if the owner refuses or fails to ***Authority*** the legal proceedings.... ***Recommendation:*** Redraft. The sub-clause lacks coherence and uses gender specific as opposed to gender neutral language i.e. *"him"*	For clarity and inclusivity.

General Comments:

1. Provide for representation of County Governments in the Board composition.
2. There are grammatical errors in the Bill which need to be reviewed for coherence e.g. under clauses 9, 184 (6) and 204.
3. There is need for use of gender neutral language to entrench inclusivity principles as per the Constitution.

COMMENTARY ON THE WATER (AMENDMENT) BILL, 2026

A. Introduction

The Bill seeks to amend the Water Act, to provide for the merger of the Irrigation Authority and the National Water Harvesting and Storage Authority, to harmonize the functions of the merged Authorities and for connected purposes.

B: Clause by Clause Analysis

Issues noted on the Bill are as follows-

Serial No.	Clause	Issue & Recommendation	Justification for CRA Position
1.	**General comments**	The provisions in this Bill should be included **as consequential amendments in the Irrigation (Amendment) Bill, 2026** which provides for merger and transition provisions for the repealed National Water Harvesting and Storage Authority in terms of its Board tenure, staff and assets with the National Irrigation Authority as opposed to it being a standalone Bill.	To ensure continuity and smooth transition.
2.		The proposed merger will however enhance efficiency, avoid duplication of roles and ensure prudent use of public resources as per Article 201 of the Constitution.	

COMMENTARY ON THE IRRIGATION(AMENDMENT) BILL, 2026

Include a **new clause on consequential amendments to the Water Act, Cap. 372 which will entail all the amendments contained in the Water (Amendment) Bill, 2026.**

COMMENTARY ON THE FILMS AND STAGE PLAYS (AMENDMENT) BILL, 2026

A. Introduction

The Bill as per the Memorandum of Objects and Reasons seeks to amend the Films and Stage Plays Act, Cap. 222 to provide for the dissolution of the Kenya Film Classification Board and revert functions performed by the Board to the relevant Ministry.

B. Clause by Clause Analysis

The following issues are noted-

Serial No.	Clause	Issue & Recommendation	Justification for CRA Position
1.	**Add a new definition under section 2 of Cap. 222**	Add in its correct alphabetical sequence the following definition- *"licensing officer" means a public officer appointed by the Cabinet Secretary under section 3;*	For ease of interpretation
2.	**Clause 3**	Amends section 3 of the Principal Act as follows- *Section 3 of the principal Act is amended by deleting the word "person" and substituting therefor the words "a public officer from the Ministry".* ***Recommendations:*** The Bill enhances the role of the licensing officer to even absorb the roles of the repealed Kenya Film Classification Board (see clauses 9-10). Outline the qualifications of such a licensing officer. Additionally, and based on the expanded roles as proposed in the Bill, consider	For clarity and to ensure professionalism and efficiency in the enhanced role. Appointment of various licensing officers or creating room for delegation will avert abuse of power and expedite licensing and other procedures

		appointment of various licensing officers under section 3 or delegation of the attendant roles.	
3.	**Clause 13** Amendment of section 16 of Cap. 222	Provides under sub-clause 13 (c) as follows: *If the licencing officer approves a film subject to excisions therefrom, the licencing officer may make the excisions and retain in their possession the excised parts* **Recommendation:** State what will happen to the excised part.	For clarity.
4.	**General Comment**	Reverting functions of the Kenya Film Classification Board to the relevant Ministry will ensure prudent use of limited public resources as per Article 201 of the Constitution.	To align with Article 201 of the Constitution.

COMMENTARY ON THE REGIONAL DEVELOPMENT AUTHORITIES LAWS (REPEAL) BILL, 2026

A. Introduction

This Bill aims at repealing the laws relating to regional development authorities and for connected purposes. The regional development authorities subject of repeal are-

(a) the Kerio Valley Development Authority established under section 3 of the Kerio Valley Development Authority Act;

(b) the Lake Basin Development Authority established Cap. 442. under section 3 of the Lake Basin Development Authority Act;

(c) the Tana and Athi Rivers Development Authority established under section 3 of the Tana and Athi Rivers Development Authority Act;

(d) the Ewaso Ng'iro South River Basin Development Authority established under section 3 of the Ewaso Ng'iro South River Basin Development Authority Act;

(e) the Ewaso Ng'iro North River Basin Development Authority established under section 3 of the Ewaso Ng'iro North River Basin Development Authority Act; and

(f) the Coast Development Authority Act established under section 3 of the Coast Development Authority Act

B. Clause by Clause Analysis

The Commission is in support of this Bill as the repeal will cut on government expenditure and alleviate potential functional overlap between county governments and the regional development authorities.

COMMENTARY ON THE EAST AFRICAN DEVELOPMENT BANK (AMENDMENT) BILL, 2026

A. Introduction

This Bill as per its long title seeks to amend the East African Development Bank Act and for connected purposes.

B. Clause-by-Clause Analysis

The following issues are noted on review of the Bill-

Serial No.	Clause	Issue & Recommendation	Justification for CRA's Position
1.	**Clause 2** Amendment of section 2 of Cap. 493A	This clause provides in part- *Subject to subsection (4), the relevant Committee of the National Assembly shall consider and table its report for debate within thirty days from the date on which the notification for approval was sought.* *If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given."* **Recommendation:** Delete	Under the doctrine of separation of powers, there can be no deemed or implied approval by Parliament regarding financial matters. Any appropriation of public funds or imposition of a charge upon the Consolidated Fund strictly requires an affirmative, formal resolution by the Legislature.

2.	**Clause 3**	Amends the Schedule to the Principal Act for Articles 44 and 45 on immunity. It is unclear why the immunity status of the Bank is subject of amendment as proposed in this clause of the Bill. ***Recommendation:*** Retain current provision.	For accountability purposes

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DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING IN THE NATIONAL ASSEMBLY.

MEMORANDUM ON THE COMPETITION (Amendment) BILL & THE EAST AFRICA DEVELOPMENT BANK (EAFDB) Amendment BILL,2026.

Submitted by: WeCare Youth Organization | 23rd July, 2026

Section A — Objective of the Bill

The objectives of the Competition (Amendment) *Bill 2026 and the East Africa Development Bank amendments Bill 2026* were gazetted on 2nd March 2026 and 2nd July 2026, respectively.

The Competition (Amendment) Bill 2026 seeks to amend the Competition Act to strengthen the competition legal framework, including the regulation of competition in Digital Markets and provisions relating to abuse of superior bargaining positions.

The East Africa Development Bank Amendment Bill seeks to amend the East Africa Development Bank Act to enhance legislative oversight and accountability in relation to Kenya's obligations and dealings concerning the East African Development Bank.

Section B—Personal Information

1. **Name: WeCare Youth Organization**

   WeCare Youth Organization is a youth-led community-based organization committed to advancing transparency, accountability, and participatory governance amongst young people and Persons with Disabilities in Kenya. Our work focuses on strengthening public finance management, promoting equitable taxation, and ensuring that fiscal policies reflect the interests of current and future generations. WeCare convenes Transparency & Integrity Clubs in Maseno, JOOUST, GLUK, and Masinde Muliro, which serve as sustainable student-led hubs for their engagement in governance and development processes in Kenya. We jointly submit this memorandum, having interrogated through the lived realities of youth, women, and persons with disabilities (PWDs) who constitute over 60% of Kenya's population yet remain structurally disadvantaged in tax design, revenue mobilization, and fiscal relief. We also ground our proposals in constitutional provisions, Statutory Frameworks, and International frameworks.

Section C—Views on Bill

2. ***What are your views on the Bill? (Fill Table as appropriate)***
Having looked at both the ***Competition Amendment and*** ***the Competition Amendment Bills,2026,*** WeCare notes the following Key issues of concern and therefore recommends the following in the table below;

S/N o.	Clause/Page of the Bill	Proposal	Justification
	Clause 10 (new s.41(2)(i), p.75) – merger definition expanded to include privatisation of Government agencies and state corporations engaged in trade.	Retain and strengthen Clause 10 by requiring the Competition Authority's merger review of any privatisation or partial divestiture of a state corporation to include a mandatory public-interest assessment covering valuation adequacy, data sovereignty, affordability of the resulting service, and intergenerational fiscal impact – with the assessment report published and tabled before the relevant National Assembly Committee before approval.	WeCare's memorandum of 19th January 2026 the proposed 15% GoK divestiture in Safarico PLC (Sessional Paper No. 3 of 2025) raised precisely these concerns – undervaluation, los strategic public influence, data sovereignty risl and weak public participation – with no independent competition-style review available the time. Clause 10 closes that regulatory gap principle; the proposed strengthening operationalises the safeguards WeCare alreac recommended to this Committee. Art. 10 & 201 of our COK requires transparenc public finance management, and parliament should ensure privatization reforms not only consider fiscal profits but also long-term economic resilience and secure our future generations.
	Clause 6 (new s.23(2)(c), p.70) – an undertaking in a digital market may be deemed dominant with less than 40% market share where it has 'market power'.	Support the lower dominance threshold for digital markets but require the Authority to publish and periodically update clear indicators (data access, network effects, multi-homing costs) used to assess 'market power', to give predictability to smaller and youth-led digital enterprises. We recommend that the committee require the Competition Authority to provide annual or quarterly reports on Digital Market Competition showing SME barriers, women's digital enterprises, youth involvement, etc.	Youth-led digital start-ups and gig-economy platforms frequently transact as counterparties dominant app stores, payment rails, and delivery/ride-hailing aggregators. Published, predictable criteria protect genuine innovators from uncertain exposure while still catching genuinely dominant players. This will help avoid a monopoly by big firms ov young people's startups and innovation, ensur equal opportunity for all.
	Clause 9 (new s.40B(2)(i), Part IIIA, p.73) – abuse of superior bargaining position includes 'unreasonable collection or processing of data of the counterparty'.	Amend s.40B(2)(i) to expressly cross-reference the Data Protection Act, 2019, so that 'unreasonable data processing' is interpreted consistently with existing data-protection standards, and require the Authority to consult the Office of the Data Protection Commissioner before determining such complaints.	Young Kenyans are the most active di consumers and gig workers and disproportionately exposed to data harvestin platforms with superior bargaining po Cross-referencing the Data Protection

		prevents two regulators from appl inconsistent standards to the same conduct.
Clause 14 (new s.91A, pp.76–77) – administrative penalties of up to 10% of an undertaking's gross annual turnover.	Pass as it is, and we recommend further that a defined proportion **(2%)** of the penalties recovered under **s.91A** be ring-fenced for the Authority's consumer-education and market-inquiry functions under s.9, rather than reverting wholly to the Consolidated Fund.	Stronger enforcement should be matched by stronger consumer capability to exercise right Ring-fencing, part of penalty revenue for publi education, mirrors the ring-fencing principle WeCare has consistently urged for public finar flows, including in its Safaricom divestiture memorandum. This proportion set aside can be used to resea market trends & competitions, and digital litera and will be in alignment with the Public Financ Management Act.
Clause 4 (new s.9(o), p.69) – new Authority function to foster strategic partnerships with national, regional, and international bodies.	Require that any strategic partnership entered into under s.9(o) be reported annually to the relevant National Assembly Committee, and that consumer and civil-society bodies be included among stakeholders consulted before such partnerships are finalized.	Consistent with Articles 10 and 232 of the Constitution on public participation and accountability. Prevents an open-ended partnership mandate from being used to sides parliamentary or public oversight.
Clause 11 (s.55, p.75) – new false or misleading representation offences, including withholding material information on the quality or use of a good or service.	Support the clause and recommend it be extended to explicitly cover digital and app-based representations – including algorithmic pricing, hidden fees, and subscription auto-renewal terms – which disproportionately affect young, digital-first consumers.	The current drafting reads as oriented towards physical goods and services. Digital 'dark patterns' are a growing, under-regulated sourc of consumer harm to Kenya's youth, who trans predominantly through mobile and app-based platforms.
Clause 2 (new s.2(6), On the EAFDB Amendment Bill, p.1176) – if the National Assembly does not pass a resolution within 30 days of notification, Cabinet Secretary approval is deemed given.	Amend by deleting or narrowing the 'deemed approval' default and replacing it with a requirement that, if the National Assembly has not acted within 30 days, the matter is escalated for express plenary debate rather than automatically approved by default.	A default 'deemed approval' undermines the E own stated purpose of enhancing legislative oversight and accountability (per its Memoran of Objects and Reasons). It converts parliamentary silence into consent, weakening safeguard for public funds required under Artic 201 of the Constitution. Public debt in our country keeps rising, and citizens deserve to see the measurable outcor from our public borrowing in terms of affordabi sustainability, and long-term socio-economic development.
Clause 2 (new s.2(3), EAFDB Amendment Bill, p.1175) – Cabinet Secretary to submit an annual report to the National Assembly on all	Support the clause. Recommend that the report also be published in a simplified, publicly accessible format – not tabled in Parliament alone – to enable civic monitoring by citizens and civil society organizations.	Article 201(a) of the Constitution requires openness and public participation in public finance matters. A report tabled only in the National Assembly has limited reach to citizen including the young people WeCare represent

	Consolidated Fund payments to the Bank within three months of the financial year-end.		
	Clause 3 (Schedule amendments, Articles 44–45, pp.1176–1177 & 1181, EAFDB Amendment Bill) – broadened immunity of the Bank from legal process and immunity of its assets.	Seek express confirmation on the record that these treaty-based immunities apply to the Bank itself and do not extend to, or limit, Kenya's domestic accountability mechanisms – including the Auditor-General's mandate under Article 229 and Parliament's oversight under Article 226 – over funds disbursed by or received from the Bank on Kenya's side of the transaction.	While such immunities are standard practice f multilateral development banks and necessary the Bank's own operations, WeCare seeks assurance that the broadened language is not inadvertently read to insulate Kenya-side ha of these funds from ordinary domestic audit parliamentary scrutiny.

NAME: Nellie Chepkemoi, Head of Policy & Advocacy Campaigns
CONTACT: wecare518@gmail.com
ADDRESS: 7164 - 400, KISUMU

SIGNED: _____ **DATE:** 23rd July, 2026

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DIRECTOR RECEIVE
24 JUL 2026
Directorate of Departmental Committees

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

DDC & 23/7/26

Our Ref: AG/LDD/191/1/181A VOL. I
Your Ref: NA/DDC/F&NP/2026/100

23rd June, 2026

Mr. Samuel Njoroge CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842-00100
NAIROBI.

Tracy Chebet, HOD
to facilitate
23/7/26

RE: CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE EAST AFRICAN COMMUNITY COMMON EXTERNAL TARRIF (EACCET) ON GLASS PRODUCTS UNDER HS HEADINGS 70.03 TO 70.10

Reference is made to your letter under Ref. NA/DDC/ F&NP/2026/100 dated the 18th June, 2026, inviting this Office to make submissions on the proposed amendments to the East African Community Common External Tariff on glass products under HS headings 70.03 to 70.10 for consideration by the Departmental Committee on Finance and Economic Planning in the National Assembly.

We note that the proposals emanated from the recommendations of the Pre-Budget Deliberations of the Ministers and Cabinet Secretaries for Finance held in Arusha, United Republic of Tanzania, on the 11th to 15th May, 2026. The Pre-Budget Deliberations of the Ministers and Cabinet Secretaries recommended that the Sectoral Council of Trade, Industry Finance and Investment amend the East African Community Common External Tariff—

(a) in HS Codes 7007.11.00, 7007.21.00 and 7009.10.00 to attract a duty rate of 25% and allow Partner States to apply a stay of application when required; and
(b) in HS Codes 7005.10.00, 7005.21.00, 7005.29.00, 7005.30.00, 7006.00.00, 7007.19.00, 7007.29.00, 7008.00.00, 7009.91.00 and 7009.92.00 to attract a duty rate of 35%.

However, Kenya stated that additional time was required to undertake consultations on the proposed amendments before the recommendations are submitted to the Sectoral Council of Trade, Industry Finance and Investment for consideration.

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We have reviewed the proposals for the amendment to HS headings 70.03 to 70.10 in the East African Community Common External Tariff against the Protocol establishing the East African Community Customs Union and advise that they do not raise any substantive constitutional and statutory issues and may therefore, be submitted to the Sectoral Council of Trade, Industry Finance and Investment for consideration.

We thank you and assure you of our continued support.

HON. SHADRACK J. MOSE, CBS
SOLICITOR-GENERAL