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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION

COMMITTEE ON IMPLEMENTATION

THIRD REPORT ON
THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 05 DEC 2024
DAY.
TABLED BY: HON. RAPHAEL WANJALA — CHAIRPERSON
CLERK-AT-THE-TABLE: WILLIS OBIERO

NATIONAL ASSEMBLY
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Directorate of Audit, Appropriations, and General-Purpose Committees
National Assembly
Parliament Buildings
NAIROBI

December, 2024

Table of Contents

ANNEXURES ..... **vi**

ABBREVIATIONS ..... **ix**

1 PREFACE **1**

1.1 Mandate of the Committee 1

1.2 Committee Membership 2

1.3 Committee Secretariat 4

2 INTRODUCTION **1**

3 THE TWENTY-SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE AUDITOR-GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FY 2013/14 TO 2015/16 ..... **3**

3.1 Background 3

3.2 Implementation status of the recommendations 4

3.2.1 Submission by the CEO/Managing Trustee, National Social Security Fund (NSSF) ... 5

4 THE TWENTY-SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE AUDITOR-GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF KENYA MEDICAL SUPPLIES AGENCY (KEMSA) (FYS 2012/2013-2016/2017) **9**

4.1 Background 9

4.2 Implementation status of the recommendations 9

4.2.1 Submission by the Ag. Chief Executive Officer of KEMSA 9

5 THE TWENTY-SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE AUDITOR-GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF NATIONAL CEREALS AND PRODUCE BOARD (NCPB) (FYS 2015/16 AND 2016/17) **15**

5.1 Background 15

5.2 Implementation status of the recommendations 15

5.2.1 Submission by the Managing Director 15

6 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON A PUBLIC PETITION REGARDING THE RESTORATION OF LAND BELONGING TO MRS. TERESIA WAMBUI KESI IN KILIFI NORTH CONSTITUENCY **21**

6.1 Background 21

6.2 Implementation status of the recommendations 21

6.2.1 Submission by the Principal Secretary, State Department for Lands & Physical Planning 21

7 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON A PUBLIC PETITION REGARDING SECURING LAND OWNERSHIP RIGHTS OF MWANANGU VUZE RESIDENTS IN LIKONI CONSTITUENCY 22

7.1 Background 22

7.2 Implementation status of the recommendations 22

7.2.1 Submission by the Principal Secretary, State Department for Lands & Physical Planning 22

8 REPORT OF THE DEPARTMENT COMMITTEE ON LANDS ON A PUBLIC PETITION REGARDING THE IRREGULAR ANNEXATION AND FENCING OF PRIVATE LAND BY GREATCOM LIMITED IN MATUGA CONSTITUENCY IN KWALE COUNTY 24

8.1 Background 24

8.2 Implementation status of the recommendations 24

8.2.1 Submission by the Principal Secretary, State Department for Lands & Physical Planning 24

9 REPORT ON THE IMPLEMENTATION STATUS OF A STATEMENT BY HON. OWEN BAYA, MP ON LUIGI BROGLIO-SPACE CENTRE IN MALINDI, KILIFI COUNTY 26

9.1 Background 26

9.2 Implementation status of the recommendations 27

9.2.1 Submission by stakeholders regarding the implementation status of the agreement between the Republic of Kenya and Italy on the Luigi Broglio-Malindi Space Centre. 27

10 REPORT ON IMPLEMENTATION STATUS OF A MOTION BY HON. GATHONI WAMUCHOMBA, HSC REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS ON STANDARDIZATION AND PRODUCTION OF SCHOOL UNIFORMS 31

10.1 Background 31

10.2 Implementation status of the recommendations 31

10.2.1 Submission by the Cabinet Secretary, Ministry of Education Hon. Ezekiel Machogu. 31

11 REPORT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING ON ITS CONSIDERATION OF THE PUBLIC PETITION ON PAYMENT OF TERMINAL DUES TO FORMER EMPLOYEES OF PAN PAPER MILLS COMPANY LIMITED 33

11.1 Background 33

11.2 Implementation status of the recommendations 33

11.2.1 Submission by the Principal Secretary, State Department for Industry 33

Implementation Status: 34

Implementation Status 34

Committee on Implementation Observations 35

Committee on Implementation Recommendations 35

12 REPORT OF THE PUBLIC PETITIONS COMMITTEE ON A PETITION BY PASTOR OCHIENG' ODINDO REGARDING ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) INVESTIGATIONS OF WEST KANO IRRIGATION SCHEME 36

12.1 Background 36

12.2 Implementation Status of the recommendations 36

12.2.1 Submission by the Chief Executive Officer-EACC 36

i). Submission by National Irrigation Authority 39

13 THE PUBLIC INVESTMENTS COMMITTEE SPECIAL REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND 42

13.1 Background 42

13.2 Implementation status of the recommendations 44

13.3 Submissions by the Principal Secretary PS State Department for Youth Affairs and the Creative Economy on behalf of the Cabinet Secretary Ministry of Youth Affairs and the Creative Economy 45

13.5 Submissions by the Director of Criminal Investigations (DCI) regarding the implementation status of the recommendations contained in the Report of the Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund 53

13.7 Submissions by The Asset Recovery Agency Regarding the Implementation Status of The Recommendations Contained in the Report of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund 73

14 THE 19TH REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS, VOL. I REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF AGRICULTURAL FINANCE CORPORATION (AFC) FOR THE FINANCIAL YEARS 2003/2004 TO 2011/2012 77

14.1 Background 77

14.2 Implementation Status of the recommendations 78

14.3 Submissions by the Managing Director 79

14.3 Submissions from the Inspectorate of State Corporations Concerning the Implementation Status of the Resolutions of the Public Investment Committee's (Pic) 19th Report on Consideration of the Auditor-General's Report on The Financial Statements of State Corporations (Agricultural Finance Corporation (AFC) 89

15 THE IMPLEMENTATION STATUS OF THE 13TH REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE (SFAC) ON STATUS OF THE EQUALIZATION FUND 92

15.1 Background 92

15.2 Implementation Status of the recommendations 92

15.3 Submission by the Chief Executive Officer 93

16 REPORT ON THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENTS COMMITTEE'S (PIC) 21ST AND 23RD REPORTS ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS: COAST WATER WORKS DEVELOPMENT AGENCY 103

16.1 Background 103

16.3 Submissions by the Ag. Chief Executive Officer 105

17 THE STATUS OF IMPLEMENTATION ON THE RESOLUTIONS OF THE HOUSE ON MOTION SPONSORED BY MEMBER FOR KAKAMEGA COUNTY, THE HON. ELSIE MUHANDA, MP, THAT THE MINISTRY OF EDUCATION DEVELOPS A SCHOOL FEEDING POLICY TO COVER BASIC EDUCATION FOR PUPILS AND SUSTAINS THE PROGRAMME IN ORDER TO ENSURE THAT CHILDREN ARE MAINTAINED IN SCHOOLS FOR EFFECTIVE LEARNING AND IMPROVE THEIR WELL-BEING 114

17.1 Background 114

20.2 Implementation Status of the resolutions 114

20.3 Submissions by the Principal Secretary, State Department for Basic Education - Ministry of Education 115

18 THE IMPLEMENTATION STATUS REGARDING A MOTION ON THE ESTABLISHMENT OF THE NATIONAL SWAHILI COUNCIL IN KENYA BY THE CABINET SECRETARY, MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE 119

18.1 Background 119

18.2 Implementation status of the recommendations 120

18.3 Submissions by the Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage 120

19 MOTION SPONSORED BY THE MEMBER FOR MARAGWA CONSTITUENCY, THE HON. MARY WAMAUA, MP, URGING THE GOVERNMENT TO ESTABLISH DATABASE CENTRES IN ALL CIVIL REGISTRATION CENTRES FOR PURPOSES OF STORING ALL THE NECESSARY INFORMATION REQUIRED FOR ISSUANCE OF BIRTH CERTIFICATES TO ALL CHILDREN 123

19.1 Background 123

19.2 Implementation Status of the Recommendations 123

19.3 Submissions by The Principal Secretary, State Department for Immigration and Citizen Services - Ministry of Interior and National Administration 124

20 REPORT OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE VISIT TO RIYADH, SAUDI ARABIA ON A FACT-FINDING MISSION ON THE WELFARE OF MIGRANT KENYAN WORKERS IN THE KINGDOM OF SAUDI ARABIA FROM FEBRUARY 27 TO MARCH 3, 2019 126

20.1 Background 126

20.2 Status of Implementation of the Departmental Committee on Labour Report 127

21 REPORT OF THE DEPARTMENTAL COMMITTEE ON ENERGY RELATING TO A PUBLIC PETITION REGARDING THE DEGRADATION OF THE ENVIRONMENT ALONG THE SONDU-MIRIU DAM DUE TO THE FAILURE BY KENGEN TO FULLY COMPLY WITH THE ENVIRONMENTAL IMPACT ASSESSMENT OF 1995 141

21.1 Background 141

21.2 Prayers by the Petitioners 141

21.3 Committee Observations as per Petitioners' Prayers 142

21.4 Implementation status of the recommendations 144

21.4.1 Submission by the CEO/Managing Director- KENGEN 144

22 REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEAR ENDED 30TH JUNE, 1997 TO 2012 151

22.1 Background 151

22.2 Implementation status of the recommendations 153

22.3 Submissions by the Director General Kenya Development Corporation Regarding the Implementation Status of The Report of The Auditor General on The Financial Statement of Kenya Tourist Development Corporation for The Year Ended 30th June, 1997 to 2012 154

22.4 Submission by The Inspectorate of State Corporations (ISC) Regarding the Implementation Status of The Report of The Auditor General on The Financial Statement of Kenya Tourist Development Corporation for The Year Ended 30th June, 1997 to 2012 165

23 GENERAL COMMITTEE OBSERVATIONS 167

24 GENERAL COMMITTEE RECOMMENDATIONS 168

ANNEXURES

Annex No	Title
Annex 1	Minutes of the Committee
Annex 2	Adoption List
Annex 3	Submission by the National Social Security Fund on the implementation status of the Public Investments Committee, Twenty-Second Report on consideration of the Auditor General's Reports on Financial Statements of State Corporations.
Annex 4	Submission by the Kenya Medical Supplies Agency (KEMSA) on the implementation status of the Public Investments Committee, Twenty-Second Report on consideration of the Auditor General's Reports on Financial Statements of State Corporations.
Annex 5	Submission by the National Cereals and Produce Board on the implementation status of the Public Investments Committee, Twenty-Second Report on consideration of the Auditor General's Reports on Financial Statements of State Corporations.
Annex 6	Submission by the Principal Secretary, State Department for Lands & Public Works on the implementation status of the Departmental Committee on Lands, Report on a Public Petition regarding the restoration of land belonging to Mrs. Teresia Wambui Kesi in Kilifi North Constituency.
Annex 7	Submission by the Principal Secretary, State Department for Lands & Public Works on the implementation status of the Departmental Committee on Lands, Report on a Public Petition regarding securing land ownership rights of Mwanangu Vuze residents in Likoni Constituency
Annex 8	Submission by the Principal Secretary, State Department for Lands & Public Works on the implementation status of the Departmental Committee on Lands, Report on a Public Petition regarding the irregular annexation and fencing of private land by Greatcom Limited in Matuga Constituency in Kwale County.
Annex 9	Submission by the stakeholders regarding the implementation status of the agreement between the Republic of Kenya and Italy on the Luigi Broglio-Malindi Space Centre
Annex 10	Submission by the Cabinet Secretary, Ministry of Education Hon. Ezekiel Machogu on the implementation status of a motion by Hon. Gathoni Wamuchomba, HSC regarding the standardization and production of school uniforms
Annex 11	Submission by the Principal Secretary, State Department of Dr. Juma Mukhwana, PhD on the implementation status of the resolution on payment of terminal dues to former employees of Pan Paper Mills Company Limited
Annex 12	Submission by the Chairman, Ethics and Anti-Corruption Commission (EACC) Mr. Twalib Mbarak and the Chief Executive Officer, National Irrigation Authority Eng. Charles Muasya, MBS on the implementation status of the house resolutions on the Public Petition on the Ethics and Anti-Corruption Commission (EACC) investigations of West Kano Irrigation Scheme

Annex 13	Submissions by the Principal Secretary, State Department for Irrigation - Ministry of Water, Sanitation and Irrigation, Mr. Ephantus K. Kimani, CBS in response to the Public Petition Public Petition Committee Reports in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme for their action
Annex 14	Submissions by the Principal Secretary PS State Department for Youth Affairs and the Creative Economy on behalf of the Cabinet Secretary Ministry of Youth Affairs and the Creative Economy regarding the implementation status of the recommendations contained in the Report of The Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at The Youth Enterprise Development Fund.
Annex 15	Submissions by the Chief Executive Officer, Ethics and Anti-Corruption Commission regarding the implementation status of the recommendations contained in the Report of The Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at The Youth Enterprise Development Fund.
Annex 16	Submissions by the Director of Criminal Investigations (DCI) regarding the implementation status of the recommendations contained in the Report of the Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund
Annex 17	Submissions by The Office of The Director of Public Prosecutions Regarding the Implementation Status of The Recommendations Contained in The Report of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund
Annex 18	Submissions by The Asset Recovery Agency Regarding the Implementation Status of The Recommendations Contained in the Report of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund
Annex 19	Submissions by the Managing Director AFC on Reports of the Auditor-General relating to the Financial Statements of Agricultural Finance Corporation (AFC) for the financial years 2003/2004 to 2011/2012
Annex 20	Submissions from the Inspectorate of State Corporations Concerning the Implementation Status of the Resolutions of the Public Investment Committee's (PIC) 19th Report on Consideration of the Auditor-General's Report on The Financial Statements of State Corporations (Agricultural Finance Corporation (AFC)
Annex 21	Submission by the Chief Executive Officer on the Implementation Status of the 13th Report of The Special Funds Accounts Committee (SFAC) on Status of The Equalization Fund
Annex 22	Submissions by the Ag. Chief Executive Officer on The Implementation Status of The Public Investments Committee's (Pic) 21st And 23rd Reports on Consideration of The Auditor-General's Report on The Financial Statements of State Corporations: Coast Water Works Development Agency

Annex 23	Submissions by The Ethics & Anti-Corruption Commission Regarding the Implementation Status of The Public Investment Committee's (PIC) 21st and 23rd Reports on Consideration of The Auditor-General's Report on The Financial Statements of State Corporations: Coast Water Works Development Agency
Annex 24	Submissions by Dr. Belio R. Kipsang, CBS - Principal Secretary – State Dept. for Basic Education on the status of implementation on the resolutions of the House on motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being.
Annex 25	Submissions by Hon. Aisha Jumwa Katana, EGH the Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage on the Implementation status regarding a motion sponsored by Member for Kamukunji Constituency, the Hon. Yusuf Hadsan, MP, urging the Government to establish the National Swahili Council in Kenya and launch specific strategies, methods, and policies needed to promote and develop Kiswahili in the Country.
Annex 26	Submissions by Mr. Paul Mwangemi, Secretary – Civil Registration Services, representing the Cabinet Secretary - Ministry of Interior and National Administration on the implementation status of the recommendations of a Motion, sponsored by the Member for Maragwa Constituency, the Hon. Mary Wamaua, MP, urging the Government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children.
Annex 27	Submissions by the Principal Secretary - State Department for Diaspora Affairs, the PS - Labour and Skills Development - Ministry of Labour & Social Protection and the Director General National Employment Authority on the Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from February 27 to March 3, 2019
Annex 28	Submission by the Kenya Electricity Generating Company on the implementation status of the Report of the Department Committee on Energy on a Public Petition regarding the degradation of the Environment along the Sondu-Miriu Dam due to the failure by KENGEN to fully comply with the Environmental Impact Assessment of 1995.
Annex 29	Submissions by Ms. Norah Ratemo the Director General Kenya Development Corporation on the implementation status of the Report of The Auditor-General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012
Annex 30	Submission by The Inspectorate of State Corporations (ISC) Regarding the Implementation Status of The Report of The Auditor General on The Financial Statement of Kenya Tourist Development Corporation for The Year Ended 30th June, 1997 to 2012

ABBREVIATIONS

AFC	-	Agricultural Finance Corporation
ARA	-	Asset Recovery Agency
CPA	-	Certified Public Accountant
CSR	-	Corporate Social Responsibility
CWWDA	-	Coast Water Works Development Agency
DCI	-	Directorate of Criminal Investigations
EACC	-	Ethics and Anti-Corruption Commission
EIA	-	Environmental Impact Assessment
FRC	-	Financial Reporting Centre
FY	-	Financial Year
HPTs	-	Health Products and Technologies
IDPs	-	Internally Displaced Persons
JMB	-	Joint Management Board
KDC	-	Kenya Development Corporation
KEMSA	-	Kenya Medical Supplies Agency
KENGEN	-	Kenya Electricity Generating Company
KIE	-	Kenya Industrial Estate
KTDC	-	Kenya Tourist Development Corporation
MD	-	Managing Director
MDAs	-	Ministries, Departments and Agencies
MSEA	-	Micro and Small Enterprise Fund
NACONEK	-	National Council for Nomadic Education in Kenya
NCPB	-	National Cereals and Produce Board
NSSF	-	National Social Security Fund
O & M	-	Operation and Maintenance
OAG	-	Office of the Auditor General
OCS	-	Officer Commanding Station
PIC	-	Public Investments Committee
POCAMLA	-	Proceeds of Crime and Anti-Money Laundering Act
SCAT	-	State Corporations Appeals Tribunal
SDPW	-	State Department Public Works
SFAC	-	Special Funds Accounts Committee
WKIFRF	-	West Kano Irrigation Farmers Revolving Fund
YEDF	-	Youth Enterprise Development Fund

CHAIRPERSON'S FOREWORD

This Report contains status of implementation statuses of various recommendations of House Reports, Petitions and House Resolutions considered by the Committee on Implementation. It also entails a compilation of the responses received by various implementing bodies.

In total, the Committee considered the implementation status of recommendations contained in sixteen (16) adopted House Reports and resolutions emanating from four (4) Motions adopted by the National Assembly, as well as recommendations of various Petitions that the Committee was able to dispense with.

In determining the implementation status of the aforementioned House resolutions, the Committee examined whether such decisions and undertakings had been implemented within the sixty (60) days provided for by the Standing Order 201 on Reports on House Resolutions, and whether such implementation had taken place within the minimum time necessary, and in instances where that had not happened, if a satisfactory explanation for the delay had been provided.

To help the Committee effectively examine the progress made by the relevant government agencies in the implementation of House resolutions, the Committee was guided by the provisions of Article 153(4) (b) of the Constitution. This provision requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control. The Committee, therefore, wrote to various Ministries, State Corporations, and Agencies requesting for updates on the implementation status of House resolutions.

To achieve this, the Committee on Implementation wrote to the relevant government agencies including Ministries, State Departments and Agencies between 9th October 2023 and 30th May, 2024 seeking the implementation status of the Reports and House Resolutions.

Consequently, the Committee received both oral and written submissions from relevant Cabinet Secretaries, and accounting officers of State Corporations, providing the implementation status of the recommendations contained in the Reports adopted by the House.

In addition, the Committee undertook inspection visits to various parts of the country to ascertain the progress made in implementing some of the House resolutions. For instance, the Committee conducted site inspection visits to counties such as Mombasa and Kilifi to verify responses submitted to it on the report of the Auditor-General on the audited accounts of Coast Water Works Development Agency (Coast Water Services Board) FY 2012/2013 – 2014/2015.

Arising from its findings, the Committee made the following general observations on implementation of House resolutions: -

i. Majority of the resolutions had either been implemented, while other had not been implemented at all;

ii. the implementation of some of the House resolutions have been hampered by ongoing litigations and lack of budgetary allocation to actualize implementation;
iii. land remains a recurrent issue and also features in the assets of state corporations that have been grabbed and subsequently flagged by reports of the Auditor-General;
iv. the Committee in the course of discharging its mandate found out that many state corporations had staff in acting capacity among them, the Inspectorate of State Corporations. This ties the hands of state officers in discharging their oversight role where they cannot enforce matters such as surcharging the management of state corporations whose funds had been misappropriated;
v. for the House resolutions that require a multi-agency effort, lack of collaboration between the relevant government agencies, failure to take responsibility amongst the government agencies and outright blame shifting among themselves, had impeded implementation of House resolutions within the envisaged timelines; and
vi. resolutions on payment of terminal dues to former public officers remain pending for more than twenty years and have not been addressed to the date of compiling this report due to the complexity of the issue on repayment of such dues.

Honourable Speaker, I wish to reiterate the utmost commitment of the Select Committee on Implementation in ensuring that the National Assembly resolves issues of concern to the citizenry by holding the Executive to account through the implementation of House resolutions. This ultimately ensures that the National Assembly executes its constitutional mandate effectively and efficiently and that it does not act in vain.

In conclusion, Honourable Speaker, I wish to express my appreciation to fellow Honourable Members of the Committee, the Office of the Speaker, the Clerk of the National Assembly and the Secretariat for facilitating the production of this Report.

Honourable Speaker, pursuant to Standing Order 199(6), it is my pleasant duty and privilege, on behalf of the Select Committee on Implementation, to lay this Report on the Table of the House and urge the House to adopt it and the recommendations therein.

4/12/2024

HON. RAPHAEL BITTA SAUTI WANJALA, MP.
CHAIRPERSON, COMMITTEE ON IMPLEMENTATION

1 PREFACE

1.1 Mandate of the Committee

1. The Committee on Implementation is established under Standing Order 209 of the National Assembly Standing Orders.

2. The Committee is charged with scrutinizing the resolutions of the House (including adopted Committee Reports), Petitions and undertakings given by the National Executive and examining whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation had taken place within the minimum time necessary; and whether or not legislations passed by the House have been operationalized and where operationalized, the extent to which such operationalization had taken place within the minimum time necessary. The Committee may propose to the House sanctions against any Cabinet Secretary who fails to report to the relevant Select Committee on implementation status without justifiable reasons.

3. Standing Order 201 further provides that within sixty days of a resolution of the House or adoption of a Report of a Select Committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House.

4. The mandate of the Committee is further enhanced by the provisions of Article 153(4) (b) of the Constitution which requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

1.2 Committee Membership

5. The Committee membership comprises: -

Chairperson
Hon. Raphael Bitta Sauti Wanjala, MP
Budalangi Constituency
Orange Democratic Movement

Vice-Chairperson
Hon. Rose Museo, MP
Makueni County
Wiper Democratic Movement-Kenya

Members

Hon. Mohamed Ali, MP
Nyali Constituency
United Democratic Alliance

Hon. Elijah Memusi Kachory, MP
Kajiado Central Constituency
Orange Democratic Movement

Hon. Johnson Manya Naicca, MP
Mumias West Constituency
Orange Democratic Movement

Hon. Hillary Arap Kosgei, MP
Kipkelion West Constituency
United Democratic Alliance

Hon. George Koimburi Ndung'u, MP
Juja Constituency
United Democratic Alliance

Hon. Nicholas N. Nixon Ngikilong', MP
Turkana East Constituency
Jubilee Party

Hon. Charles Gumini Gimose, MP
Hamisi Constituency
Amani National Congress

Hon. Prof Guyo Waqo Jaldesa, M.P
Moyale Constituency
United Party of Independent Alliance

Hon. Lillian Chebet, Siyoi, MP
Trans Nzoia County
United Democratic Alliance

Hon. Abdul Ebrahim Haro, MP
Mandera South Constituency
United Democratic Movement

Hon. Cynthia Jepkosgei Muge, MP
Nandi County
United Democratic Alliance

Hon. Julius Taitumu M'Anaiba, MP
Igembe North Constituency
United Democratic Alliance

Hon. John Okwisia Makali, MP
Kanduyi Constituency
FORD-K

Hon. Timothy Kipchumba Toroitich, MP
Marakwet West Constituency
Independent

Hon. Hamisi Kakuta Maimai, MP
Kajiado East Constituency
Orange Democratic Movement

Hon. Stanley Muiruri Muthama, MP
Lamu West Constituency
Jubilee Party

Hon. Mark Samwel Muriithi Mwenje, MP
Embakasi West Constituency
Jubilee Party

Hon. Zamzam Mohamed Chimba, MP
Mombasa County
Orange Democratic Movement

Hon. Rael Chepkemoi Kasiwai, MP
West Pokot
Kenya Union Party

1.3 Committee Secretariat

6. The Secretariat facilitating the Committee in executing its mandate comprises of : –

Ms. Lucy G Kimathi
Principal Clerk Assistant I/HoD - Team Leader

Mr. Abdiaziz Shobay
Clerk Assistant I

Mr. Alex Amwata
Hansard Reporter II

Mr. Mark Namaswa
Clerk Assistant II

Mr. Collins Namulen
Fiscal Analyst III

Ms. Noel Amutabi
Legal Counsel II

Mr. Danton Kimutai
Audio Officer III

Mr. James Macharia
Media Relations Officer I

Ms. Catherine Mukunyi
Sergeant- at- Arms

Ms. Lydia Shalom Migare
Research Officer III

Ms. Angela Jepkemboi
Public Communications Officer III

2 INTRODUCTION

7. The Committee on Implementation commenced to apprise itself on the implementation status of House resolutions in accordance to Standing Order 209 (2) which requires the Committee to scrutinize resolutions of the House (including adopted Committee Reports), Petitions and the undertakings given by the National Executive.

8. The Report contains the status of the implementation of various reports as submitted by Ministries, Departments and Agencies as from October 2023 to date. They include:

   i) The Twenty-Second Report of the Public Investments Committee on its consideration of the Auditor-General Reports on the financial statements of the National Social Security Fund (NSSF) FY 2013/14 to 2015/16;
   ii) The Twenty-Second Report of the Public Investments Committee on its consideration of the Auditor-General Reports on the financial statements of Kenya Medical Supplies Agency (KEMSA) (FYs 2012/2013-2016/2017);
   iii) The Twenty-Second Report of the Public Investments Committee on its consideration of the Auditor-General Reports on the financial statements of National Cereals and Produce Board (NCPB);
   iv) Report of the Departmental Committee on Lands on a Public Petition regarding the restoration of land belonging to Mrs. Teresia Wambui Kesi in Kilifi North Constituency;
   v) Report of the Departmental Committee on lands on a Public Petition regarding securing land ownership rights of Mwananguvuze Residents in Likoni Constituency;
   vi) Report of the Departmental Committee on Lands on a Public Petition regarding the irregular annexation and fencing of private land by Greatcom Limited in Matuga Constituency in Kwale County;
   vii) Report on Implementation Status of a Statement by Hon. Owen Baya, MP On Luigi Broglio-Space Centre in Malindi, Kilifi County;
   viii) Report on implementation status of a Motion by Hon. Gathoni Wamuchomba, MP, HSC, regarding implementation status of House resolutions on standardization and production of school uniforms;
   ix) Report of the Departmental Committee on Finance and National Planning on its consideration of the Public Petition on payment of terminal dues to former employees of Pan Paper Mills Company Limited;
   x) Report of the Public Petitions Committee on a Petition by Pastor Ochieng' Odindo regarding Ethics and Anti-Corruption Commission (EACC) investigations of West Kano Irrigation Scheme;
   xi) The Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund;
   xii) The Reports of the Auditor-General on the financial statements of Agricultural Finance Corporation (AFC) for the Financial Years 2003/2004 to 2011/2012;
   xiii) Status of implementation status of the 13th Report of the Special Funds Accounts Committee (SFAC) on status of The Equalization Fund;

xiv) Report on the implementation status of the Public Investment Committee's (PIC) 21st and 23rd Reports on consideration of the Auditor-General's Report on the Financial Statements of State Corporations: Coast Water Works Development Agency (CWWDA);

xv) Status of implementation of the resolutions of the House on a Motion sponsored by Member for Kakamega County, The Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being;

xvi) The status of implementation regarding a Motion on the establishment of the National Swahili Council in Kenya;

xvii) Status of implementation on the resolutions of the House on a Motion, sponsored by the Member for Maragwa Constituency, The Hon. Mary Wamaua, MP, urging the government to establish Database Centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children;

xviii) Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from February 27 to March 3, 2019;

xix) Report of the Departmental Committee on Energy on a Public Petition regarding the degradation of the environment along the Sondu-Miriu Dam due to the failure by KenGen to fully comply with the Environmental Impact Assessment Report of 1995; and

xx) Status of the implementation of the Report of The Auditor-General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012.

IMPLEMENTATION STATUS OF VARIOUS COMMITTEE REPORTS, PETITIONS AND HOUSE RESOLUTIONS

3 THE TWENTY-SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE AUDITOR-GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FY 2013/14 TO 2015/16

3.1 Background

9. The Public Investments Committee examined the report of the Auditor-General on the audited accounts of the National Social Security Fund for the Financial Years 2013/14, to 2015/16.
10. In its Report, the Public Investments Committee made the following recommendations on the various audit queries.

i) On Members contributions held in suspense account FY 2013/14 to 2015/16

11. The Public Investments Committee recommended that NSSF should liaise with employers to identify the contributors/beneficiaries.

ii) On completion of Hazina Trade Centre 2014/2015 and 2015/2016

12. The Public Investments Committee recommended that:
    i) The NSSF should only pay the amount that was recommended by the State Department of Public Works;
    ii) The Office of the Auditor-General should conduct a value-for-money and forensic audit; and
    iii) Further, determined by the outcome of the audit, the EACC and DCI should investigate the management and the board of NSSF that were in place during the period under review with a view to establishing whether there was fraud relating to the contract of works on the completion of Hazina Trade Centre and the subsequent prosecution of any person found culpable.

iii) On Nyayo Estate Embakasi Phade Six Contract No. 18/2012 – 2013 (FY 2014/2015 and 2015/2016)

13. The Public Investments Committee recommended that:
    i) the NSSF Managing Trustee should seek a legal opinion from the Attorney General on whether the NSSF can utilise the bank guarantee elsewhere;
    ii) in the event of loss of Kshs. 215,540,744, all the officers that failed to seek approvals from the Nairobi City County should be individually held responsible; and
    iii) the Fund should ensure all the necessary approvals are sought and acquired before commencement of capital projects.

iv) On Composition of the Board

14. The Public Investments Committee recommended that:
    i) all the stakeholders should pursue out of court settlements. This will reduce both the cost and time of considering the matter;
    ii) The Cabinet Secretary for Labour should always follow the law and the laid down guidelines whenever he/she appoints members to NSSF Board; and

iii) The National Assembly should amend the NSSF Act with a view to reducing the rigidity in board composition at the Fund.

v) On unsatisfactory Budget Control and Performance

15. The Public Investments Committee recommended that: -
    i) In the event of a dispute, NSSF board members should explore arbitration to resolve the matter rather than going to court;
    ii) The Kenya Revenue Authority (KRA) should refund NSSF the overpaid tax of Kshs. 904,904,000 within six months;
    iii) The Fund should ensure proper financial planning, budgeting and prudence when undertaking its mandate.

vi) On Unremitted Members Contributions (Financial year 2015/2016)

16. The Public Investments Committee recommended that: -
    i) The Fund should put in place robust collection strategies including legal mechanisms to avoid under collection and resultant losses;
    ii) The Office of the Auditor-General (OAG) should increase the sample size of files for audit exercise to have a fairly accurate representation;
    iii) The National Assembly should increase financial allocation to the OAG to acquire additional human resource that will assist in effectively undertaking the mandate of the Office.

vii) On Irregular Disposal of Undeveloped Land (Financial year 2015/2016)

17. The Public Investments Committee recommended that: -
    i) The National Land Commission (NLC) and the Ministry of Lands should resolve the matter within six months;
    ii) The Ethics and Anti-Corruption Commission (EACC) and the DCI (should investigate the Director of Surveys, the Registrar of Titles and Messrs Karsan Ramji & Sons with respect to the acquisition and Grant No. I.R. 91466 (LR No. 26817) and prosecute where any of the parties is found culpable.

viii) On Hazina Plaza Mombasa Lease – LR.No. MSA/BLK XX/328 & 329 (FY 2015/2016)

18. The Public Investments Committee recommended that the Auditor-General should carry out a forensic audit and a 'value for money audit' to establish whether the transaction under this matter was marred in fraud.

3.2 Implementation status of the recommendations

19. The Committee on Implementation wrote to the National Social Security Fund on 9th October, 2023 seeking the implementation status of the Report.
20. Mr. David Korros, the CEO/Managing Trustee appeared before the Committee on 17th October, 2023. He was accompanied by the following officers:
    1. Mr. Moses N. Cheseto - Ag. General Manager, Finance & Investment, NSSF
    2. Ms. Marietta Mutinda - Ag. Manager, Finance, NSSF
    3. Ms. Peter Muiruri - Manager Property Development, NSSF
    4. Mr. Evans Ombui - Regional Manager Western/Nyanza, NSSF
    5. Mr. Fred Kiplaingia - Technical Advisor to the CEO, NSSF
    6. Ms. Hellen Koech - Ag. Manager Legal Manager, NSSF

7. Mr. Hillary K. Mwaita - Manager Registration and Compliance, NSSF

3.2.1 Submission by the CEO/Managing Trustee, National Social Security Fund (NSSF)

1. On recommendation that the Fund publishes in the media all the money held in suspense accounts to allow members to come and clear their accounts.

Implementation Status

21. The Chief Executive Officer submitted that the Fund finds this approach too expensive and practically not possible due to the huge amount of data involved. Further, the Data Protection Act now prohibits the publication of member identification data online or in the media. Instead, the Fund had chosen to deal directly with the employers and members through the following means:
    i) The Fund had deployed Zonal Compliance Officers who routinely collect missing returns and particulars for uploading as they conduct Employer Record inspections;
    ii) All field offices have a dedicated team that exclusively works on clearing the Contributions in Transit. In the Financial year 2022/2023, a clearance of Kshs 245,882,722.35 was resolved and posted to member accounts. In quarter one of FY 2023/2024, KES 87,290,748.05 was cleared. This is a routine exercise undertaken daily.

Committee on Implementation Observation

22. **Arising from the submission by the Chief Executive Officer, the Committee observed that the NSSF had not implemented the recommendation satisfactorily as at the Financial Year 2022/2023, members contributions amounting to Kshs. 942,134,660.52 were still being held in suspense accounts.**

Committee on Implementation Recommendation

23. **The Committee recommended that within sixty (60) upon tabling and adoption of this report, the NSSF should resolve the matter since pensioners whose contributions were not captured on time, experience difficulty following up with their employers.**

2. On PIC's recommendation that the Fund should not receive any contributions not accompanied by a full receipt.

Implementation Status

24. The Chief Executive Officer submitted that the Fund progressively reduced the amount of data errors acceptable, from an initial 5% to the current 2%. Setting the limit to ZERO would trigger significant challenges to employers who have to deal with late joiners who would either have to be excluded from the payroll or would lead to delay in entire payrolls;
25. The 2% limit allows one or two new entries per 100 to join the payroll and be processed as they go through the NSSF registration process. The Fund deployed online and USSD registration processes to hasten that registration process;
26. Further the Fund receives contributions from Government entities with missing NSSF numbers. It was only until recently that the Integrated Payroll and Payroll Database (IPPD) was amended to include the column for NSSF in County and Central Government payrolls;

27. The Fund allows the amounts to be received under such exceptional circumstances to allow capture of the payments otherwise the amounts could end up being allocated to competing resource requirements. A process then follows which allocates these contributions to the individual members using data already held in the system. The changes in IPPD shall significantly improve on this; and
28. In all cases, the Fund collects and holds sufficient data to identify the specific member when he comes to make a claim or when he finally completes the registration process.

Committee on Implementation Observation

29. **The Committee observed that the addition of a column requiring provision of NSSF numbers in Integrated Payroll and Payroll Database will reduce the data errors.**

Committee on Implementation Recommendation

30. **The Committee recommends the addition of a column requiring provision of NSSF numbers in Integrated Payroll and Payroll Database be implemented within sixty (60) days upon tabling and adoption of this report.**

3. On recommendation that NSSF should only pay the amount that was approved by the State Department of Public Works concerning the completion of Hazina Trade Centre in the FYs 2014/15 and 2015/16.

Implementation Status

31. The Chief Executive Officer submitted that the contractor had presented a claim for cost of extended preliminaries due to the lost time. The State Department Public Works (SDPW) was directed by the Public Investments Committee of the National Assembly to evaluate the claim and present a report which they did. In their report, the SDPW determined that Kshs. 871,697,124.00 was contractually payable to cover the costs incurred by the contractor during the delays (extended preliminaries) up to that point in time, i.e. 15th March 2018.
32. The Fund sought the opinion of the State Law Office on the legality of the claim and the Attorney General responded that according to the contract, the contractor had the right to claim the amounts claimed under compensation event clauses. Variation Order No. 2 was prepared and executed formalizing the amount that was agreed between the Fund and the contractor and approved by the SDPW and Project Consultants. This amount was paid in four equal instalments of Kshs. 271,924,281.05 each vide Certificates Nos. 14, 15, 16 and 18.

Committee on Implementation Observation

33. **The Committee observed that the NSSF had implemented the recommendation as per the submissions by the Managing Director.**

4. On recommendations that KRA should refund Kshs. 904,904,000 overpaid by NSSF

Implementation Status

34. The Chief Executive Officer submitted that they have continued to pursue the refund, a matter which escalated to the High Court after which a ruling was delivered in favour of NSSF on 29th June 2016, but KRA is yet to honour the court ruling.
35. The Managing Director submitted that while KRA confirmed in writing on 27th June 2013 and on 30th May a credit of Kshs.425, 518,277 in favour of NSSF, the authority is yet to honour the NSSF members with the refund and members continue to suffer loss from the continued holding on to the Kshs. 904,903,717 due to the Fund.
36. In 2017, the Fund received a letter from the Office of the Attorney-General suggesting that the parties submit the matter to mediation to be conducted by the Nairobi Centre for International Arbitration. However, the Fund declined and maintained that there was no pending dispute as the matter had been determined by the High Court, and what was remaining was settlement of the owed funds. The matter had also been escalated by the Fund to the National Treasury.
37. The Fund further proposed to the Commissioner General an agreement to offset the debt against taxes owed (PAYE, VAT and other taxes). But the proposal had not been honoured.
38. KRA indicated that in 2021 at the time of pursuing the refund of Kshs. 904,903,717, the Fund had outstanding tax liabilities arising from an appeal they had made to the Court of Appeal against the High Court decision. On 28th July 2021, KRA wrote to the Fund referring to the Honourable Attorney General's advisory that indicated that it is against public policy and prudent public financial management for government entities to institute legal action against one another, strongly encouraging use of out of court settlement through alternative dispute resolution as duly elucidated under Article 159 (2) (c) of the Constitution.
39. In keeping with this advisory, the Fund in 2021 subjected itself to an ADR process with KRA aimed at arriving at a win-win scenario. However, even with this effort, the matter was not resolved with the KRA Tax Dispute Resolution Decision writing on 17 January 2022 indicating closure of the ADR discussions for lapse of ADR timelines as per the Tax Procedures Act. The Tax Dispute Resolution Division further indicated that the Commissioner was carrying out internal consultations and upon finalization, the file would be reopened for discussion. No further communication had been received on the same to date.

Committee on Implementation Observation

40. **Arising from the submission by the Chief Executive Officer, the Committee observed that the Kenya Revenue Authority had not honoured the court ruling delivered on the 19th June 2016.**

Committee on Implementation Recommendation

41. **The Committee recommended that the Kenya Revenue Authority present a payment plan for the Kshs 904,904,000 overpaid by NSSF within 90 days of the adoption of this Report.**

5. **On the recommendation that the NSSF continues to engage the National Land Commission on the irregular disposal of undeveloped land (LR. NO 209/11642) in the FY 2015/16.**

Implementation Status

42. The Chief Executive Officer submitted that, the Fund wrote a letter on 9th March 2016 demanding the reinstatement of the title. On 18th April 2016, the Chairman of the National Land Commission (NLC) wrote to NSSF stating "it was not possible to reinstate the land to NSSF as it was already allocated to the Principal Secretary, State Department for National Treasury on 12th March, 2010 to hold in trust for the Judiciary for the development of Court facilities. The NSSF sued the Chief Land Registrar and Lekuna Limited for recovery of the purchase price and interest (HC Case No. HCC/ELC No. 153 of 2018). The case is yet to be determined.

Committee on Implementation Observation

43. **Arising from the submission by the Chief Executive Officer, the Committee observed that the case by NSSF had taken an inordinately long time to be determined. However, the Committee noted that this is an active matter in court.**

4 THE TWENTY-SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE AUDITOR-GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF KENYA MEDICAL SUPPLIES AGENCY (KEMSA) (FYS 2012/2013-2016/2017)

4.1 Background

44. The Public Investments Committee examined the report of the Auditor-General on the audited accounts of Kenya Medical Supplies Agency for the Financial Years (2012/2013-2016/2017). In its Report, the Public Investments Committee made the following recommendations on various audit queries:

i) On Property, Plant & Equipment (FY 2012/13 to FY 2016/17)

45. The Public Investments Committee recommended that KEMSA should expedite acquisition of ownership documents for the aforementioned pieces of land within six months.

ii) On Receivables from Exchange transactions (FY 2015/16 TO FY 2016/17).

46. The Public Investment Committee recommended that the Principal Secretary for the State Departments of Health and the National Treasury should provide budgetary allocation for the purchase of drugs within six months.

iii) On expired/damaged drugs (FY 2016/17)

47. The Public Investment Committee recommended that: -
    i) The medical camps by KEMSA and civil society groups should utilize drugs with a short shelf life to avoid expiry of drugs;
    ii) KEMSA should ensure that it puts in place strategies that will prevent wastage such as the use of anticipatory patterns to predict demand of drugs from the Counties.

4.2 Implementation status of the recommendations

48. The Committee on Implementation wrote to the Kenya Medical Supplies Authority (KEMSA) on 9th October, 2023 seeking the implementation status of the Report.
49. Dr. Andrew Mulwa, the then Ag. Chief Executive Officer appeared before the Committee on 17th October, 2023. He was accompanied by the following officers:
    1. Ms. Ebla M. Mohamed - Director Human Resource & Admin' KEMSA
    2. Mr. Waiganjo Karanja - Director Finance & Strategy, KEMSA
    3. Mr. Gilbert Mamati - Ag. Director, Procurement, KEMSA
    4. Mr. Fredrick Wanyonyi - Director Legal Services, KEMSA

4.2.1 Submission by the Ag. Chief Executive Officer of KEMSA

1. On the recommendation that KEMSA should expedite the acquisition of ownership documents for the aforementioned pieces of land within six months.

Implementation Status

50. The Ag. Chief Executive Officer submitted that KEMSA acted to gather precise and verified information about the ownership status of its land. The authority instructed Ong'anda and Associates Advocates to conduct searches on all its properties to gather accurate and verified information regarding the land ownership status. The authority had managed to acquire most of the title deeds and the lawyer vide a letter dated 5th October 2023 provided the status of the properties as follows:

a) Parcels of land with available documents of ownership

51. KEMSA currently had obtained documents of ownership for the following parcels of land:

i) KEMSA Supply Chain Centre (Embakasi)

(a) Registration: LR NO 9042/ 176

Status: KEMSA owns this property in Embakasi. The property was purchased from Kenya Airways Ltd, and the transfer was duly registered on 30th August, 2016.

ii) KEMSA Head Office-Commercial Street, Industrial Area, Nairobi.

(a) Registration: LR No. 209/7154/2.

Status: The property was transferred to KEMSA from the Government of Kenya. It officially belongs to KEMSA under LR. 209/20026

(b) The lease had expired and is currently being reviewed.

iii) Nakuru Depot

(a) Registration: 209163/A11

Status: The property was transferred to KEMSA by the Government of Kenya. The Parcel Card(s) for this property is not available. The lease, however, is under KEMSA.

iv) Nyeri Depot

(a) Registration:3/173/174 (merged to Nyeri Block 3/337)

Status: The property belongs to KEMSA, free from any encumbrances, confirming their rightful ownership. The property was transferred to KEMSA by the Government of Kenya.

v) Meru Depot

(a) Registration: Isiolo/ Ngarema/2567.

Status: The property was allocated to KEMSA by the Meru County Government and is confirmed to be under the ownership of KEMSA, devoid of any encumbrances.

vi) Meru Depot

(a) Registration: Meru Central/ Ruiri Rwarera.

Status: The property was allocated to KEMSA by the Isiolo County Government and is confirmed to be under the ownership of KEMSA, devoid of any encumbrances.

b) Parcels of land without documents of ownership

i) Embakasi - Green Site

(a) Registration: LR NO.123525 and LR NO. 123536.

Status: The titles for these properties were revoked by Gazette Notice No. 1547. The Gazette notice further recommended that both the sub-leases for the parcels be issued under the Kenya Airport's Authority (KAA) overarching title deed.

ii) Garissa Green Site

(a) Registration: N/A- PDP

Status: This property was allocated to KEMSA by the Garissa County Government. The parcel is unregistered and KEMSA's proof of ownership is an unregistered Part Development Plan.

iii) Eldoret depot:

(a) Registration: BLOCK 10/ 156

Status: The Eldoret property was transferred to KEMSA by the Government of Kenya. The Parcel Card(s) for this property is not available. The property lease exists but is not yet registered since no green /white cards exist on file.

iv) Kisumu depot:

(a) Registration: 209163/IX

Status: The parcel was allocated to KEMSA by the Government of Kenya and currently registered under the National Treasury. KEMSA had initiated the transfer process by writing to the Cabinet Secretary, Ministry of Health, to coordinate with the Cabinet Secretary, National Treasury, for the direct transfer of 209163/IX.

v) Mombasa depot:

(a) Registration: N/A - Unsurvey land

Status: The Mombasa property is held under an allotment letter and a Part Development Plan. This property was allocated to KEMSA by the Government of Kenya.

vi) Kakamega Green site:

52. KEMSA was allocated 3 acres by the County Government of Kakamega. The lease had been signed by KEMSA's and is awaiting signature by the County Government of Kakamega.
53. Further, the Ag. CEO submitted that based on the official search provided through the letter from Ong'anda and Associates Advocates, it had developed a matrix to ensure a conclusion of the outstanding matters on properties at Commercial Street HQ-Nairobi, Nakuru, Eldoret, Kisumu, and Kakamega by 31st December 2023 and pursue titling of land for Garissa, Mombasa, and Embakasi Green-site 1 & 2 by the end of June 2024.

Committee on Implementation Observations

54. **Arising from the submission by the Ag. Chief Executive Officer, the Committee observed that:**
    i) **KEMSA had not implemented the recommendation as provided in the PIC Report since they have not obtained ownership documents for seven out of thirteen properties;**
    ii) **The Parcel Card for Nakuru property was not available, even though KEMSA listed it under parcels with a document of ownership;**
    iii) **The Green/White cards for the Eldoret property were not available thus KEMSA had not registered the property; AND**
    iv) **The Mombasa parcel was un-surveyed thus KEMSA is exposing it to encroachment.**

Committee on Implementation Recommendation

55. **The Committee recommends that KEMSA should expedite the processing of the ownership documents and provide a well-structured status report to the Committee within 90 days.**

2. On the recommendation that the Principal Secretary for Health and the National Treasury should provide budgetary allocation for purchase of drugs within six months.

Implementation Status

56. The Ag. Chief Executive Officer submitted that the current Budgetary Allocation by the National Treasury & Ministry of Health for the purchase of drugs for FY 23/24 is Kshs. 6,303,033,902.

Committee on Implementation Observation

57. **Arising from the submission by the Ag. Chief Executive Officer, the Committee observed that the response provided was satisfactory.**

3. On the recommendation that medical camps by KEMSA and civil society groups should utilize drugs with a short shelf life to avoid expiry of drugs.

Implementation Status

58. The Ag. Chief Executive Officer submitted that, previously, KEMSA would provide short-dated Health Products and Technologies (HPTs) to any medical camp upon request as a donation. This included Camps organized by Civil Societies, faith-based groups and Political Leaders.
59. It was discovered that there was inadequate accountability for the donated HPTs, as some ended up in the wrong hands and posed a high risk of being repackaged and resold.
60. KEMSA took a different approach in handling donations of short-dated commodities to medical camps as follows:
    i) KEMSA supplies drugs to health facilities that are duly registered by the Medical Practitioners and Dentists Board;
    ii) KEMSA does not engage directly with civil society groups on the utilization of short-shelf-life drugs, drugs are only issued to health facilities;
    iii) KEMSA supports medical camps as long as they are conducted within the Medical Practitioners and Dentists (Medical Camp) Rules, 2016 under the Medical Practitioners and Dentists Board Act (Cap. 253). KEMSA can support a medical camp being conducted outside of a medical facility, only if the medical camp is led by a medical practitioner who assumes overall responsibility for the medical camp;
    iv) KEMSA systems routinely isolates all HPTs whose shelf life runs below six months from the normal sales stock. KEMSA does not issue for sale products with shelf life of 6 months and below;
    v) On a monthly basis, the list of short shelf-life HPTs is shared by the sales and marketing team with the County, Sub-County & hospitals health managers;
    vi) Based on their needs, the health managers formally request in writing for donation of short shelf-life HPTs;
    vii) Once approval is granted by the Chief Executive Officer (CEO), the short shelf-life HPTs are processed and shipped out to the customers whose requests have been approved; and
    viii) Short shelf-life donation orders are managed centrally by the Customer service department at the Supply Chain Centre in Embakasi.

Committee on Implementation Observation

61. **Arising from the submission by Ag. Chief Executive Officer, the Committee observed that the recommendation had been implemented.**

4. On the recommendation that KEMSA should ensure that it puts in place strategies that will prevent wastage such as the use of anticipatory patterns to predict the demand for drugs from the Counties.

62. The Ag. Chief Executive Officer submitted that KEMSA had taken measures to prevent the wastage of public resources due to the disposal of drugs with short shelf lives as follows:
63. KEMSA procures HPTs with more than 75% remaining shelf-life to ensure sufficient utilization time. However, despite this and other measures in place, some HPTs may still end up expiring due to low consumption. The following are some strategies that KEMSA is implementing in its quest to curb avoidable wastage:
64. For HPTs that are procured for sale to the counties:
    i) KEMSA is advocating for the ring fencing of county budgets - this will ensure that counties have adequate resources to procure what is available at KEMSA;
    ii) support the training of county and other health facility staff on commodity management and quantification to enable the staff to accurately determine their needs;
    iii) support the provision of reliable data through reporting of consumption of products on the online platform;
    iv) distribute reporting tools (MOH 647) procured by Ministry of Health, Department of Health Products and Technologies (MOH-DHPI) to all facilities and encourage utilization of the same to capture logistics data;
    v) on Procurement - improve supplier performance through implementation of supplier appraisal to increase the Order Fill Rate (OFR) and ensure efficiency in deliveries of supplies. This will ensure that health facilities and counties are able to order products that are available when they need them and will not need to procure elsewhere;
    vi) slow-moving HPTs - offer discounts and create awareness of the products;
    vii) Short-dated HPTs - offer for donation;
    viii) improve the demand forecasting through the use of artificial intelligence and data analytics to more accurately predict the demand patterns that will inform the supply planning; and
    ix) lobbying for timely debt settlements to avoid suspension of accounts that may lead to delays in processing repeat orders from Counties with overdue outstanding debts.

5. For the program HPTs, working with MOH strategic programs KEMSA will:

    i). support data management - improve reporting rates on the online Kenya Health Information System (KHIS) platform which will provide better data for forecasting. Provide a link between the Logistical Management Information System (LMIS) and KHIS to create an end-to-end visibility;
    ii). improve Supplier performance - improved supplier performance to ensure timely deliveries and availability of HPTs when they are needed which will improve uptake;
    iii). proper coordination of regimen changes to not only ensure minimal disruption to treatment but also reduce expiries due to the implementation of a phased approach in the introduction of new regimens;

iv). support data quality audits to ensure the quality of consumption data reported on the online platforms matches the actual consumption at the facility level; and

v). carry out post-distribution and post-market surveillance to identify supply chain bottlenecks and address factors that would hinder the utilization of HPTs. This would also inform redistribution to areas that require supplies from those that are oversupplied.

Committee on Implementation Observation

65. **Arising from the submission by Ag. Chief Executive Officer, the Committee observed that the recommendation had been implemented.**

5 THE TWENTY-SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON ITS CONSIDERATION OF THE AUDITOR-GENERAL REPORTS ON THE FINANCIAL STATEMENTS OF NATIONAL CEREALS AND PRODUCE BOARD (NCPB) (FYS 2015/16 AND 2016/17).

5.1 Background

66. The Public Investments Committee examined the report of the Auditor-General on the audited accounts of the National Cereals and Produce Board (NCPB) (FYS 2015/16 and 2016/17).
67. In its Report, the Public Investments Committee made the following recommendations on various audit queries.

i. Procurement of 40,000 metric tons of maize - FY 2015/2016

68. The Public Investments Committee recommended the fast-racking of the implementation of the Previous PIC reports which provided that the Managing Director ensures the Board applies for speedy conclusion of the case on the amount payable if any or the amount due to the Board if the award is set aside.

ii. On Current Assets: Debtors and Prepayments.

69. The Public Investments Committee recommended that the Auditor-General should undertake a forensic audit of the Kshs. 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment to the lawyers to establish whether there had been fraud, corruption or other financial improprieties.

iii. On Current Assets: Government Debtors Agency Account

70. The Public Investments Committee recommended that the multi-agency team formed by Management should resolve the matter of bad debts within three months of the adoption of this Report.

5.2 Implementation status of the recommendations

71. The Committee on Implementation wrote to the National Cereals and Produce Board on 9th October 2023 seeking the implementation status of the Report.
72. Mr. Joseph Kimote, the Managing Director, appeared before the Committee on 17th October 2023 and made submissions in regards to implementation status on the Report of the Public Investment Committee.

5.2.1 Submission by the Managing Director

1. **On the recommendation on fast tracking of the implementation of the previous PIC Reports which provided that the Managing Director ensures the board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the board if the award is set aside.**

Implementation Status:

73. The Managing Director submitted that the Board had established through its investigation that the parties alleged to have been contracted by Erad to supply grains were not aware of the transaction. The report was submitted as part of the evidence adduced during the arbitration proceedings but was not considered during the proceedings.

74. From the recommendations contained in the 21st PIC Report, EACC was directed to undertake investigations to confirm the board's position and institute proceedings against Erad and its directors. Through mutual assistance, EACC was able to finalize investigations and confirm that the parties claimed to have been contracted by Erad were not aware of the transaction. Based on the investigations and findings, EACC instituted a case against Erad and its directors which culminated in the conviction of Erad's directors as well as the company.
75. In the matter at the Court of Appeal where the board was seeking to set aside the arbitral award, EACC applied to be enjoined as an interested party and to adduce additional evidence that had been obtained through the investigations that were successfully used during the criminal proceedings.
76. Further, he submitted that the Court of Appeal heard and admitted the new evidence on 16th December 2022. The evidence adduced is similar to the one used during the Criminal Court Case (Republic -vs- Grace Sarapei Warungu & 2 others) which ruled for the conviction of the directors as well as fines for both the company and its directors.
77. Additionally, it is expected that this matter will end and probably the arbitral award may be set aside. NCPB is waiting for the court to invite the parties for a hearing. Additionally, the management of the board had always disclosed this contingent liability in all proceeding financial statements.

Committee on Implementation Observations

78. **Arising from the submission by the Managing Director, the Committee made the following observations:**
    i) **The National Cereals and Produce Board (NCPB) had not demonstrated sufficient effort to expedite the resolution of the case regarding the amount payable, if any, or the amount due to the Board if the award is overturned, as no evidence was presented indicating a request for the court to prioritize the case; and**
    ii) **The Management of the NCPB had not attempted to prosecute the employees who were engaged in the signing of the contract with the Erad Suppliers.**

Committee on Implementation Recommendations

79. **Arising from the observations, the Committee made the following recommendations:**
    i) **The Management of NCPB should engage the Courts within 60 days to ensure that the matter is concluded; and**
    ii) **The management of NCPB should conduct internal investigations to identify current and former employees of the board who led to loss of public funds and ensure they are prosecuted.**

2. On the recommendation that the Auditor-General should undertake a forensic audit of the Kshs. 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment to the lawyers to establish whether there had been fraud, corruption or other financial improprieties:

Implementation Status

i). The Managing Director submitted that the forensic audit is yet to be undertaken as recommended by PIC. However, the Board of Directors approved the write-off of the debt subject to approval by the National Treasury.

ii). He further submitted that notwithstanding, NCPB had vigorously been pursuing payments of debts including taking legal action against defaulters as a result of which, currently cases involving Kshs.56.9 million are under litigation. Goods and properties for other defaulters especially for rental have been confiscated and will be sold to defray the rental arrears.

iii). The Managing Director submitted that they have set up a Debts Recovery Unit (DRU) with the sole mandate to pursue all debts that are one year old and above. However, as a prudent measure, NCPB had provided Kshs.943 million as provision for doubtful debts. The provision for bad and doubtful debts consists of 100% specific provision and 7.5% general provision on the balance tabulated below: -

CATEGORY	BALANCE AS AT 30.06.2017 (KSHS)	SPECIFIC PROVISION (KSHS)	BALANCE AFTER SPECIFIC PROVISION (KSHS)	7.5 % GENERAL PROVISION (KSHS)	PROVISIONS FOR 2016/2017 (KSHS)
(b)	(c)	(d)	(e)	(f)	(g)
Associated Company	160,077.50	160,077.50	0.00	0.00	160,077.50
Debtors for imported Wheat	35,933,463.80	35,933,463.80	0.00	0.00	35,933,463.80
Other Trade Debtors	1,019,091,083.01	725,339,216.15	291,966,357.38	21,897,476.80	749,022,202.36
Staff Debtors	124,912,936.11	106,897,244.98	18,008,491.13	1,350,636.83	108,247,881.52
Sundry Debtors	141,790,355.03	41,073,889.36	100,716,465.67	7,553,734.93	50,194,292.44
TOTAL	**1,321,887,915.45**	**909,403,891.79**	**410,691,314.18**	**30,801,848.75**	**943,557,917.63**

1. The provisions are therefore in line with the Boards policy and provisions.

Current Status on Implementation of Debt Swap Recommendation

80. The Managing Director submitted that the debt related to the World Food Programme for organizations that had swap arrangements under the coordination of the government with NCPB for the exchange of commodities in the 1980s. The balance was Kshs. 360,483,433.05. Joint reconciliations were undertaken in the 1990s to extract documents between WFP and the Board which further classified the debts as follows:

Value of un-supplied quantities with IDA documents retrieved between 1/7/1988 – 8/5/2000 (4,889.91 MT	*78,660,028.50*
Value of quantity lacking supporting Documents (4,094.00 MT)	*65,994,529.91*
Amounts arising from price differential on commodities supplied to WFP in Relation to agreed swap rations	*215,828,874.64*
Balance of outstanding debt due from WFP	***360,483,433.05***

81. The Managing Director further submitted that NCPB had been pursuing the debt with the Government (Treasury) who were signatories to the commodities SWAP agreement. There is an amount of Kshs. 65,994,529.91 which is unsupported and dates back to the 1980s. The likelihood of retrieving relevant supporting documents is remote. Against this background, the Board of Directors approved the write-off of the amount subject to approval by The National Treasury.

Current Status Payment to lawyers representing the NCPB on the two cases

82. Lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court. The background for these cases is as follows; Gunny bag Debtors Kshs. 133,877,201.15 while the outstanding amount of Kshs. 133,877,201.15 is related to two specific cases as summarized below: -

	Outstanding
Gunny bags losses involving non-supply of gunny bags by East African Bag and Cordage Ltd, Thika and Kensack Ltd prior to June 1988 fraud case involving Irregular payment for non-delivery of gunny bags by some four (4) debtors during the period 1986/87 Financial year	**Kshs. 99,886,751.70**
	Kshs. 33,990,449.45
	Kshs. 133,877,201.15
Total gunny bags debtors	**Kshs. 6,631,758.00**
Less recoveries	**Kshs. 127,245,443.15**

Thika Gunny Bag Losses - Kshs. 99,886,751.70

83. The two companies were manufacturing gunny bags for the board. They were placed under receivership and although the stock records indicated they were holding 4 million bags for the Board, they could not be found.
84. The Board filed two cases: one against East African Bag and Cordage Ltd and the other against its sister Company Kensack Ltd (on receivership). The case against East African Bag and Cordage could not proceed because the company was placed under liquidation on 21st November 1997 by the court pursuant to winding up Case No.19 of 1996.
85. The board filed a notice of intention to appear in the winding up case and also lodged its proof of debt claim for the loss of Kshs.99,886,751.70 to be considered alongside other creditors when the company is finally wound up.
86. The company was liquidated by the official Receiver and the board had subsequently received Kshs.6,631,758 from the official receiver and liquidator being dividends in respect of the board's claim.

Current status

87. On 14th March 2005, Justice Osiemo (as he then was) ordered the separation of the two matters HCCC No. 2947 of 1989 NCPB -V- KENSACK Ltd and HCCCC No. 2892 of 1989 NCPB -V- East African Bag & Cordage Company Ltd to be heard independently. The board's advocates successfully appealed against the orders and the two matters have been consolidated once again.

88. The board had instructed its advocates to commence out-of-court settlement negotiations with the debenture holder, Ms. National Bank. The negotiations will be with a view to sharing the proceeds of the sale of various gunny bags found at the Kensack Ltd and East African Bag and Cordage and deposited in an interest-earning account as per the court order.
89. The negotiations are ongoing between the advocates.

Mombasa Fraud Case - Kshs. 33,990,449.45

90. With regard to the Mombasa fraud case, besides criminal cases, which resulted in conviction of the culprits, the board instituted Civil Suit No. HCCC No. 176 of 1994 against five (5) defendants for restitution of the amount of Kshs. 33,990,449.45.

Current status

91. The Board had obtained judgement against the fifth defendant Mombasa Development Ltd. An investigator was commissioned to identify attachable assets belonging to Mombasa Development Ltd and the location of such assets. The preliminary report indicated that the investigator had established the particulars of Mombasa Development Ltd and its directors. They are currently pursuing the assets of the company.
92. The matter is still proceeding in court with the other four defendants, where the board had instructed its advocate to apply for summary judgment.
93. The representative of the Auditor-General submitted that the Office of the Auditor-General had not undertaken an audit as per the PIC recommendations.

Committee on Implementation Observations

i). **The Auditor-General had not conducted a forensic audit of the Ksh. 943,557,914, including the debt swap of Ksh. 360,483,433.5 and payments to legal counsel, to determine whether fraud, corruption, or other financial improprieties have occurred; and**

ii). **The Auditor-General is considering consolidating various PIC recommendations directly due to budgetary constraints. However, the Office of the Auditor-General committed to undertake the audit within three months.**

Committee on Implementation Recommendation

94. **The Auditor-General should undertake the audit within three months of tabling and adoption of this report.**

3. On recommendation that the multi-agency team formed by Management should resolve the matter of bad debts within three months of the adoption of this Report.

Implementation Status:

95. The Managing Director submitted that in a letter dated 5th January 2018, the management of the board requested the Principal Secretary (PS) of the Ministry of Agriculture, Livestock and Fisheries to constitute a Committee to scrutinize the documents, authenticate the claim and make recommendations so that the matter can be concluded. However, the letter had not been responded to date.

Committee on Implementation Observation

96. **The Committee noted that the recommendation had not been implemented, as the bad debt remains unsettled beyond the three-month period following the adoption of the Public Investments Committee (PIC) Report.**

Committee on Implementation Recommendation

97. **The Board should follow up with the State Department of Agriculture within sixty (60) days of the tabling and adoption of this report.**

6 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON A PUBLIC PETITION REGARDING THE RESTORATION OF LAND BELONGING TO MRS. TERESIA WAMBUI KESI IN KILIFI NORTH CONSTITUENCY

6.1 Background

98. The Departmental Committee on Lands considered the Petition regarding the restoration of land belonging to Mrs. Teresia Wambui Kesi in Kilifi Constituency.
99. Pursuant to the provisions of Standing Order 227 and further noting that the prayers of the Petitioner had already been settled, the Departmental Committee on Lands recommended that the Land Registrar in the Ministry of Lands and Physical Planning does recall the original lease document for L.R 150660 from Libya Oil Kenya Limited and surrender it to the Petitioner within sixty days of the tabling of this Report.

6.2 Implementation status of the recommendations

100. The Committee on Implementation wrote to the Ministry of Lands, Public Works, Housing and Urban Development on 9th October 2023 seeking an update on the implementation status of the Report on the Public Petition regarding restoration of land belonging to Mrs. Teresia Wambui Kesi in Kilifi North Constituency.
101. The Principal Secretary, Hon. Generali Nixon Korir, appeared before the Committee on 3rd August, 2023 accompanied by Mr. Gershom Otachi, the Chairperson, National Land Commission (NLC).

6.2.1 Submission by the Principal Secretary, State Department for Lands & Physical Planning

102. The Departmental Committee on Lands recommended that the Ministry of Lands, Public Works, Housing and Urban Development through the Land Registrar in the Ministry of Lands and Physical Planning recalls the original lease document for L.R 150660 from Libya Oil Kenya Limited and surrender it to the petitioner within sixty days of the tabling of this Report.

Implementation Status

103. The Principal Secretary, the State Departments of Lands and Physical Planning Hon. Generali Nixon Korir submitted that it was on record that Libya Oil (Kenya) Limited protested the action taken by the Registrar in expunging the alleged fraudulent transfer documents, as stated in a letter dated June 12, 2017, from its advocates, Muthoga Gaturu & Company Advocates.
104. In light of the circumstances, the Ministry suggested that the petitioner engages the law enforcement agencies, such as the National Police Service or the courts of law, to pursue the retrieval of the title document.

Committee on Implementation Observations

105. **The Committee observed that the Ministry of Lands had taken appropriate action in response to the petitioner's claim, and the fraudulent transfer documents had been expunged from the records. As a result, Mrs. Teresia Wambui Kesi's title as the registered owner was reinstated and the matter had been resolved.**

7 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON A PUBLIC PETITION REGARDING SECURING LAND OWNERSHIP RIGHTS OF MWANANGU VUZE RESIDENTS IN LIKONI CONSTITUENCY

7.1 Background

106. The Departmental Committee on Lands considered the Petition regarding securing land ownership rights of Mwananguvuze Residents in Likoni Constituency.

107. In its Report, the Departmental Committee on Lands recommended that the Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the National Land Commission and County Government of Mombasa regularizes the petitioner's settlement on the unalienated government land namely, No. MS/1/1837 and No. MS/1/1/1786 for which no ownership records exist, within six months of tabling of its Report.

7.2 Implementation status of the recommendations

108. The Committee on Implementation wrote to the Ministry of Lands, Public Works, Housing and Urban Development on 9th October 2023 seeking the implementation status of the Report on the Public Petition regarding securing land ownership rights of Mwananguvuze residents in Likoni Constituency.

109. The Principal Secretary, Hon. Generali Nixon Korir, appeared before the Committee on 3rd August 2023 accompanied by Mr. Gershom Otachi, the Chairperson National Land Commission (NLC).

7.2.1 Submission by the Principal Secretary, State Department for Lands & Physical Planning

110. The Report of the Departmental Committee on Lands recommended that the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development in consultation with the National Land Commission and County Government of Mombasa regularize the petitioner's settlement on the unalienated government land namely, No. MS/1/1837 and No.MS/1/1/1786 for which no ownership records exist within six months of tabling of its Report.

Implementation Status

111. Mr. Gershom Otachi, the Chairperson National Land Commission, submitted that through a letter dated 30th June 2022, the Commission formally requested the County Government of Mombasa to reserve the parcels (No.MS/1/1837 and NO.MS/1/1/1786) for settlement, as per the Committee on Lands' recommendation. However, there had been no response from the county government regarding this letter.

112. Once the reservation is made by the Commission to the Land Settlement Fund Board of Trustees, the Ministry is to proceed with squatter verification, survey and titling in the designated area.

113. The National Land Commission proposed two approaches to the County Government of Mombasa for dealing with land issues:

Approach A: Regularization Exercise - This involves invoking Reg 32 of Land (Allocation of Public Land) Regulations. The County Executive Committee Member (CECM) will plan, survey, and verify beneficiaries. Once this information is shared with the NLC, they will proceed to regularize the land tenure. The County Government needs to submit an approved plan, an authenticated survey, and a verified list of beneficiaries

for ownership regularization. After due diligence, the NLC will prepare ownership documents such as letters of allotment and certificates of lease.

Approach B: Settlement Scheme - This approach follows Sec.134 of the Land Act. The County Government will reserve land for squatter settlements upon request from the CECM. The NLC will process the reservation request and communicate the verdict to the County. The County Government must then plan and survey the subject land, making adequate provisions for public utilities, including churches and mosques. The settlement will be undertaken by the Ministry through the Land Settlement Fund Board of Trustees (LSFBT).

114. The National Land Commission is awaiting a formal request and promises to proceed with resettlement for Mwananguvuze residents as recommended by the Committee, following the law, upon receiving the request.

Committee on Implementation Observations

115. **The Committee observed the following:**

i). **That this matter is under the purview of the County Government of Mombasa;**

ii). **That the key actor in this matter is the County Government of Mombasa, which had not provided a response to the National Land Commission's request for land reservation as it had the Authority to proceed with the land regularization process; and**

iii). **That this matter had shifted from the Ministry to the County level, indicating the need for coordination and communication between the two entities.**

Committee on Implementation Recommendations

116. **The Committee recommends the following:**

i). **that there be coordination and communication between two entities; the Ministry of Lands and the County Government of Mombasa.**

ii). **that the Ministry sends a reminder letter to the County Government of Mombasa to prompt a response and expedite the process of regularizing the petitioner's settlement on the unalienated government land.**

8 REPORT OF THE DEPARTMENT COMMITTEE ON LANDS ON A PUBLIC PETITION REGARDING THE IRREGULAR ANNEXATION AND FENCING OF PRIVATE LAND BY GREATCOM LIMITED IN MATUGA CONSTITUENCY IN KWALE COUNTY

8.1 Background

117. The Departmental Committee on Lands considered the Public Petition regarding the irregular annexation and fencing of private land by Greatcom Limited in Matuga Constituency in Kwale County.

118. In its Report, the Departmental Committee on Lands recommended that the Cabinet Secretary, Ministry of Lands and Physical Planning in consultation with the National Land Commission and County Government of Kwale, ensure that Greatcom Ltd allows access of public pathways within LR. No 4752/2 to facilitate among other things the movement of pupils to adjacent schools within three months of tabling of the Report.

8.2 Implementation status of the recommendations

119. The Committee on Implementation wrote to the Ministry of Lands, Public Works, Housing and Urban Development on 9th October 2023 seeking the implementation status of the Report on the Public Petition regarding the irregular annexation and fencing of private land by Greatcom Limited in Matuga Constituency in Kwale County.

120. The Principal Secretary, Hon. Generali Nixon Korir, appeared before the Committee on 3rd August 2023 accompanied by Mr. Gershom Otachi, the Chairperson National Land Commission (NLC).

8.2.1 Submission by the Principal Secretary, State Department for Lands & Physical Planning

121. The Departmental Committee on Lands in the Twelfth Parliament recommended that the Cabinet Secretary Ministry of Land and Physical Planning in consultation with the National Land Commission and County Government of Kwale, ensure that Greatcom Ltd allows access of public pathways within LR. No 4752/2 to facilitate among other things the movement of pupils to adjacent schools within three months of tabling of the Report.

Implementation Status

122. The Principal Secretary submitted that the petitioner's parcels have access roads, but the problem lies in the longer route to access the public school after an access road through Greatcom Limited's land was fenced off.

123. The survey report revealed the presence of a murram road maintained by the County Government of Kwale within Greatcom Limited's boundaries, but this road is not recognized as a public road by the Director of Surveys.

124. To address the issue, the Ministry advised the petitioners to apply to the National Land Commission for the creation of a communal right of way over the subject land, as per the provisions of Sections 143-149 of the Land Act, 2012, along with Part VI of the Land Regulations, 2017. This application can be initiated by the county government, an association or any group of persons.

125. The National Land Commission responded that the matter was related to private land and was currently active in court. Some local residents in ECL at Mombasa sued Greatcom Ltd under the case (No 25 of 2021), with the Attorney General, Ministry of Lands and Physical Planning, and National Land Commission as respondents. Consequently, the National Land Commission had refrained from further action due to the ongoing court case.

Committee on Implementation Observations

126. **The Committee made the following observations:**

i). That it was satisfied with the Ministry's submission; and

ii). That the matter was currently the subject of an ongoing court case (ECL at Mombasa No 25 of 2021) in which the Commission is a respondent along with the Attorney General and Ministry of Lands and Physical Planning.

Committee on Implementation Recommendation

127. **The Ministry of Lands, National Land Commission and the County Government of Kwale should collaboratively explore a resolution while taking cognizant of the ongoing court proceedings.**

9 REPORT ON THE IMPLEMENTATION STATUS OF A STATEMENT BY HON. OWEN BAYA, MP ON LUIGI BROGLIO-SPACE CENTRE IN MALINDI, KILIFI COUNTY

9.1 Background

128. On 13th June 2023, pursuant to the provisions of Standing Order 44(2)(c), the Hon. Owen Yaa Baya, CBS, MP Member for Kilifi North Constituency requested for a statement from the Chairperson of the Committee on Implementation regarding implementation of the agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio–Malindi Space Centre.
129. The House was notified that the Luigi Broglio–Malindi Space Centre was established close to 60 years ago through a public-private partnership between the Aerospace Research Centre at the Sapienza University of Rome, the National Aeronautics and Space Administration (NASA) in the United States and the Government of Kenya.
130. The Centre had been used for several launch activities into space cementing the country's contribution to the space sector. However, while the presence of such facilities is intended to bring positive change not only to the country but more specifically to the surrounding community, it is regrettable that the contrary is true.
131. Over time, the governments of Kenya and Italy have made agreements in respect of the centre. On 2nd February 2019, the then Cabinet Secretary for Defence, Hon. Raychelle Omamo, SC, EGH, signed an Agreement between the Government of the Republic of Kenya and the Government of Italian Republic on the Luigi Broglio-Malindi Space Centre, Kenya. Under this agreement, which was ratified by the National Assembly on 15th October 2020 in accordance with the provisions of the National Assembly Standing Order 170(a), the Italian Republic agreed to implement certain undertakings which are yet to take effect.
132. The Hon. Member sought a Statement from the Chairperson of the Committee on Implementation on the following:
    1) the state of the Agreement on enhancement of the capacity of Kenyan public institutions of higher learning in training in space science and technology;
    2) the current state of the training of Kenyan nationals on aerospace science technology, courses and scholarships in other disciplines as per the agreement;
    3) what development support programmes the Italian Government had undertaken for the people of Ngomeni area in Kilifi County as was agreed;
    4) the state of the negotiations through respective implementing agencies or Ministries in order to give support to the Kenya Space Agency on access to earth observation and space science data, education and training, telemedicine and establishment of a regional centre for earth observation; and
    5) the number of professionals seconded to the facility by the Kenyan Government and how many non-professional staff have been recruited.

9.2 Implementation status of the recommendations

133. The Committee on Implementation wrote to the Ministry of Defence, Ministry of Foreign and Diaspora Affairs, Kenya Space Agency and Luigi Broglio-Malindi Space Centre on 21st July, 2023 to consider the implementation status of the Report of the Departmental Committee on Defence and Foreign Relations on the consideration of the agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre.
134. The representatives of the Ministries and State agencies appeared before the Committee on 11th August 2023 and made submissions.

9.2.1 Submission by stakeholders regarding the implementation status of the agreement between the Republic of Kenya and Italy on the Luigi Broglio-Malindi Space Centre.

135. The Kenya-Italy Bilateral Agreement on the Luigi Broglio Malindi Space Centre was ratified by the National Assembly on 15th October, 2020 and came into effect on 16th December, 2020 following the completion of exchange of diplomatic notes on the agreement between the two governments. The implementing parties are the Kenya Space Agency (KSA) and the Italian Space Agency (ASI).
136. Outlined in the agreement are key provisions and commitments aimed at fostering cooperation in the peaceful use of outer space for scientific, technological and socioeconomic development of both Nations. It is however noted that there had been lack of significant progress in the implementation of these provisions and commitments that include: support to the Kenya Space Agency; access to earth observation and space science data; education and training; telemedicine; and the establishment of a centre for earth observation.
137. During a meeting held on 13th August, 2023 with the Ministry of Defence, the Committee noted that the Ministry had consistently raised concerns with the Italian Space Agency (ASI) through various correspondences, the most recent being letters addressed to the President of the Italian Space Agency in March, 2023 and the Italian Minister responsible for Space Matters in May, 2023. Regrettably, the responses received so far have neither addressed those concerns adequately nor have they demonstrated a genuine commitment to fulfilling the obligations stipulated in the agreement.
138. Arising from the meeting, the Committee resolved to undertake an inspection visit to the Luigi Broglio Malindi Space Centre from 10th to 13th August, 2013, to seek prompt responses from the implementing agencies.
139. The Committee convened a meeting with the implementing parties; the Ministry of Defence, Ministry of Foreign and Diaspora Affairs, the Kenya Space Agency and the Italian Space Agency to address the continuous breach of the agreement between the Government of Kenya and the Italian Republic.
140. The Committee expressed concern over the absence of the CEO of the Italian Space Agency, who was to address various issues of concern to the Committee despite having been invited through the Ministries of Defence and Foreign and Diaspora Affairs. The presence of the CEO was crucial since he is the Chief Accounting Officer of the institution and was fit to fully answer the Committee and the state agencies present on the exact implementation status of the Agreement.

141. The Committee resolved to extend a second invitation to the Chief Executive Officer and the Management of the Luigi Broglio-Malindi Space Centre, the Ministry of Defence, Ministry of Foreign & Diaspora Affairs, and the Kenya Space Agency to a meeting on Thursday, 5th October, 2023, to apprise the Committee on the implementation status of the said Agreement.

142. Hon. Patrick Mariru, the Principal Secretary, Ministry of Defence appeared before the Committee on 13th October, 2023. He was accompanied by the following officers:

1) Maj Gen (Rtd) James Aruasa - Board Chair, Kenya Space Agency Board
2) Brig. Hillary Kipkosgey - Ag. Director General, Kenya Space Agency
3) Mr. Muchemi Muriithi - Director Europe, Ministry of Foreign Affairs
4) Lt. Col Andrew Nyawade - Director Technical, Kenya Space Agency

143. Mr. Teodoro Valente, the President of the Italian Space Agency (ASI) appeared before the Committee on 13th October, 2023. He was accompanied by the following officers:

1) Mrs. Lorenza Gambacorta -Charge d'Affaires A.I. of the Italian Mission
2) Col. Luigi Riggio -Advisor-Italian Prime Minister's Office
3) Mr. Giacomo Montemarani -Political Counsellor of the Italian Mission
4) Mrs. Gabriella Arrigo -Director, International Affairs, ASI
5) Mr. Munzer Jahjah -ASI Manager at Luigi Broglio Space Centre
6) Mrs. Maria Chiara Noto - -International Affairs Officer of ASI

9.2.3 Submission by the Principal Secretary, Ministry of Defence

i. Regarding the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre:

Implementation Status

144. The Principal Secretary submitted that:

i) As a result of various engagements between the Ministry of Defence, Kenya Space Agency and Italian Space Agency, there are all in full agreement and they have signed Minutes of the meeting in which key resolutions were reached without any reservations;

ii) There were some important developments during the meeting which signalled a renewed sense of commitment to implement the agreement. These developments include the following:

a) Provision of office space for the Deputy CEO;
b) Availing some of the contracts with third parties for services offered at the Malindi Space Centre;
c) Completed rehabilitation of X-Band Earth Observation Antenna and its indoor equipment (antenna control unit) installed and functional;
d) Completed rehabilitation of building for Centre for Earth Observation and Remote Sensing and partitioning done;
e) Indoor equipment for data acquisition and processing at the Centre for EO and Remote Sensing scheduled to be shipped to Kenya by Nov 2023;
f) Demolition of the old building at Broglio Space Centre to pave way for construction of the International Centre for Space Education; and

g) There is currently running a 2-week long regional capacity building workshop on space weather monitoring and sensitization ongoing at Malindi Space Centre. This was jointly conceived and organized by the Italian Space Agency, the Kenya Space Agency, Pwani University and other International Non-Governmental Agencies;

h) The signing of the Minutes of the Joint Steering Committee meeting and the Joint Steering Committee Resolutions / Key decisions, which paved the way for convening of the Apex Joint Council of Ministers in the next few weeks (around Mid-November), to further strengthen the joint resolve to move forward.

Submissions by the President of The Italian Space Agency

145. The President of the Italian Space Agency Mr. Teodoro Valente submitted the following in response to the implementation status of the Report of the Departmental Committee on Defence & Foreign Relations regarding the agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre:

i) He informed the Committee that he agreed with the submissions by the Principal Secretary Ministry of Defence and noted that bilateral relations between ASI and Kenya Space Agency are now characterised by robust dialogue at all levels which are aimed at defining Kenya's space key priorities;

ii) He submitted that every decision and step forward have been made in full agreement with the Kenyan members of the Joint Management Board (JMB) and Joint Technical Working Group (JTWG);

iii) He further submitted that there were ongoing education projects at the Broglio Space Centre. These include:

a) The "Earth Observation", project for the development of a satellite data system for acquisition, archiving, processing, and distribution;

b) The "Outer Space Law for International Cooperation", project, which aimed to identify international cooperation models between developed and emerging space countries;

c) The "New Observatory for Real-time Ionospheric Sounding over Kenya", a project for studying the relations Sun-Earth and the monitoring Space weather;

d) The Copernicus Training for African Trainers project in collaboration with the European Union, which started virtually on February 2023;

e) An Eastern Africa capacity building workshop on Space Weather and Low-Latitude Ionosphere, co-sponsored by UNOOSA and ICTP, was held at the BSC from 3 to 12 October 2023 with the participation of 40 students from Africa and 17 teachers from Europe, Canada and USA;

f) Three other training courses on Space product and Quality Standards, CubeSat and Earth Observation, are scheduled for the coming months;

g) ASI finalized an agreement with Sapienza University of Rome to host 45 students for three years with ASI Ph.Ds. scholarships on Earth Observation;

h) ASI in collaboration with KSA and in accordance with one of the implementing arrangements were set to build a Regional Centre for Earth Observation. In particular, ASI had completed the necessary work to host the Centre, including the procurement of the equipment for data acquisition, archiving and distribution;

i) The activation of an antenna for data acquisition and a second antenna for meteorological data on the Kenyan area had been completed. Technical specifications for the Nairobi node are currently in progress;

j) To address the obsolescence of some existing technical systems and better fulfil the obligations outlined in the Intergovernmental Agreement, ASI was set to procure new antenna systems for data acquisition and tracking services;

k) Additionally, an antenna system dedicated to scientific research and space exploration (Deep Space) for possible support also to lunar exploration (ex. NASA Artemis Program) from an equatorial site was to be acquired; and

l) Finally, Kenya Space Agency was actively involved in the management of the Broglio Space Centre through the Deputy CEO, and it receives regular updates on all activities taking place at the BSC through the JSC and JWC.

Committee on Implementation Observations

146. **Arising from the submissions by the Principal Secretary and the President of the Italian Space Agency, the Committee observed that the meetings between the Ministry of Defence, Kenya Space Agency and Italian Space Agency resulted in full agreement by the parties and key resolutions reached. The outcome was signed Minutes of the meetings by both parties which signalled a renewed sense of commitment to implement the agreement.**

Committee on Implementation Recommendations

147. **The Committee recommends that the Ministry of Defence furnishes the Committee with a progress report every three (3) months concerning the implementation status of the agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre in Kenya.**

10 REPORT ON IMPLEMENTATION STATUS OF A MOTION BY HON. GATHONI WAMUCHOMBA, HSC REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS ON STANDARDIZATION AND PRODUCTION OF SCHOOL UNIFORMS

10.1 Background

148. The National Assembly by a resolution passed on Wednesday, March 1, 2023, approved a Motion sponsored by the Member for Githunguri Constituency, the Hon. Gathoni Wamuchomba, M.P, resolving that the Government develops a policy on standardization and production of school uniforms in the country.

The House resolved;

149. THAT, aware that school uniform which is a variety of standardized clothing worn by students in educational institutions, create homogeneity among students irrespective of their socio-economic status or fashion preference; further aware that school uniforms keep students focused on education, not clothes, reducing peer pressure and bullying, enhancing school pride, unity and community spirit as they go a long way in contributing to students' sense of belonging to their school's population; appreciating that in Kenyan education system, schools across the Country, whether private or public schools require that students wear school uniform in order to be allowed to attend classes; concerned that the cost of uniforms had continued to escalate becoming prohibitively expensive for the poorest within the community with some schools demanding that parents pay uniform money to specific school accounts, a move that locks out many children whose parents cannot afford the expensive uniforms as listed by schools; now therefore, this House therefore resolves that the government through the Ministry of Education develops a policy on standardization and production of school uniform.

10.2 Implementation status of the recommendations

150. The Committee on Implementation wrote to the Ministry of Education and the Teachers Service Commission on 9th October 2023 to consider the implementation status of the House resolution on the standardization and production of school uniforms.

151. The Cabinet Secretary, Ministry of Education Hon. Ezekiel Machogu, appeared before the Committee on 24th October 2023. He was accompanied by the following officers:

1. Mr. Elyas Abdi - Director General, Basic Education
2. Mr. Joshua Wabwire - Legal Officer

10.2.1 Submission by the Cabinet Secretary, Ministry of Education Hon. Ezekiel Machogu.

152. The Cabinet Secretary, Hon. Ezekiel Machogu, submitted the following in response to the implementation of the resolution on standardization and production of school uniforms in the country; -

i) That at the time of the House resolution, the President had already constituted the Presidential Working Party on Education Reforms which had a wide range mandate of reviewing various aspects of Kenya's education system. One of the mandates is on the financing frameworks at all levels of basic education;

ii) He submitted that the Working Party had presented its report to the President on 3rd August, 2023 and it had captured the views of stakeholders on school uniforms. The views were captured as follows:

"School uniforms are expensive for parents because school administrators collude with suppliers and force parents to purchase from a specific supplier identified by the school administration".

iii) The Working Party recommended that the Ministry of Education provide guidelines to regulate and liberalize the question of school uniforms in basic education institutions;

iv) That the Ministry had already issued directives to ensure that school administrations do not compel parents to purchase uniforms from schools or from specific suppliers;

v) The Ministry issued a directive vide a Circular dated 30th May, 2023 (MOE/HQS/3/13/3) to all regional and county directors of education to ensure the stoppage of practices where schools stock uniforms and compel parents to buy or direct parents to purchase uniforms from specific dealers. The names of noncompliant schools will be noted for necessary action within the provisions of the law; and

vi) The CS informed the Committee that the Ministry had also issued a directive to school principals to the effect that no school is to direct parents to any particular outlet for the purpose of purchasing uniforms, and no school would stock any uniforms and boarding related items.

Committee on Implementation Observations

153. **Arising from the submissions by the Cabinet Secretary, the Committee observed that the circular issued by the Ministry only focused on secondary education yet the concern of school uniforms also concerns pupils who ought to be included.**

Committee on Implementation Recommendations

154. **Arising from the submissions, the Committee recommends that within sixty (60) days upon tabling and adoption of this report:**

i). The Cabinet Secretary disseminates the circular through public announcements across various broadcast outlets to ensure the information reaches all Kenyans.

ii). The Ministry puts in place a more detailed standardization framework and enforceability mechanisms; and

iii). The Ministry establishes a mechanism to enhance compliance on the directive that no school should direct parents to any particular outlet for the purpose of purchasing uniforms and no school would stock any uniforms and boarding related items whatsoever.

11 REPORT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING ON ITS CONSIDERATION OF THE PUBLIC PETITION ON PAYMENT OF TERMINAL DUES TO FORMER EMPLOYEES OF PAN PAPER MILLS COMPANY LIMITED

11.1 Background

155. The Departmental Committee on Finance and National Planning considered the Public Petition on payment of terminal dues to former employees of Pan Paper Mills Company Limited.

156. In its Report, the Departmental Committee on Finance and National Planning recommended that: -

i) The Government of Kenya, through the Ministry of Investments, Trade and Industry in conjunction with the National Treasury expedites compilation of an authentic list of all the former employees of the Pan Paper Mills Company Limited within the next three months after tabling of the Report;

ii) The Government of Kenya, through the Ministry of Investments, Trade and Industry and the National Treasury computes the final dues of the former employees of Pan paper Mills Company Limited with a view to paying them as provided for under Section 66 of the Employment Act 2012 and other related legislations; and

iii) The Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for payment of terminal dues to the former employees of the Pan Paper Mills Company Limited.

11.2 Implementation status of the recommendations

157. The Committee on Implementation wrote to the Principal Secretary, State Department for Industry - Ministry of Industry, Trade and Development, and the Principal Secretary, The National Treasury and Economic Planning on 2nd November 2023 and 18th March 2024 regarding the implementation status of the recommendations by the Departmental Committee on Finance and National Planning on the Public Petition on payment of terminal dues to former employees of Pan Paper Mills Company Limited.

158. The Principal Secretary, State Department for Industry Dr. Juma Mukhwana, PhD., CBS, appeared before the Committee on 2nd April 2024. He was accompanied by the following officers:

1.	Mr. Nobby Macharia	-	Ag. Secretary, Industry
2.	Mr. Joseph Mbeva	-	Director, Industry
3.	Mr. Mutie Nzau	-	State Department for Industry
4.	Ms. Caroline Kungu	-	SDI, Parliamentary Liaison Officer
5.	Mr. Paul Kinyanjui	-	SDI, Parliamentary Liaison Officer

11.2.1 Submission by the Principal Secretary, State Department for Industry

159. The Principal Secretary, Dr. Juma Mukhwana, PhD submitted the following in response to the implementation of the resolution on payment of terminal dues to former employees of Pan Paper Mills Company Limited: -

160. **On the recommendation that the Government of Kenya, through the Ministry of Investments, Trade and Industry in conjunction with the National Treasury expedites compilation of an authentic list of all the former employees of the Pan Paper Mills Company Limited within the next three months after tabling of the report;**

161. The Principal Secretary submitted that the Ministry of Industry, Trade and Development was not involved in the valuation of assets and liabilities of Pan African Paper Mills.
162. The Principal Secretary submitted that the valuation was done by the Joint Receiver/ Manager Messrs Muniu Thoithi and Kuria Muchiru and the Ministry of Finance. However, for the purpose of paying their terminal dues, the Ministry of Industry, Trade and Development in conjunction with the Ministry of Finance was directed by the National Assembly through the Implementation Committee to undertake verification of all former employees of Pan African Paper Mills.
163. The Ministry immediately engaged the Receiver Manager, Muniu Thoithi requesting for the necessary and relevant documents and information regarding pending payments to the former employees. It is worth noting that on behalf of the Government of Kenya, the Joint Receiver Muniu Thoithi and Kuria Muchiri c/o PWC undertook a verification exercise of former employees of Pan African Paper Mills with the details and records availed to them by the former senior employees of Pan African Paper Mills.
164. The list consisting of 1,349 employees was developed by the receiver managers and verified by the ministry.
165. **On the recommendation that the Government of Kenya, through the Ministry of Investments, Trade and Industry and the National Treasury computes the final dues of the former employees of Pan paper Mills Company limited with a view to paying them as provided for under Section 66 of the Employment Act 2012 and other related legislations;**

Implementation Status:

166. The Principal Secretary submitted to the Committee that due to budgetary limitation/constraints, the Ministry of Industry, Trade and Development had not been able to pay the former employees of Pan African Paper Mills as provided under Section 66 of the Employment Act.
167. However, the Ministry had continuously been engaging with the National Treasury, with the view of availing funds to settle the terminal dues of the former employees of Pan African Paper Mills. Copies of correspondences between the Ministry of Investments, Trade and Industry are herein annexed for ease of reference; and
168. In addition, the Committee was made aware that the Ministry of Investment, Trade and Industry is desirous of ensuring that this matter is brought to rest and is working closely with the National Treasury to ensure that the matter is settled.
169. **With regard to the recommendation that the Government of Kenya, through the National Treasury, avails funds within the 2017/18 financial year for payment of terminal dues to the former employees of the Pan Paper Mills Company Limited.**

Implementation Status

170. The Principal Secretary submitted to the Committee that in relation to the recommendation above, the National Treasury is yet to provide funds for settlement of the former employees' dues. However, the two Ministries are in consultation with a view of resolving the matter. The correspondences between the Ministry of Investments, Trade and Industry, specifically the State Department for Industry and the National Treasury suffixes.

Committee on Implementation Observations

171. **The Committee made the following observations: -**

i). **The National Treasury was not available for the meeting and at the time of the meeting, had not sent responses;**

ii). **On whether the former employees of Pan Paper Company had received part payment of the amounts owed the Committee noted the following:**

a) **The total amount due to the former employees was Ksh. 304 million; and**

b) **In a previous payment, Kshs 74 million was paid with a pending balance of Kshs. 229 million still due.**

iii). **The Pan Paper Company was sold for Kshs. 900 million which the Committee observed was not commensurate with its true market value;**

iv). **The sale of the company and its premises as demonstrated before the Committee was solely to solve the issue of insolvency and not to make a profit;**

v). **The failure by the government to pay the former workers a sum of Kshs. 300 million; fifteen (15) years after they lost their jobs, indicates lack of goodwill and commitment to settle the amounts due;**

vi). **The evidence presented indicates that the Ministry of Industry, Trade and Development was not involved in the valuation of the Pan Paper Company Limited which undermined their ability to make binding and timely decisions on the fate of the workers dues;**

vii). **The Committee noted that the list of former employees was generated by the receiver manager for Pan Paper Company Limited;**

viii). **As it stands at the moment, the Ministry of Industry, Trade and Development does not have the capacity or a budgetary allocation that can settle the dues owed to the former employees of Pan Paper Company Limited;**

ix). **The Ministry of Industry, Trade, and Development proposed including the Ksh. 220 million owed to former Pan Paper employees in its FY 2024/2025 budget estimates, but the National Treasury indicated that the amount could not be accommodated.; and**

x). **The Ministry of Industry, Trade and Development had provided two letters to the National Treasury requesting for the inclusion of Kshs. 229 million in their Sector ceiling.**

Committee on Implementation Recommendations

172. **The Committee resolved as follows:**

i). **That upon tabling and adoption of this report, the Committee on Budget and Appropriations considers a budgetary allocation to settle the balance of Kshs. 229 million;**

ii). **That the Ministry of Industry, Trade and Development makes a request for the pending balance of Kshs. 229 million in the subsequent Supplementary Budget after the tabling of this Report; and**

iii). **That the Principal Secretary, State Department of Industry treats the matter of settling dues owed to former employees of Pan Paper Company Limited as a matter of priority and urgency.**

12 REPORT OF THE PUBLIC PETITIONS COMMITTEE ON A PETITION BY PASTOR OCHIENG' ODINDO REGARDING ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) INVESTIGATIONS OF WEST KANO IRRIGATION SCHEME

12.1 Background

173. Public Petition No.8 of 2022 regarding the Ethics and Anti-Corruption Commission (EACC) investigations of West Kano Irrigation Scheme was presented by the Honourable Speaker on Tuesday 22nd November 2022 on behalf of Pastor Ochieng' Odindo and West Kano Irrigation Scheme farmers.

174. In its Report, the Public Petitions Committee recommended that:

i) The EACC should fast-track their internal process and conclude on the report in this matter and report to the National Assembly;

ii) Pursuant to Section 37 of the Public Audit No. 34 of 2015, the Auditor-General conducts a thorough forensic audit into the matter of the revolving fund for West Kano Irrigation Scheme and reports its finding to the House; and

iii) The EACC improves its service delivery and adopt a client-centric service charter by seeking and promoting customer feedback and communicating clear service standards.

12.2 Implementation Status of the recommendations

175. The Committee on Implementation wrote to the Chief Executive Officer, Ethics and Anti-Corruption Commission (EACC) and the National Irrigation Authority on 25th March 2024 regarding the implementation of status of the recommendations by the Public Petitions Committee on the Petition on the Ethics and Anti-Corruption Commission (EACC) investigations of West Kano Irrigation Scheme.

176. Mr. Jackson Mue -Director Field Services, EACC representing the CEO, Ethics and Anti-Corruption Commission (EACC) appeared before the Committee on 11th April 2024.

177. He was accompanied by the following officers:

1. Mr. George Ojowi - Deputy Director Forensic Investigations, EACC
2. Mr. Abraham Kemboi - Western Regional Manager, EACC
3. Ms. Mary Kakuvi - Legal Officer, EACC

12.2.1 Submission by the Chief Executive Officer-EACC

178. The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under Section 3 of the Ethics and Anti-Corruption Commission Act, 2011 pursuant to the requirement under Article 79 of the Constitution of Kenya, 2010.

179. The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity and ethics.

1. 2. 2 Allegations

180. The Commission received the following allegations in 2015 from a member of the public:

i) An alleged embezzlement of public funds, which had been released to the West Kano Irrigation Scheme by the government through the then Ministries of Agriculture and Water & Irrigation under the Economic Stimulus Program (ESP) in 2009/2010 financial year of Kshs. 64 million and a further alleged misappropriation of Kshs. 18 million for a revolving fund;

ii) Allegation regarding mismanagement of tractors; and

iii) Allegation on suspected misappropriation of rice purchase funds.

13.2.3 Findings and Status of the Investigation.

i). On the embezzlement of West Kano Economic Stimulus Funds, the EACC submitted that:

181. The West Kano Irrigation Scheme was established in 1974 and became operational in 1976. The Scheme is owned by 837 rice farmers, organized into 59 groups. The total acreage of the Scheme is 2,230 acres;
182. The Scheme received a grant of Kshs. 54,331,938.00 under the Economic Stimulus Programme (ESP) in the Financial Year 2009/2010 to be advanced to farmers to improve rice production. The money was accounted as indicated in the table below:

No.	Activities	Amount (Kshs.)
1.	Cash advances (tilling, seed-bed preparation and transplanting; spraying, harvesting, post-harvest activities-drying of rice, packaging & storage)	25,573,847
2.	Inputs (chemicals, rice, seeds and fertilizer)	17,038,445
3.	Operation and maintenance (piping, pumping of water, dykes, water-pans, electricity, canals and access roads)	11,691,680
4.	Loading and off-loading of farm-inputs.	27,966
	TOTALS	**54, 331, 938**

Status: The investigation had been completed and did not disclose loss of public funds under the ESP Grant.

ii). On the embezzlement of Revolving Fund, the EACC submitted as follows: -

183. On 31st December 2010, the Scheme members formed a Revolving Fund which they named West Kano Irrigation Farmers Revolving Fund (WKIFRF).
184. The Commission established that the WKIFRF (the Fund) was not registered. The Fund had no policies, structures or any governance instruments for accountability.
185. The farmers elected officials on 31st December 2010 to manage the Fund. The Officials opened a bank account number 1124565752, at the Kenya Commercial Bank Kisumu Branch with four signatories. The signatories included a chairperson (an official from the National Irrigation Board), vice chairperson, secretary and treasurer.
186. On 31st December 2012, the Revolving Fund received a grant of Kshs. 18,468,752.20 through the Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing.

The Funds received were disbursed/expended by the Fund as shown below:-

No	Institution	Amount (Kshs.)
1.	National Irrigation Board	2,124,860
2.	Mwea Irrigation Agriculture	975,000
3.	Ahero Irrigation Scheme	495,000
4.	Kenya Women Microfinance	145,000
5.	National Cereals and Produce Board	130,000
6.	Unaccounted	14,598,882
Total		**18,468,752**

An amount of Kshs. 14, 598,882 was unaccounted for.

Status: The investigation had been concluded and appropriate recommendations made which will include recovery of Kshs. 14, 598,882 from three officials. Note that the former secretary is deceased.

iii) On the allegation of mismanagement of tractors, the EACC submitted that:

187. The Commission established that in 2015, West Kano Irrigation Co-operative Society received 13 tractors from Japan International Corporation Agency (JICA) and the Ministry of Agriculture, Livestock and Fisheries at subsidized rates. The machinery was partially paid by the County Government of Kisumu at Kshs. 32.1 million in February, 2022 and a total of Kshs. 47.9 million which was supposed to be paid by the two Cooperatives society was still outstanding.
188. The Commission observed that the 13 tractors were not serviceable as at April, 2023.
189. The Commission had established that the Kisumu County Government had initiated an audit to assess the status of the tractors and farm machinery for West Kano Irrigation Co-operative Society to inform remedial action.

Status: Investigations are complete and the Commission is in concurrence with action taken by the County Government of Kisumu.

iv). On the alleged misappropriation of Rice Purchase Funds, the EACC submitted that:

190. Between 2020 and 2021, the Government of Kenya, through Kenya National Trading Corporation (KNTC) resolved to buy milled rice from farmers in Mwea, Ahero, West Kano and Bunyala Irrigation Schemes;
191. The Government set aside funds for the said rice purchases. The rice purchases were to be executed through Farmers' Co-operatives within the rice schemes; and West Kano Farmers were paid Kshs. 60, 516,750 for rice deliveries.

Status: Investigations are complete with no evidence of financial loss.

Committee Observations

192. The Committee made the following observations:
   i). That from the submission the actual disbursement was Kshs. 54,331,938 and not Kshs. 64 million;
   ii). The revolving fund which was unregistered, was operated in personal names. In addition, the introduction letter from the National Irrigation Authority enabled them to open the account; and
   iii). The civil approach was preferred as opposed to the criminal approach.

i). Submission by National Irrigation Authority

193. The Chief Executive Officer - National Irrigation Authority Eng. Charles Muasya, MBS, appeared before the Committee on 11th April 2024. He was accompanied by the following officers:
   1. Mr. Joel Tanui - Ag. Dep. GM, Operations and Irrigation
   2. Mr. Daniel Atula - Dep. Gen Manager, Corporate

194. The Chief Executive Officer, made the following written submissions:

195. The West Kano Irrigation Scheme is located in the Kano plains between Nandi escarpment and Nyabondo Plateau on the shores of Lake Victoria in Kisumu County. The scheme was constructed in 1974 and became operational in 1976. The scheme had 837 farmers with a total area of 4,396 acres and a gross farm land area of 2,230 acres. The average farm size is 2-4 acres per farmer. Irrigation water is abstracted by pumping from Lake Victoria and water drainage is by pumping back water to the Lake Victoria.

Farmer involvement in management of the scheme;

196. West Kano Irrigation scheme is managed under Participatory Irrigation Management where the farmers through their elected representatives participate in day to day running of the scheme activities. The scheme had Irrigation Water Users Association, West Kano Farmers' Cooperative Society, Dispute Resolution Committee and the Scheme Management Committee. All these committees are formed by the farmers as anchored in the Irrigation Act of 2019.

ESP Program and West Kano Irrigation scheme revolving fund

197. In the financial year 2009/10 the Government of Kenya initiated the Economic Stimulus Program (ESP) which was an economic recovery plan started to boost economic growth and address some of the key economic challenges. One of the project components was food production whose aim was to increase availability and accessibility of maize/rice crops in the national irrigation schemes.

198. The lead players for this component were, the Ministry of Agriculture and Livestock Development, Ministry of Water and Irrigation, Ministry of Regional Development and the Ministry of Youth Affairs. The Ministry of Agriculture and Livestock Development was to provide farm inputs which included fertilizers, seed and pest control chemicals while the Ministry of Water through the then National Irrigation Board was to offer operation and maintenance services such as: provision of irrigation water, land preparation support and farming cash advances. This support was structured to be a one-off grant to the farmers and thus they were not required to pay back.

199. The then National Irrigation Board (NIB), currently National Irrigation Authority (NIA) coordinated the provision of seeds, fertilizers, ploughing (rotavation) and offered operation and maintenance (O&M) services which included, water, electricity, puddling, transplanting and harvesting cash advances. Though the support had been given as grant, the board recommended that this support be recovered at the end of the growing season and be converted into a revolving fund that will be used to ensure sustainability of scheme production and operation activities.

200. All the records have been provided to the EACC as requested. The West Kano revolving fund was formed by farmers to manage the funds and an account opened in 2010. The model of establishing and running a revolving fund collapsed as farmers resisted to pay back due to lack of a binding obligation to recover and contribute to the revolving fund.

As per available records; the following funds were disbursed to the farmers;

NO	Schedule	Farmers disbursed	Admin Expenses
1	Land preparation & rotavation	10,962,302	
2	Nursery advances	5,360,100	
3	Transplanting & paddling	5,806,895	
4	Spraying	72,400	
5	Harvesting	2,052,430	
6	Gunny/Harvesting Bags	1,319,720	
7	Loading & offloading	27,965.80	27,965.80
	Sub-total	**25,601,812.80**	**27,965.80**
	Inputs disbursed		
1	Rice seeds	6,971,400	
2	SA Fertilizer	8,155,350	
3	Chemicals	1,911,695	
4	O&M 3212 Acres@3640	11,691,680	
	Sub-total	**28,730,125**	
	Grand Total	**54,331,937.80**	**27,965.80**

201. The Petition- the petitioner moved ahead to report the matter to the EACC Western Region and upon the invitation by the investigators, all the required documentation to support the position of the fund was provided. There was no misappropriation of the fund unearthed as alleged by the petitioner. All records were presented to the EACC.

202. Tractors and Accessories granted to the Cooperative Society; Ahero and West Kano Irrigation Schemes through the Farmer's Cooperative Societies received various farm machinery from JICA and Ministry of Agriculture and Livestock Development through the 2KR Project in the year 2015 to help farmers improve production by enhancing mechanization of their operations, mainly rice production. The machinery issued to the farmers' cooperative in West Kano are in operation under the management of the society. The National Irrigation Authority (NIA) had not been involved in the management of the tractors. Information on the management of the same is under the Kisumu County Government Department of Cooperatives Development.

Implementation Status

Committee on Implementation Observations

203. **The Committee observed that:**

i) **The EACC did conduct the investigations after receiving allegation of misappropriation of the funds from a member of the public in 2015;**

ii) **The said amount of money was in the form of funds from the Economic Stimulus Programme (Ksh 54 million and not Ksh. 64 million as earlier cited in the Petition);**

iii) **The money in question was provided in the 2009/2010 Financial Year;**

iv) **That according to the EACC, there were two instances of irregularities: concerning alleged misappropriation of Kshs. 18 million for a revolving fund and concerning misuse of tractors (a matter that Kisumu County was auditing);**

v) **That the alleged embezzlement of Kshs.14,598,882.00 on 31st December 2012, of the revolving fund received through a grant of Kshs. 18,468,752.20 through the Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing, involved two government officers;**

vi) **That the West Kano irrigation Scheme Farmers' Revolving Fund was an unregistered entity without proper accountability framework;**

vii) **That so far, no action had been taken by the EACC against the two officials implicated in the embezzlement of the Kshs. 14,598,882.00;**

viii) **That the EACC is undertaking civil proceedings to recover Kshs. 14.598,882 million from the said National Irrigation Authority staff implicated in the loss of the funds; and**

ix) **That the EACC had reported loss through destruction of some crucial documents related to the loss of funds.**

Committee on Implementation Recommendations

204. **The Committee recommends that within two (2) months of tabling and adoption of this Report, the EACC provides the Committee on Implementation with an update concerning the civil recovery of Kshs. 14 million from the two officials of the National Irrigation Authority implicated in the embezzlement of the funds from the West Kano Irrigation Scheme.**

13 THE PUBLIC INVESTMENTS COMMITTEE SPECIAL REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND

13.1 Background

205. The Public Investments Committee undertook a special inquiry into allegations of fraud and financial mismanagement at the Youth Enterprises Development Fund (YEDF).

206. In its Report, the Public Investments Committee made the following recommendations:

1) That, the National Treasury should constitute a multi-government agency team composed of the responsible State Departments and the Inspectorate of State Corporations to review the corporate governance issues at YEDF, performance of the various projects undertaken by YEDF since its inception and to undertake a value for money audit of the Fund since inception to date. The Cabinet Secretary for the National Treasury to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.
2) That, there is need to amend Sections 23, 24 and 44 of the Proceeds of Crime and the Anti - Money Laundering Act 2009 to give the Financial Reporting Centre more powers to act on suspicious bank transactions and accounts. The Committee shall propose an amendment to this section to ensure that the FRC can mitigate on funds especially originating from government institutions.
3) That, the Cabinet Secretary, Ministry of Public Service, Youth and Gender Affairs should expedite the appointment of a substantive Chief Executive Officer of the Youth Enterprise Development Fund. The YEDF had operated without a substantive CEO ever since. The Cabinet Secretary, Ministry of Public Service, Youth and Gender Affairs to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of that recommendation.
4) That, there is need to amend Sections 23 and 24 of the Proceeds of Crime and the Anti - Money Laundering Act 2009 to enable the tacking of proceeds of crime especially in the real estate sector in Kenya. There are indications that the real estate sector in Kenya is being used for money laundering especially proceeds of corruption. The Attorney-General should submit draft legislation to the National Assembly not later than two (2) months after the adoption of this Report as part of the Status of implementation of this recommendation.
5) That, the Auditor - General to undertake a forensic audit of all the funds that have been appropriated by the National Assembly to YEDF from inception to date. The Auditor-General should report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.
6) That, the Financial Reporting Centre (FRC) and the Asset Recovery Agency (ARA); the two crucial institutions established under the Proceeds of Crime and the Anti - Money Laundering Act 2009 to deal with matters of proceeds of crime and money-laundering are under-funded by the Government and have never been fully operationalized. The National Treasury and the Attorney General should ensure that the FRC and ARA are adequately funded and fully operationalized to enable the two

institutions adequately fulfil their legal mandate. The Attorney-General and the Cabinet Secretary of National Treasury should report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.

7) That, Chase Bank (K) Limited did not fully conduct due diligence in accordance with Prudential Guideline 5.6.6 of the Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism - CBKIPG/08 in acting on instructions of Ms. Catherine A. Namuye, the suspended CEO, YEDF to transfer funds from YEDF account to Quorandum Ltd. The Central Bank of Kenya should investigate Chase Bank (K) Limited for possible violations of the Banking Act (Cap.488), the Proceeds of Crime and the Anti - Money Laundering Act 2009 and the Prudential Guidelines. The Governor, Central Bank of Kenya should report back to the National Assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.
8) That, the National Treasury enhances budgetary allocation to the Inspectorate of State Corporations to facilitate effective inspection of state corporations. The Cabinet Secretary, the National Treasury should report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.
9) That, the circumstances surrounding the death of the Fund driver, Mr. Simon Mwangi who at the time of his death on 18th October, 2015 was on duty during unofficial hours in Diani Beach Mombasa, are suspect. The death allegedly occurred at a private party attended by former YEDF Board Director Mr. Clement Ayungo on invitation by his friend, Mr. Babu Owino. The Director, Directorate of Criminal Investigation should extend his investigation to include possible involvement of Mr. Clement Ayungo and Mr. Babu Owino in the death of Mr. Simon Mwangi and establish if his death is linked to the financial mismanagement at the YEDF. The Director, DCI, Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.
10) That, the Circular dated 18th July, 2007 issued by the former Head of Civil Service and Secretary to the Cabinet, Ambassador Francis Muthaura, barring the Inspectorate of State Corporations from sitting in board meetings of State Corporations unless invited by the board was in contravention of Section 18 (2) (c) of the State Corporations Act which gives the Inspectorate the mandate to attend board meetings as deemed necessary. The Chief of Staff and Head of the Public Service to report back to the National Assembly not later than two (2) months after the adoption of this Report on the action taken to correct the amendment of an Act of Parliament through a Circular.
11) That, the Chief of Staff and the Head of Public Service should, as a matter of priority, ensure that the recommendations of the Presidential Taskforce on Parastatal Reforms on the merger of the YEDF, Women Fund, Uwezo Fund, Micro and Small Enterprises Authority (MSEA) and the Kenya Industrial Estates (KIE) to create Biashara Kenya are implemented. This merger is expected: to pool the scattered financial resources estimated at approximately Kshs. 30 billion per financial year; harness the potential

of youth, women and men; build synergies among the various government agencies; and leverage on economies of scale. Further, there is duplication of roles of some state organs, hence the need to implement the Mwongozo Code of governance for State Corporations so as to remove duplication of duties and create clarity on the same. The Chief of Staff and Head of the Public Service to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.

12) That, the Chief of Staff and Head of Public Service should ensure that the appointment of persons to serve as board chairpersons and board members of State Corporations is done in accordance with the Mwongozo Code of governance for State Corporations which requires that appointment of persons to serve as board chairpersons and board members have the following minimum qualifications:
    i) Holds a minimum of a degree in the relevant field from a university recognized in Kenya;
    ii) Proven business management or other relevant professional experience;
    iii) Served in a position of senior management for at least six years;
    iv) Had not served in the same entity as employee in the preceding five years;
    v) Meets the requirements of Chapter Six of the Constitution; and
    vi) Meets the requirements of the fit and proper test.
13) That, further, alternate directors of respective Ministries seconded to parastatal boards should be individuals well versed in the affairs and operations of the respective boards and should have unfettered access to Board meetings and ensure that they submit regular reports to their respective Principal Secretaries on the operations of the boards in which they sit in.11.
14) That, the Director of Criminal Investigations (DCI) should:
    i) Engage the services of a forensic examiner to authenticate all YEDF documents used in the fraudulent transfer of funds from YEDF account at Chase Bank (K) Limited including board minutes and correspondences; and
    ii) Engage the services of a graphology expert to analyse signatures on all correspondences that were purportedly signed by the then Ag. CEO Ms. Catherine Namuye and other Fund officials that may have resulted in the loss of funds at YEDF.

207. The Director of Criminal Investigations to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.

13.2 Implementation status of the recommendations

208. The Committee on Implementation wrote to the Ministry of Youth Affairs and the Creative Economy on 7th May, 2024 seeking to be apprised on the implementation status of the Report. Mr. Ismail Madey, CBS - PS State Department for Youth Affairs and the Creative Economy, appeared before the Committee on 18th May, 2024 to adduce evidence on the implementation status of the recommendations contained in the Report of the Public Investments Committee Special Report on the Inquiry into Allegations of Fraud and Financial Mismanagement at the Youth Enterprise Development Fund. He was accompanied by Mr. Simon Moriasi, CEO Youth Fund.

209. The Principal Secretary, State Department for Youth Affairs and the Creative Economy relayed apologies on behalf of Hon. Ababu Namwamba, the Cabinet Secretary, Youth Affairs and the Creative Economy who was unable to attend the meeting.

13.3 Submissions by the Principal Secretary PS State Department for Youth Affairs and the Creative Economy on behalf of the Cabinet Secretary Ministry of Youth Affairs and the Creative Economy

210. The Committee was informed that on:

Recommendation No. 1:

211. The National Treasury constitutes a multi-government agency team composed of the responsible State Departments and the Inspectorate of State Corporations to review the corporate governance issues at YEDF, performance of the various projects undertaken by YEDF since its inception and to undertake a value for money audit of the Fund since inception to date.

Key Respondent: The Cabinet Secretary for the National Treasury

Ministry's Response:

212. The Committee was informed that arising from this recommendation, several agencies contacted the Youth Enterprise Development Fund (YEDF) with the intention of conducting investigations. In particular, the following agencies carried out investigations as evidenced by the annexed correspondence:
    i) Ethics and Anti-Corruption Commission
    ii) Directorate of Criminal Investigations
    iii) Inspectorate of State Corporations
    iv) Office of the Auditor-General
    v) Public Procurement Regulatory Authority
213. Further, YEDF provided all documents that were requested by these agencies.

Recommendation No. 2

214. That, there is need to amend Sections 23,24 and 44 of the Proceeds of Crime and the Anti-Money Laundering Act, 2009, to give the Financial Reporting Centre more powers to act on suspicious bank transactions and accounts. The Committee shall propose an amendment to this section to ensure that the FRC can mitigate on funds especially originating from government institutions.

Key Respondent: The Public Investments Committee

215. Ministry's Response: The Committee was informed that the FRC plays an important role in identification of the proceeds of crime and combating money laundering, terrorism financing and proliferation. The Ministry appreciated this recommendation to give FRC more powers to act on suspicious bank transactions and accounts and looked forward to the enactment of the envisaged amendments to strengthen internal controls and deter similar incidences in future.

Recommendation No. 3

216. That, the Cabinet Secretary, Ministry of Public Service, Youth and Gender Affairs should expedite the appointment of a substantive Chief Executive Officer of the Youth Enterprise Development Fund. The YEDF had operated without a substantive CEO since 2013.

Key Respondent: The Cabinet Secretary, Youth Affairs, Creative Economy and Sports

Ministry's Response:

217. The Committee was informed that under the Ministry's guidance, the Board of the Youth Enterprise Development Fund advertised the position of the CEO in July 2016. The Board subsequently recruited and appointed the substantive CEO with effect from 1st November 2016.

Recommendation No. 4

218. There is need to amend Sections 23 and 24 of the Proceeds of Crime and the Anti - Money Laundering Act, 2009 to enable the tracking of proceeds of crime especially in the real estate sector in Kenya. There are indications that the real estate sector in Kenya is used for money laundering especially proceeds of corruption.

Key Respondent: The Attorney-General

Ministry's Response:

219. The Committee was informed that the Proceeds of Crime and the Anti - Money Laundering Act 2009 grants powers to investigative bodies to trace, preserve and recover illegally acquired assets through financial investigations. The Ministry appreciated that the Proceeds of Crime and the Anti - Money Laundering Act 2009 needed to be amended to give investigative agencies more power to trace, preserve and recover illegally acquired assets.

Recommendation No. 5

220. That, the Auditor-General undertakes a forensic audit of all the funds that have been appropriated by the National Assembly to YEDF from inception to date.

Key Respondent: The Auditor General

Ministry's Response:

221. The Committee was informed that the Auditor-General contacted the Youth Enterprise Development Fund (YEDF) to carry out investigations. The Ministry is therefore aware that Auditor-General carried out a special audit on YEDF. The YEDF provided all available documents requested by the Auditor General.

Recommendation No. 6

222. That, the Financial Reporting Centre (FRC)and the Asset Recovery Agency (ARA); the two crucial institutions established under the Proceeds of Crime and the Anti - Money Laundering Act 2009 to deal with matters of proceeds of crime and money-laundering are under-funded by the Government and have never been fully operationalized. The National Treasury and the Attorney General should ensure that the FRC and ARA are adequately funded and fully operationalized to enable the two institutions adequately fulfil their legal mandate.

Key Respondents: The National Treasury and Attorney General

Ministry's Response:

223. The Committee was informed that FRC plays an important role in identification of the proceeds of crime and combating money laundering, terrorism financing and proliferation while ARA is instrumental in combating money laundering, terrorist financing, and proliferation financing through identification, tracing, freezing, seizure, and confiscation of proceeds of crime. The Ministry therefore appreciates this recommendation that will fully operationalize and strengthen these institutions.

Recommendation No. 7

224. That, Chase Bank (K) Ltd did not fully conduct due diligence in accordance with Prudential Guideline 5.6.6 of the Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism-CBK/PG/08 in acting on instructions of Ms. Catherine A. Namuye, the suspended CEO, YEDF to transfer funds from YEDF account to Quorandum Ltd. The Central Bank of Kenya should investigate Chase Bank (K) Ltd for possible violations of the Banking Act Cap 488, the Proceeds of Crime and the Anti - Money Laundering Act 2009 and the Prudential Guidelines.

Key Respondent: The Central Bank of Kenya

Ministry's Response:

225. The Committee was informed that the youth of Kenya lost money through the transaction that was the subject of these investigations by the PIC. The Ministry therefore looked forward to the outcome of this investigation as it would be useful in pursuing the lost funds. On its part, YEDF reported that they had instituted civil proceedings against Chase Bank with a view to recover the money.

Recommendation No. 8

226. That, the National Treasury enhances budgetary allocation to the Inspectorate of State Corporations to facilitate effective inspection of state corporations.

Key Respondent: The National Treasury

Ministry Response:

227. The Committee was informed that the Inspector of State Corporations plays a significant role in advising the Government on matters affecting the effective running of state corporations. The Ministry therefore welcomes an enhanced budget for the office.

Recommendation No. 9

228. That, the circumstances surrounding the death of the Fund's driver, Mr. Simon Mwangi who at the time of his death on 18th October, 2015 was on duty during unofficial hours in Diani Beach Mombasa, are suspect. The death allegedly occurred at a private party attended by former YEDF Board director Mr. Clement Ayungo on invitation by his friend, Mr. Babu Owino. The Director, Directorate of Criminal Investigation should extend his investigation to include possible involvement of Mr. Clement Ayungo and Mr. Babu Owino in the death of Mr. Simon Mwangi and establish if his death is linked to the financial mismanagement at the YEDF.

Key Respondents: The Director, Directorate of Criminal Investigation and Secretary, EACC

Ministry's Response:

229. The Committee was informed that the deceased was a hardworking officer and had a very young family at the point of his death. The Ministry stated that they were aware that the DCI carried investigations on this matter. YEDF provided all requested documents and equipment. The outcome of the investigations would be very useful for the Ministry's closure as the deceased was part of our family.

Recommendation No. 10

230. That, the Circular dated 18th July 2007 issued by the former Head of Civil Service and Secretary to the Cabinet, Ambassador Francis Muthaura, barring the Inspectorate of State Corporations from sitting in board meetings of State Corporations unless invited by the board was in contravention of Section 18(2) (c) of the State Corporations Act which gives the Inspectorate the mandate to attend board meetings as deemed necessary.

Key Respondent: The Chief of Staff and Head of Public Service

Ministry's Response:

231. The Committee was informed that the Inspector of State Corporations plays a significant role in advising the Government on matters affecting the effective running of state corporations and advising Boards on best practices. The Inspectorate of State Corporations reported that they had appointed an officer to sit in the meetings of the Youth Enterprise Development Fund Board, and noted that he had been very helpful during Board deliberations.

Recommendation No. 11

232. That, the Chief of Staff and the Head of Public Service should as a matter of priority ensure that the recommendations of the Presidential Taskforce on Parastatal Reforms on the merger of the YEDF, Women Fund, Uwezo Fund, Micro and Small Enterprises Authority (MSEA) and the Kenya Industrial Estates (KIE) to create Biashara Kenya are implemented. This merger is expected: to pool the scattered financial resources estimated at approximately Kshs. 30 billion per financial year; harness the potential of youth, women and men; build synergies among the various government agencies; and leverage on economies of scale. Further there is duplication of roles of some State organs, hence the need to implement the Mwongozo Code of Governance so as to remove duplication of duties and create clarity on the same.

Key Respondent: The Chief of Staff and Head of Public Service

Ministry's Response:

233. The Committee was informed that the process to merge some of the agencies was initiated by the National Treasury but later halted. However, the Ministry reported that it was in receipt of an invitation to participate in fresh discussions on the merger of the Youth Enterprise Development Fund, Uwezo Fund and the Women Enterprise Fund.

Recommendation No. 12

234. That, the Chief of Staff and Head of Public Service should ensure that the appointment of persons to serve as board chairpersons and board members of State Corporations is done in-accordance with the Mwongozo Code of Governance for State Corporations- which requires that appointment of persons to serve as board chairpersons and board members have the following minimum qualifications:

    i) Holds a minimum of a degree in the relevant field from a university recognized in Kenya;
    ii) Proven business management or other relevant professional experience;
    iii) Served in a position of senior management for at least six years;
    iv)Had not served in the same entity as employee in the preceding five years;
    v)Meets the requirements of Chapter Six of the Constitution; and
    vi)Meets the requirements of the fit and proper test.

Key Respondent: The Chief of Staff and Head of Public Service

Ministry's Response:

235. The Committee was informed that the board of directors is responsible for protecting shareholders' interests, establishing management policies, overseeing the governance of the corporation or organization, and making critical business decisions. Appointment of board members should therefore be done as per the laid-out procedure. Appointment of members to the board of the Youth Enterprise Development Fund adheres to this recommendation and the legal instruments establishing the YEDF.

Recommendation No. 13

236. That, further, alternate directors of respective Ministries seconded to parastatal boards should be individuals well versed in the affairs and operations of the respective Boards and should have unfettered access to board meetings and ensure that they submit regular reports to their respective Principal Secretaries on the operations of the boards in which they sit in.

Key Respondent: Line Ministries

Ministry's Response:

237. The Committee was informed that the Ministry was in receipt of communication OP/CAB.9/ 1A dated 18th October 2019 outlining guidelines on alternate directors representing government agencies in State Corporations. Alternate directors representing the National Treasury and the Ministry of Youth Affairs, Creative Economy and Sports who sit on the board of YEDF are individuals well versed in the affairs and operations of the board and have unfettered access to board meetings. In addition, they submit regular reports to their respective Principal Secretaries on the operations of the Board.

Recommendation No. 14

238. That, the Director, Directorate of Criminal Investigations should:
    i). Engage the services of a forensic examiner to authenticate all YEDF documents used in the fraudulent transfer of funds from YEDF account at Chase Bank (K) Ltd, including Board Minutes and correspondences; and
    ii). Engage the services of a graphology expert to analyses signatures on all correspondences that were purportedly signed by the then Ag. CEO Ms. Catherine Namuye and other Fund officials that may have resulted in the loss of funds at YEDF. The Director, Directorate of Criminal Investigations to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.

Key Respondent: Director, DCI

Ministry's Response:

239. The Committee was made aware that the Ministry had confirmed that the Directorate of Criminal Investigations contacted YEDF with a request for documents which the Fund provided. The DCI shared the status report of the investigations with YEDF. (Annex 2(a), 2(b))

5.2 Specific Recommendations on various Persons of Interest Committee recommended investigation and prosecution of:

1. Catherine A. Namuye, Suspended Ag. CEO, YEDF
2. Mr. Bruce Dominic Odhiambo, Former YEDF Board Chairman
3. Mr. Mukuria Ngamau, Director and Shareholder, Quorandum Limited

240. Other Persons of Interest (to be investigated)

1.Mr. Ezekiel Owuor – be investigated and to surrender outstanding balance of payment owed to Mr. Mukuria Ngamau to the Asset Recovery Agency
2.Industries D'Amico Ltd
3.Mr. Yogesh Kumar Bhadwarj
4.Mr. Dilshad S. Mohammed
5.Ms. Doreen Waithera Ng'ang'a
6.Directors of Rock Plant Ltd

Key Respondents: The Director, DCI and Secretary, EACC

Ministry Response:

241. The Committee was informed that the following were investigated, charged and prosecuted for conspiracy to defraud the YEDF:

1.Ms. Catherine Namuye (deceased)
2.Mr. Bruce Odhiambo (deceased)
3.Mr. Mukuria Ngamau
4.Ms. Doreen W. Nganga
5.Quorandum Limited

242. The Judgement of Anti-Corruption Case No. 13 of 2016, Republic VS Catherine Akello Namuye and 4 others was attached. However, it was noted the first two accused passed on as the case proceeded and the proceedings against them were marked as abated.

243. Further, the Committee recommended that the Inspector-General of State Corporations and the Chief Executive Officer of YEDF should surcharge Mr. Bruce Odhiambo a sum of Kshs.1, 034,014.65 for the misuse of vehicle, Toyota Land Cruiser VXL, Registration No. KBZ 753D. The Inspectorate of State Corporations to liaise with the Asset Recovery Agency to ensure a recovery of this amount and appurtenant costs with immediate effect.

Key Respondents:

The Inspector-General of State Corporations and the Chief Executive Officer, YEDF

Ministry's Response:

244. The Committee was told that the Inspector-General of State Corporations, through the representative on the YEDF board, guided the Fund that the institution had put in motion the process of surcharging Mr. Bruce Odhiambo who passed on before the process was complete.

Committee on Implementation Observations

245. **The Committee made the following observations:**

i) **That the current YEDF CEO, Josiah Moriasi was first appointed in 2016 on a three-year contract;**
ii) **The CEO served from 1st November 2016-November 2019 and a further 6 months to April 2020. However, he was dismissed but challenged the dismissal in court; and**

iii) The court ruled in his favour but he was not reinstated until three years later (in January 2023).

13.4 Submissions by the Chief Executive Officer, Ethics and Anti-Corruption Commission regarding the implementation status of the recommendations contained in the Report of The Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at The Youth Enterprise Development Fund.

Allegations that the CEO of Youth Enterprise Development Fund (YEDF) one Catherine Namuye, in collusion with a senior Board member and other senior managers, were deeply involved in the scheme to defraud the fund of Kshs. 180.9 million **in FY 2013/2014**

246. The Committee was informed that the Youth Enterprise Development Fund (YEDF) had a need for the provision of consultancy on the ICT Strategy and Enterprise Resource Planning in the Financial Year (FY) 2012/2013 and a budget was approved. This procurement for provision of consultancy on the ICT Strategy and Enterprise Resource Planning services was to run for a period of five (5) years 2012 to 2017.
247. The Committee was made aware that Microflex Business Solution Africa Ltd (Microflex) emerged as the successful bidder. The Fund formally entered into a written contract with Microflex to provide the services for the period 2012 to 2017.

Findings of the Criminal Investigation

248. The Committee was informed that:
    i) The then CEO of the YEDF, Catherine Namuye single-handedly engaged Mukuria Ngamau and Quorandum Ltd for similar services that Microflex was already undertaking without following any procurement process.
    ii) On 11th February, 2015 and 27th April, 2015, Catherine Namuye irregularly and unlawfully authorized payment from the YEDF amounting to Kshs. 115,710,000 and Kshs 65,184,946 respectively to Quorandum Ltd for services not rendered.
    iii) Upon an inquiry by the Bank on the alleged payment, the Chairperson of the YEDF board, Bruce Odhiambo and Catherine Namuye indicated that the YEDF board had authorized Ms. Namuye to effect any payment from the YEDF account, a fact that was false.
    iv) Catherine Namuye presented forged contracts between the YEDF and Quorandum Limited for provision of consultancy on the ICT Strategy and Enterprise Resource Planning services in support of the payment to Quorandum Limited.
    v) Quorandum Limited unlawfully received a total of Kshs. 180,364,789 from the YEDF for services not rendered.
    vi) Bruce Odhiambo, Catherine Namuye and the Directors of Quorandum Limited conspired to defraud the YEDF of Kshs 180,364,789.

Status of the Investigation:

249. The Committee was informed that:

Upon conclusion of investigations, the Commission recommended charges against the following:

1. Catherine Namuye Akelo (CEO YEDF)
2. Bruce Odhiambo (Chairman YEDF)
3. Mukuria Ngamau and Doreen Ng'ang'a (Directors of Quorandum Limited)
4. Quorandum Limited

250. The ODPP concurred with the Commission and suspects were charged in Milimani Anti-Corruption Court No. 13 of 2016. Catherine Namuye Akelo and Bruce Odhiambo passed away in the course of the criminal proceedings, while Doreen Nganga was acquitted under Section 210 of the Criminal Procedure Code.

251. The case was concluded and Mukuria Ngamau, Quorandum Limited were convicted and sentenced on 30th September, 2021 with the following counts:

Count 1: Mukuria Ngamau and Quorandum Limited; Conspiracy to commit an economic crime contrary to section 47A (3) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. Sentenced to 7 years' imprisonment with no option of a fine.

Count 2: Mukuria Ngamau and Quorandum Limited; Unlawful acquisition of Public Property Contrary to Section 45 (1) (a) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act. Sentenced to pay a mandatory fine of Kshs 442,840,000, in default 7 years' imprisonment.

Count 3: Mukuria Ngamau, Doreen Ng'ang'a and Quorandum Limited; Unlawful acquisition of Public Property Contrary to Section 45 (1) (a) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act. Sentenced to pay a mandatory fine of Kshs 258,629,156 in default 7 years' imprisonment.

Count 10: Mukuria Ngamau; Making of false document contrary Section 347 (a) as read with Section 349 of the Penal Code. Sentenced to 3 years' imprisonment with no option of a fine.

Count 11: Mukuria Ngamau; Making of false document contrary section 347 (a) as read with Section 349 of the Penal Code. Sentenced to 3 years' imprisonment with no option of a fine.

Count 2 and Count 3 are to run concurrently while Count 1, 10 and 11 are to run consecutively.

252. Cumulatively, the accused persons were fined Kshs. 701,469,156 or in default serve 7 years' imprisonment. Further, the accused persons were to serve a mandatory 13 years' imprisonment.

253. In addition, the Court invoked Section 51 and 54 of ACECA and ordered Mukuria Ngamau to pay the Youth Enterprise Development Fund Kshs. 180,364,789 in compensation.

254. The accused filed an appeal; however, the High Court upheld the convictions and Mr. Mukuria Ngamau is currently serving the prison sentence.

255. The prisoner is yet to pay compensation of Kshs 180,364,789 ordered by the court. Since this is a conviction-based recovery, the Commission is in the process of putting mechanisms for recovery of the said funds.

Committee on Implementation Observations

256. **The Committee made the following observations:**

i) **The Committee noted that the first and second accused persons; Catherine Namuye Akelo (CEO YEDF) and Bruce Odhiambo (Chairman YEDF) are deceased hence could not be charged;**

ii) **The Committee noted that there were no charges preferred against procurement officers at YEDF since, as per submissions by the EACC, there was no procurement done. It was a matter of direct transfer of funds from YEDF to third parties; and**

iii) **The matter had been investigated and necessary action taken place including recovery of assets and funds as well as imprisonment of the persons of interests apart from the deceased YEDF officials.**

13.5 Submissions by the Director of Criminal Investigations (DCI) regarding the implementation status of the recommendations contained in the Report of the Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund

(a) 5.1 Recommendations to Government Entities and Agencies

257. That, the circumstances surrounding the death of the Fund's driver, Mr. Simon Mwangi who at the time of his death on 18th October, 2015 was on duty during unofficial hours in Diani Beach Mombasa, are suspect. The death allegedly occurred at a private party attended by former YEDF Board director Mr. Clement Ayungo on invitation by his friend, Mr. Babu Owino. The Director, Directorate of Criminal Investigations should extend his investigation to include possible involvement of Mr. Clement Ayungo and Mr. Babu Owino in the death of Mr. Simon Mwangi and his death is linked to the financial mismanagement at the YEDF.

258. The Director, DCI and Secretary, EACC were required to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

(A) Circumstances Surrounding the death of the YEDF's driver, Mr. Simon Mwangi

The Committee was informed that:

259. The brief circumstances around this case are that one Simon Mwangi Gathigia, a Kikuyu male aged 33 years and a driver of the Youth Enterprise Development Fund Mombasa station is alleged to have drowned in a swimming pool at Kivulini Cottages in Diani town within Kwale County in the wee hours of 19/10/2015. Diani police station opened an inquest file vide Inquest No. 10/2015.

260. Following a report to Parliamentary Public Accounts Committee on investigations into the cause of death of the above deceased by the CCIO Kwale, Mr. Edwin Kamau dated 5th April 14, 2016, a team of homicide investigators from DCI Headquarters was mandated to proceed to Diani Police Station to take over the Police original file and after perusal take over and commence investigations.

261. A team of homicide investigators from DCI Headquarters proceeded to Diani police station and took over the original file vide Inquest 10/2015 and commenced investigations.

262. Investigations commenced by revisiting and reconstruction of the scene at Kivulini Cottages in the company of a Crime Scene Support Services Officer CPL Emmanuel Konde and the initial investigating officer PC Ngigi Ngugi. The scene was photographed, measured and a sketch plan drawn. The team was able to interview the caretaker Josphat Busolo, Gardener/ swimming pool attendant namely Rama Salim Mwasauri and a House Keeper Jane Amlavu Tsiruma. The team established from the caretaker that the owner of the cottage is one Italian known as Bartesaghi Carla who domiciles in Italy. The alleged cottage was rented by one Jenifer Mbogo a businesswoman from Nairobi as from August 2015 to October 2015.
263. On the 18th of October, 2015 at around 8.00 am, one Stephen Mbogo a businessman from Nairobi and a brother to Jenifer Mbogo checked in the cottage together with other eight (8) guests; four couples and a man.
264. On the same night of 18th of October 2015, Stephen Mbogo hosted other guests, who were about 20, among them Clement Ayungo a Director with Youth Enterptise Development Fund, Babu Owino the student leader of SONU and the deceased Simon Mwangi without the knowledge of the caretaker. The cottage had only five single bedroom which was able to host only eight (8) guests accompanying Stephen Mbogo.
265. During the same night, the barrier to the entrance of the said cottage was being manned by a guard from Ontrack Security Firm namely Hadsan Ali who was interviewed and confirmed that three vehicles Reg Nos. KCC 376R, KCA 655S together with a parastatal vehicle Reg. No. KBQ OO9D driven by the deceased entered the cottage at around 12:00 midnight at the same time. Unfortunately, the two vehicles were recorded at the barrier except the deceased's vehicle. It is alleged that the guests had fun, drinking the whole night at the veranda of the said cottage and swimming in a swimming pool which is about 30m from the said cottage disregarding the fact that there was no swimming pool attendant.
266. On the 19/10/2015 at around 5.00 a.m. the caretaker was called by Stephen Mbogo who informed him that there was a problem and that he should go at the cottage to check what was wrong. He proceeded to the cottage and found Stephen Mbogo and Clement Ayungo at the Veranda and Stephen Mbogo informed him that somebody had drowned in the swimming pool but had been removed. The caretaker proceeded to the swimming pool where he found the deceased being resuscitated at the deepest side of the swimming pool whereby First Aid was being rendered by a lady who claimed to be a medical student in the University. He also observed that they were all drizzling with water.
267. The caretaker advised them to rush him to hospital. Stephen Mbogo called for an ambulance but before it arrived, Clement Ayungo, Stephen Mbogo, Babu Owino and the rest took the deceased in one of their private vehicles and in a convoy of 4 vehicles rushed out of the cottage towards Diani Beach Hospital. On the way, they allegedly met the hospital ambulance and exchanged the deceased into the ambulance and at around 5.30 am the deceased reached Diani Beach Hospital and was pronounced dead on arrival by Dr. Adams Mandira.

268. On the same day, the OCS Diani Police Station CI Daniel M. Musyoka received a call from the Hospital reporting the incident. The OCS visited Diani Beach Hospital where he met Stephen Mbogo, Clement Ayungo and Babu Owino. He was shown the body of the deceased lying on a hospital gurney. He did not note any physical injuries on examining the body.
269. At around 9.00 a.m, the OCS in the company of the three persons above visited the scene at Kivulini Cottage and interviewed them on what had transpired. To his surprise, he found the veranda where they held a party the whole night cleared and the other guests already left. He took some measurement of the swimming pool and Clement Oyungo handed over to him the car keys of the deceased's vehicle which was parked 100m away from the swimming pool.
270. He found the deceased's clothes, two mobile phones among other items on the front cabin of the car. He could not confirm whether the phones were switched on or off. He took possession of the phones and the car keys. Later at around 12.10pm, he arranged for the vehicle to be driven to Diani Police Station where the clothes and other items of the deceased were removed and recorded in an inventory by PC Ngigi.
271. On the same day at around 12:00 noon, the body was taken to AGA KHAN Hospital Mortuary awaiting post-mortem.
272. On 20/10/2015 the post-mortem was performed by Dr. Ng'ali Mbuko, a government pathologist who confirmed the cause of death to be consistent with asphyxia due to drowning. He also noted a fresh bruise measuring 4 by 2.5 centimetres internally at the back of the scalp. On 9/4/2016, the investigation team visited Diani Beach Hospital where they obtained documentation and interviewed Dr. Adams Mandira who confirmed that the deceased reached their hospital already dead at 6.00am. The Ambulance Aid Nurse namely Lilian Alusa who was on call duty confirmed that immediately she received the casualty in the ambulance, she examined the deceased with an SPO2 machine and that he was already dead as the SPO2 and pulse were reading zero.
273. On 10/4/2016, the investigating team visited and interviewed the Coast Regional Coordinator Youth Enterprise Development Fund (YEDF), Mr. Edwin Mwangala Njuga who confirmed that on 16/10/2015 he was informed through mobile phone by the YEDF CEO, Mrs. Catherine Namuye that there would be a directors meeting in Mombasa on 17th /10/2015, but the agenda of the meeting was not revealed to him.
274. On 17/10/2015 at around 1.00 p.m, he attended the meeting driven by the deceased, which was held outside a veranda of the cottage where Mr. Bruce Odhiambo was residing at Tamarind Hotel. It was also attended by other Directors of YEDF namely Nicholas Mwaniki, Sabra Omar, Clement Ayungo, Jalenga and Jane and ended at around 5.00 pm. The coordinator confirmed that he was driven back to town together with one Daniel, a staff at YEDF Nairobi by the deceased who went to his residence at Miritini.

275. On 18/10/2015 at around 1.00 p.m., he was called by Director Mwaniki who requested for the driver to take them for lunch. He reportedly called the driver (the deceased) and instructed him to contact Director Mwaniki through his mobile number which he texted to the driver. He did not follow up to know whether the driver picked Director Mwaniki or communicated with the driver there after. On 19 /10/2015, he received a call from the CEO, who informed him that the driver had passed on at Diani and instructed him to visit him at Diani Beach Hospital. On 20/10 /2015, he attended the post-mortem together with a security officer from the head office in Nairobi namely Makau.
276. On the 11/4/16, the investigating team visited Tamarind Hotel where they interviewed the General Manager Vincent Shitaka who confirmed that there was no meeting booked in their hotel by directors of Youth Enterprise Development Fund on 17th/10/2015. He confirmed that Bruce Odhiambo checked in their hotel on individual capacity on 16/10/2015 for two days.
277. The investigating team interviewed the workers of Youth Enterprise Development Fund both in Mombasa and Nairobi. These included Ag. CEO. Catherine Namuye and her staff. Save for the confidential report by Efficiency Motivating Unit (EMU) dated December 2012 on investigation into mismanagement at YEDF which the deceased was in possession of it. This triggered the transfer of the deceased from Nairobi to Mombasa station. After the interview of all personnel, the team was not able to connect the death of the deceased with any staff of YEDF directly.
278. The team also reportedly interviewed the family members, among them the wife of the deceased Ann Wanjiku Mwangi, who informed them that she had received four text messages in her phone mobile number 0732 286622 from the deceased number 0720 770644 on the night of 18/19/10/2016. The last message was done by the deceased at 0204hours. An indication that he was still alive at that time. This was supported by call data records obtained from Safaricom.
279. Though there was an alleged telephone conversation between the wife and deceased person at around 2:00am, the same was not reflected in the deceased call data record and the other phones were switched off.
280. The other group that the investigating team interviewed was the team led by Steve Mbogo, revellers taking part in the party who included SONU Chairman, Babu Owino, and other guests who accompanied Steve Mbogo at the cottages. This group was at the scene of the incident. All stated that the number of guests present at the party on the material night was around twenty in number.
281. Nobody was able to give an account of what transpired between 3:00am and 5:00am on 19/10/2015 at the swimming pool, where by extension, the party went past midnight. It is alleged that the deceased was part of the swimmers who impressed other revellers very much. Majority of the people in the party attendance were drunk at that time but they do not recall witnessing a commotion or confrontation between the deceased with anyone at the party and more so at the swimming pool. Steve Mbogo, Babu Owino and Gacheru Abigael are said to have remained outside the cottages but no witness is pointing an accusing finger against them or are they assisting in giving out what transpired at the swimming pool at the time.

282. Therefore, the investigating team concluded that it was hard to get an eye witness account among the group at the cottages. The team also interviewed Mwangi's girlfriend but she did not give them any clue in pursuit to the case as the deceased had not raised any distress to her.
283. Similarly, the investigating team interviewed Clement Ayungo, one of the directors with YEDF and who was at the party. He is the one who noticed the deceased body at the swimming pool and raised an alarm as he tried to pull him out of the swimming pool. No clear motive was discovered that could have led Clement Ayungo to eliminate the deceased person. Therefore, the evidence to connect him with the death of the deceased person does not exist save for the driving duties the deceased person undertook on that night to Diani using YEDF official vehicle. All personal items of the deceased person were found intact including the motor vehicle and inventory of the same was taken.
284. The pathologist in his investigation during the post-mortem found that the deceased had succumbed to deep peripheral cyanosis. This was most likely due to blood deoxygenation; a key feature in asphyxia deaths. He also stated that the bruise at the back of the head was as a result of blunt trauma due to a blunt object or hard surface, which was possible as the deceased person was swimming in a swimming pool which was surrounded by hard surface area.
285. After analysing the evidence at hand, the investigating team found it hard to press charges against anyone in connection of the deceased person's death.

Findings

286. The homicide investigating team found:
    i). That the cottage was booked two months earlier prior to the date of the incident;
    ii). That the alleged meeting at Tamarind Hotel on 17 /10/2015 by the YEDF Directors was not official and they met on their own interest;
    iii). That prior to his death, the deceased was with the directors of YEDF;
    iv). That the hosting of guests at the Kivulini cottage by Stephen Mbogo is questionable and leaves a lot to be desired for it was not known by the caretaker;
    v). That the deceased was in the company of Director Clement Ayungo up to the time of his death;
    vi). That the Pathologist who performed post-mortem, did not rule out the possibility of foul play and only meant that the deceased when lastly alive was immersed in water due to water in the lungs. He noted that the condition was consistent with drowning supported by cyanosis (presence of deoxygenated blood in the fingers). He further observed that the deceased for some time when alive never breathed oxygenated air. He also did not exclude an act of someone, due to the injury that was at the back of the scalp that could have caused an unconscious state due the injury that was inflicted before death and self-inflicted;
    vii). That vehicles recorded at Tamarind Hotel on the vehicle movement register were also traced to be the same vehicles that brought the extra guest at Kivulini Cottage at 12:00 midnight on 18/19/10/2015 the day and time the deceased was seen alive and communicated with her wife extensively up to 0300hrs and among them was the deceased vehicle.
    viii). That the presence of the clothes and mobile phones in the vehicle is suspicious and seems to have been planted at the vehicle for no theory can explain their presence in

the vehicle if the deceased really went on a swimming rampage as sun beds were around the swimming pool;

ix). That the ignition keys of the deceased's vehicle were handed over by director Clement Ayungo to the OCS Diani Police Station;

x). That the alleged meeting at Tamarind Hotel could be a decoy to the real objective of directors being at Mombasa. Why not officially registered and preparations made?

xi). That cottage veranda was hurriedly cleared before arrival of the police officers.

287. After completion of the investigations, the file was forwarded to DPP who advised the same to be registered before a Magistrate of Competent Jurisdiction to hold a Public Inquest. The same was registered at Kwale Law Court and the case is pending before Court. After completion of the investigations, the file was forwarded to DPP vide letter referenced CID/IB/SCU/SEC/4/4/1/VOL.XXXVIII/205 dated 9th December, 2016 who advised through letter referenced ODPP/CAM/4/854 dated 23rd March, 2017 the same be registered before a Magistrate of Competent Jurisdiction to hold a Public Inquest. The same was registered at Chief Magistrates-Kwale Law Courts vide a letter referenced CID/IB/SCU/SEC/2/3/VOL.IV/108 dated 30th June, 2017.

288. However, the matter was withdrawn under Section 87(a) of the Criminal Procedure Code following a communication breakdown. It was forwarded to ODPP Kwale for re-registration vide our letter referenced CID/IB/SCU/SEC/4/4/1/VOL.XLIV/56 dated 4th June, 2018 and the case is pending before Court.

(B) Specific Recommendations on Various Persons of Interest

289. That, the Director, Directorate of Criminal Investigations should: -

i) Engage the services of a forensic examiner to authenticate all YEDF documents and the fraudulent transfer of funds from YEDF account to Chase Bank (K) Ltd, including board Minutes and correspondences;

ii) Engage the servicers of a graphology expert to analyse signatures on all correspondences that were purportedly signed by the then Ag. CEO Ms. Catherine Namuye and other Fund officials that may have resulted in the loss of funds at YEDF.

iii) Director, DCI to report back to National Assembly not later than two (2) months after adoption of the Report on the status of implementation of this recommendation.

(i) Ms. Catherine A. Namuye, Former YEDF Acting CEO

290. That, Ms. Catherine A. Namuye as the former accounting officer of the YEDF should be investigated, charged and prosecuted for violating Section 27(2) of the PPDA 2005. She failed to ensure that procurement procedures were followed in the alleged provision of consultancy services for ICT Strategy Development and ERP System by Quorandum Limited. The Secretary, EACC and Director, DCI to report back to National Assembly not later than two (2) months after adoption of the Report on the status of implementation of this recommendation.

291. That, Ms. Catherine A. Nyamuye should be investigated, charged and prosecuted for violating the use of restricted tendering as provided for in the Public Procurement and Disposal Act, 2005 particularly Section 73(2) which provides instances where a procuring entity may use restricted tendering. Further, Ms. Catherine A. Nyamuye used restricted tendering contrary to maximum threshold provided for in the Public Procurement and Disposal Regulations, 2006 that required procurements for goods and services above. The Director, DCI and Secretary, EACC to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

292. That, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violating Section 72(1) of the PFM Act 2012 which requires an accounting officer of a national government entity to be responsible for management of the entity's assets and liabilities. Ms. Catherine A. Namuye allowed Mr. Bruce Odhiambo unfettered use of YEDF facilities including office and a brand-new motor vehicle despite him being a non-executive chairperson who is not entitled to such facilities. She also failed to implement the State Corporations guidelines issued by SCAC on entitlements of chairpersons and members of boards hence occasioned loss of funds including Kshs. 12,615,448 incurred in buying a motor vehicle for the use of Mr. Bruce Odhiambo; associated repair and maintenance costs incurred for running the vehicle, totalling Kshs. 1,034,014.65 and employment of a driver and a body guard. The EACC should investigate and if found culpable, to recommend her for prosecution to the ODPP for violation of the Act. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

293. That, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violating the provisions of Section 68(1) (a), (b) of the PFM Act 2012 that stipulates that the responsibility of an accounting officer is to ensure that public resources are utilized in a legal authorized and effective way to ensure the public realises value taxes. The EACC should investigate and if found culpable, recommend her for prosecution to the DPP for violation of the Act. The Director, DCI and Secretary, EACC to report back to the National assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

294. That, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violating the provisions of Section 15 of the Public Officers Ethics Act, 2003 that requires a public officer to take all reasonable steps to ensure that property that is entrusted to her care is adequately protected and not misused or misappropriated. Ms. Catherine A. Namuye failed to comply with various provisions of the Act. In particular, her assertions that she acted under duress from the board members particularly on the issues of the board members rejecting the existence of ICT Strategic Plan (2013-2017) and recommending for a new ICT Strategic Plan should have been reported by her to the relevant authorities as provided for in Section 25 of the POE Act 2003.

295. The EACC should investigate Ms. Catherine A. Namuye for violating the provisions of the POE Act 2003 and the Code of Conduct and Ethics for Public Officers. The Director, DCI and Secretary, EACC report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.
296. That, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for various acts of omission and commission with the intention to defraud the Fund. The purported consultancy services contact agreement for ICT Strategic Plan and ERP System Development signed by Ms. Catherine A. Namuye on behalf of YEDF and Mr. Mukuria Ngamau for Quorandum Limited was a well-crafted and joint executed scheme by Ms. Catherine A. Namuye and Mr. Mukuria Ngamau with the sole intention of defrauding the YEDF of approximately Kshs.180 million.
297. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.
298. That, Ms. Catherine A. Namuye be investigated by EACC for her role in the cancellation of YEDF 8th anniversary event which was to be celebrated in the year 2015 at the Kenyatta International Conference centre (KICC) and later venue changed to the University of Nairobi grounds, but was eventually verbally cancelled by a phone call purportedly by Ms. Anne Waiguru, the former Cabinet Secretary for Devolution and Planning to Mr. Bruce Odhiambo, the former YEDF board chairman. The YEDF fraudulently paid approximately Kshs. 44,741,603 purportedly to various contacted suppliers for the cancelled event. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.
299. That, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for forgery in line with the Penal Code of 1930 Cap 63 Laws of Kenya. The purported extracts of the Fund's Board Minutes signed by Mr. Bruce Odhiambo and Ms. Catherine A. Namuye sent to Chase Bank (K) Limited to confirm the change of signatories were a forgery and a collusion between the two officers with an intent to defraud the Fund pursuant to Section 348 of the Penal Code of 1930 Cap 63 Laws of Kenya.

(ii)Mr. Bruce Dominic Odhiambo, Former YEDF Board Chairman

300. That, Mr. Bruce Odhiambo, former YEDF board chairman should be investigated, charged and prosecuted for conspiracy to defraud the YEDF. Mr. Bruce Odhiambo working with Mr. Mukuria Ngamau and Ms. Catherine A. Namuye crafted and executed a fraudulent scheme in the name of a consultancy service with the sole intention of defrauding the public of approximately Kshs. 180 million.
301. The Directorate of Criminal Investigations (DCI) should immediately investigate Mr. Bruce Odhiambo and make recommendations for prosecutions to the Director of Public Prosecutions.
302. The Director, DCI to report back to National Assembly not later than two (2) months after adoption of the Report on the status of implementation of this recommendation.

303. That Mr. Bruce Odhiambo, former Chairman YEDF should be investigated, charged and prosecuted for Money Laundering under Section 3 and. 4 of the POCAML Act, 2009 Cap 598. He allegedly received a total of Kshs. 3.3 million from Mr. Mukuria Ngamau through Quorandum Limited as per Quorandum Limited.'s Standard Chartered Bank (Kenya) Ltd account statements hereto annexed. The Committee from its investigations, believes that the said Mr. Bruce Dominic Odhiambo is the former chairman of the YEDF. The Directorate of Criminal Investigations (DCI) should immediately investigate Mr. Bruce Dominic Odhiambo for this criminal act of collusion and benefiting from proceeds of crime contrary to provisions of Section 3 and 4 of the POCAML Act 2009 and make recommendations for prosecution to the Director of Public Prosecutions. The Director, Assets Recovery Agency should immediately institute a confiscation order and proceed to recover the amount in question from Mr. Bruce Dominic Odhiambo. The Attorney-General to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

304. THAT, Mr. Bruce Odhiambo, former Chairman YEDF should be investigated, charged and prosecuted for various acts of omission and commission to defraud the public. He should be investigated by EACC for his role in the cancellation of the YEDF 8th anniversary event which was to be held in 2015 at the KICC and later changed to the University of Nairobi grounds but was eventually verbally cancelled by a phone call purportedly by Mrs. Anne Waiguru to Mr. Bruce Odhiambo. The YEDF fraudulently paid approximately Kshs. 44,741,603 purportedly to various contacted suppliers for the cancelled event. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

305. THAT, Mr. Bruce Odhiambo should be investigated, charged and prosecuted for forgery in line with the Penal Code of 1930 Cap 63 Laws of Kenya- The purported extracts of the Fund's Board Minutes signed by Mr. Bruce Odhiambo and Ms. Catherine A. Namuye sent to Chase Bank (K) Ltd to confirm the change of signatories were a forgery and a collusion between the two officers with an intent to defraud the Fund pursuant to Section 348 of the Penal Code of 1930 Cap 63 laws of Kenya.

306. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

(iii) Mr. Mukuria Ngamau Director and Shareholder, Quorandum Ltd

307. That, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for conspiracy to defraud the public. Mr. Mukuria Ngamau working together with Mr. Bruce Odhiambo and Ms. Catherine A. Namuye crafted and executed a fraudulent scheme in the name of a consultancy service with the sole intention of defrauding the public of approximately Kshs. 180 million.

308. The Directorate of Criminal investigations (DCI) should immediately investigate Mr. Mukuria Ngamau for this criminal act and conspiracy to defraud the public and make recommendations for prosecutions to the Director of Public Prosecution. The Director, DCI and Secretary, EACC to report back to the National assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.
309. That Mr. Mukuria Ngamau should be investigated, charged and prosecuted for acquisition, possession or use of the proceeds of crime. Mr. Ngamau used the proceeds from the fraudulent transactions between YEDF and Quorandum Limited to purchase a house in Lavington, Nairobi. The Director, Assets, Recovery Agency should move with utmost speed and obtain an injunction against transfer of duplex apartment number C16 at Duchess Park Apartments located along Hatheru Road, Lavington, Nairobi. The said property was purchased by Quorandum Limited from Duchess Park Limited using the proceeds from the YEDF fraud of Kshs. 180,364,789, contrary to provisions of Section 4 of the POCAML Act 2009.
310. The Attorney-General to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.
311. That, Mr. Mukuria Ngamau should be investigated charged and prosecuted for violation of Section 27(4) of the PPDA 2005 that requires all contractors, suppliers and consultants to comply with all the provisions of the Act. The actions of Mr. Mukuria Ngamau and his company Quorandum Limited violated the provisions of the Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations 2006 which were in force then.
312. The Director-General, Public Procurement Regulatory Authority to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.
313. That, Mr. Mukuria Ngamau should be investigated charged and prosecuted for giving false evidence under oath to a Committee of the National Assembly contrary to Section 21 of the National Assembly (Powers and Privileges) Act.
314. Mr. Mukuria Ngamau while appearing before the Committee on 8th March, 2016 gave false information on the particulars of a Mr. Collin Reeves who was purportedly the lead consultant in the alleged contract between YEDF and Quorandum Limited. He stated that the said Mr. Reeves resided in Michigan USA and that as at the time he appeared before the Committee, they were in contact. He later changed this position in his written submission dated 11th March, 2016 informing the Committee that Mr. Reeves died on 1st April, 2015 and that he is still trying to trace the deceased's next of kin to transfer Kshs. 115 million owed to him.
315. The Director of Public Prosecution should therefore charge Mr. Mukuria Ngamau with the offence of giving false evidence before the Committee contrary to Section 21 of the National Assembly (Powers and Privileges) Act.
316. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the report on the status of implementation of this recommendation.

317. That, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for acquisition, possession and the use of proceeds of crime. An analysis of the various statements of bank accounts held by Quorandum Limited at Chase Bank (K) Limited and Standard Chartered Bank (K) Limited shows that the Kshs. 180, 364,789 which was fraudulently transferred from YEDF account at Chase Bank (K) Limited to Quorandum Limited was used for various suspicious transactions. In particular, a total of approximately Kshs. 91,654,018 was transferred to Quorandum Limited account at Standard Chartered Bank (K) Limited and thereafter used for suspicious payments to various third parties including a Mr. Brian Dominic Odhiambo. The Director of Criminal Investigations should undertake an investigation of all transactions of the Quorandum Limited account No. 012497392600 held at Standard Chartered Bank Kenya Limited for the period 15th January 2015 to 31st March, 2016. The investigations should extend to all personal bank accounts of Mr. Mukuria Ngamau, Ms. Doreen Waithera Ng'ang'a including their close relatives and friends.

318. 8). The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

319. 9). That, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for several suspicious cash withdrawals and cheques encashment almost on a daily basis from Quorandum Limited bank accounts at Chase Bank (K) Limited and Standard Chartered Bank (Q Limited as demonstrated by the summary of the bank statements annexed hereto.

320. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

(c) Other Persons of Interest

321. An audit tail of the bank statements of Quorandum Limited account held at Chase Bank Limited and Standard Chartered Bank (K) Limited revealed that Mr. Mukuria Ngamau through Quorandum Limited made various payments to other third parties purportedly for various goods and services offered.

322. The Committee therefore made the following recommendations on the following other persons of interest:

    i). That the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009, investigate Mr. Ezekiel Owuor who received from Mr. Mukuria Ngamau through Quorandum Limited a sum of Kshs. 8,799,450 purportedly for material supplies. Mr. Ezekiel Owuor in his written submission to the Committee acknowledged receipt of the money but indicated in writing that the amount was a loan advanced to him by Mr. Ngamau. If found culpable, he should be recommended for prosecution for benefiting from the proceeds of crime. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

    ii). That Mr. Ezekiel Owuor should surrender the outstanding balance of payment owed to Mr. Mukuria Ngamau to the Asset Recovery Agency, even as the various

investigative agencies conduct investigations into the matter. The Director, Asset Recovery Agency to report back to the National Assembly not later than two (2) months alter the adoption of the Report on the status of implementation of this recommendation.

iii). That the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate the Directors and the local representatives of Industries D'Amico Limited which received a sum of Kshs. 10,254,500 from Quorandum Limited. The Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

iv). That the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate Mr. Yogesh Kumar Badwarj who received from Quorandum Limited a sum of Kshs. 880,000. If found culpable. He should be recommended for prosecution for benefiting from the proceeds of crime. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

v). That the Director of Criminal Investigations and the Ethics and Anti-Corruption Dilshad S. Mohammed who received from Quorandum Limited a sum of Kshs. 2,246,000 on 10th April, 2015. If found culpable, he should be recommended for prosecution for benefitting from the proceeds of crime. The Director of DCI and Secretary of EACC to report back to the National Assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

vi). That the Director of Criminal Investigations and the Ethics and Anti-corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate Ms. Doreen Waithera Ngang'a, spouse to Mr. Mukuria Ngamau and Co-Director, Quorandum Limited who received a sum of Kshs. 4.5 million from Mr. Mukuria Ngamau through Quorandum Limited purportedly as a repayment of a loan extended to Mr. Mukuria Ngamau. The Director of DCI and Secretary of EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

vii). That the Director of Criminal Investigations and the Ethics and Anti-Corruption emission should in accordance with Section 4 of POCAML Act 2009 investigate the Directors of Rock Plant Limited for receipt of a sum of Kshs.4.5 million by Mukuria Ngamau through Quorandum Limted. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

viii). That, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate the Directors of Simis Engineering and Construction Company Limited for receipt of a sum of Kshs. 1,000,000 from Mukuria Ngamau through Quorandum Ltd. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

ix). That, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should investigate Mr. Hillary Kiprono Yegon and any other Directors of K- Susu Limited, Gigtych Limited and any other supplier for any sum of money received from the YEDF 8th anniversary event and any other event undertaken for YEDF since inception to date. The Director, DCI and Secretary, EACC to report back to the National Assembly not later than two (2) months after the adoption of the Report on the status of implementation of this recommendation.

(b) Specific Recommendations on Various Persons of Interest

323. The Acting Inspector General of State Corporations vide letter referenced ISC/INS/POL/151/VOL II/(26) dated 14th April, 2016 requested for investigations into circumstances which led to the fraudulent internal transfer of Ksh. 180,894,946/= from account No. 0017054604027 in the name of Youth Enterprise Development Fund to account No. 0052075584001 in the name of Quorandum Limited held at Chase bank.
324. The circumstances of the case are that; the Youth Enterprise Development Fund (YEDF) board had earlier resolved that whenever there was money which was not required immediately, it would be invested in a call deposit account in one of the top twenty (20) banks accredited by Central bank of Kenya and that offer the highest interest rates.
325. The authority of the above being Section 12(2) of State Corporations Act Cap 446 of the Laws of Kenya which states that the board may place on call deposit with such bank or banks as it may determine, any moneys not immediately required for the purposes of the Board. Based on this authority the management of YEDF invested in Chase bank and other banks on several occasions. The signatories to the accounts being:
    1. **Catherine Namuye**-The Acting CEO;
    2. **Judy C. Kimeto**-Lending and Investment manager;
    3. **Benedict Atavachi**-Finance manager;
    4. **Robert Mrima**-Senior Accountant; and
    5. **Benson Mutwii**-Accountant.
326. YEDF vide a letter Ref. YEDF/4/ACC/0055/15 dated 4th February, 2015 signed by the CEO Catherine Namuye and Finance manager Benedict Atavachi instructed Chase bank to roll over Ksh. 400 million to a new call deposit from a previous deposit which was about to mature.
327. On or about Twelfth February, 2015 the acting CEO Catherine Namuye attempted to transfer Ksh. 115,710,000 to account No. 0052075584001 in the name of QUORANDUM LIMITED vide her letter Ref. YEDFB/CEO/1316/2015 dated 11th February, 2015, but Chase bank officials declined as a transaction required two signatories.
328. On or about 17th February, 2015 the acting CEO and the chairman to YEDF board Mr. Bruce Odhiambo wrote a letter ref. YEDF/CEO/1339/2015 dated 17th February, 2015 addressed to the manager of Chase Bank indicating authorised signatories to the call deposit account held there.
329. The letter indicated that the CEO can sign off any instructions and in the absence of the CEO, two signatories must sign with one being mandatory signatory.

330. On 23rd February, 2015 Chase bankrolled over Kshs. 402,095,890.40 to a new call deposit account No. 0017054604027 as per the YEDF letter of instruction and transferred Kshs. 115,710,000 to account No. 0052075584001 in the name of QUORANDUM LIMITED within the same bank vide CEO YEDF's letter Ref. YEDFB/CEO/1316/2015 dated 11th February, 2015 and the letter of the new mandate, leaving a balance of Kshs. 286,385,890.55 in the call deposit.
331. On 27th April, 2015 the acting CEO of YEDF transferred Kshs. 64,654,789 to the account of Quorandum Limited vide her letter Ref. YEDF/CEO/1504/2015 dated 27th April, 2015, leaving a new balance of Kshs. 219,815,054
332. On 6th June, 2015 the account received Kshs. 3,857,302.50 on the deposit as profit upon maturity. The deposit was placed on the account totalling Kshs. 223,093,851.85.
333. On 17th June, 2015 there was a cash deposit of Kshs. 2,687,594 making the balance to be Kshs. 225,781,445.85. The following day cash Kshs. 5,966,301.35 was paid out leaving a balance of Kshs. 219,815,144.50
334. On 13th July,2015 Kshs. 120,000,000 was transferred to KCB account of YEDF leaving a balance of Kshs. 99,814,544.50.
335. On 12th August, 2015, Kshs. 99,814,044.50 was placed under call deposit leaving Nil balance and on 14th August, 2015 the account received two internal account transfers of Kshs. 3,322,388.85.
336. On 16th September, 2015, the account was credited with Kshs. 1,365,948.35 as profit from the deposit. The deposit was credited to the account making a closing balance of Kshs. 104,297,489.45.
337. The Quorandum Limited account was opened in September, 2014 and by 23rd February, 2015 when it received Kshs. 115,710,000 from YEDF it had a balance of Kshs. 571.25. There were several withdrawals and transfers from the account.
338. On 4th May, 2015 the account received Kshs. 64,654,789 from YEDF and as at 10th November, 2015 the account had a balance of Kshs. 1,184,326.75. This amount was preserved through a Court order upon our application.
339. The following transfers through RTGS were made from the account of Quorandum limited in Chase Bank to Account No. 0102497392600 in the name of Quorandum Limited in Standard Chartered Bank.
    i) On 26th February, 2015..... Kshs. 4,800,000
    ii) On 5th March, 2015 .....Kshs. 4,600,000
    iii) On 12th March, 2015 .....Kshs. 4,700,000
    iv) On 24th March, 2015.....Kshs. 4,500,000
    v) On 10th April, 2015 ..... Kshs. 3,500,000
    vi) On 5th May, 2015..... Kshs. 7,480,000
    vii) On 12th May, 2015 ..... Kshs. 6,800,000
    viii) On 19th May, 2015 .....Kshs. 8,000,000
    ix) On 6thAugust, 2015 ..... Kshs. 3,000,000
    x) On 14th October, 2015... Kshs. 2,000,000

TOTAL.....Kshs. 28,420,000

340. On 12th March, 2015, Ksh. 3,000,000 was transferred through RTGS from the account of Quorandum limited in Chase bank to Account No. 1250262956474 in Equity Bank in the name of Gigsavvy Plus Limited.

341. The following transfers through RTGS were made from the account of Quorandum limited in Chase bank to Account No. 0030081198210 in the name of Duchess Pack Development Company Limited in I & M Bank.
    i) On 30th March, 2015 Kshs. 8,000,000
    ii) On 2nd April, 2015 Kshs. 8,100,000
    iii) On 10thApril, 2015 Kshs. 10,000,000
    iv) On 16th April, 2015 Kshs. 11,200,000
    v) On 24thApril, 2015. Kshs. 11,200,000

TOTAL.....Kshs. 48,500,000

342. On 2nd April, 2015 Kshs. 2,246,000 was wired to account No. 0500439009 in the name of Dilshad S. Mohamed in Diamond Trust Bank. This was received from Quorandum Limited being payment for one year's rent. Quorandum Limited is her tenant occupying her Muthangari Villa house No.5.
343. On 10th April, 2015 Kshs. 1,500,000 to account No. 1154048411 in the name of Gigtych Africa Limited in Kenya Commercial Bank.
344. On 5th May, 2015 Kshs. 880,000 was wired to account No. 1154048411 in the name of Yogesh Kumar Bhardwaj in Standard Chartered Bank. This was alleged to be payment of a loan obtained in the year 2014 by Mukuria Ngamau however no agreement to that effect had been executed.
345. On 5th May, 2015, Kshs. 1,000,000 was wired to account No. 1134166613 in the name of Simis Engineering and Construction Company Limited in Kenya Commercial Bank. This was payment for construction materials transported to Marimanti for Quorandum Limited.
346. On 27th May, 2015 Kshs. 4,500,000 was wired to account No. 00400616481211 in the name of Rock Plant Kenya Limited in I & M Bank. This was for payment of a used Wheel loader worth Kshs. 4.5 million purchased by Quorandum Limited.
347. On 13th May, 2015, $57,000 British Pounds was deposited in account No.GB 31LOYD 30000204014907 in the name of Britcom International Limited in Deutsche Bank Ag. London for purchase of Excavator and Breaker vide invoice No. 15409.
348. On 21st May, 2015 Kshs. 8,000,000 and on 25th May, 2015 Kshs. 10,000,000 was wired to account No. 070025007332504 in the name of Ngigi Mbugua and Advocates in Ecobank. The payment was alleged to have been lawyer's fees after the advocate represented Mr. Vincent Kipkurui of Great Lakes Forwarders Limited to recover Kshs. 18,096,653.91 from Quorandum Limited for construction work done.
349. In addition to withdrawals, the following transfers were made from Account No. 0102497392600 in the name of Quorandum Limited in Standard Chartered bank; -
    i) On 6th March, 2015 Kshs. 1,800,000 and on 16th March, 2015 Kshs. 1,500,000 TOTAL Kshs. 3,300,000 to Bruce Dominic Odhiambo
    ii) On 6th March,2015 Kshs. 1,500,000, on 16th March, 2015 Kshs. 1,999,450, on 26th March, 2015 Kshs. 2,000,000, on 15th April, 2015 Kshs. 1,300,000 and on 25th May, 2015 Kshs. 2,000,000 TOTAL Kshs. 8,799,450 to Ezekiel O. Owuor
    iii)On 6th May, 2015 Ksh. 4,232,000 and on 13th May, 2015 Ksh. 6,022,500 Total Ksh.10,254,500 to Industries D'Amico Ltd.

Findings

i) That Youth Enterprise Development fund was allowed in law to invest money in call deposit accounts in any bank;

ii) That the accounts were operated by signatories approved by the YEDF board and for each transaction two had to sign one being mandatory signatory;

iii) That for any change or variation of signatories, at least 7 members of the board had to approve being the minimum quorum for a meeting to proceed;

iv) That YEDF vide a letter Ref. YEDF/4/ACC/0055/15 dated 4th February, 2015 signed by the Catherine Namuye, and Finance manager instructed Chase bank to place Kshs. 400 million on call deposit;

v) That the acting CEO, Catherine Namuye, vide her letter Ref. YEDFB/CEO/1316/2015 dated 11th February, 2015 attempted to transfer Kshs. 115,710,000 to account No. 0052075584001 in the name of Quorandum Limited but Chase bank declined because she had signed the instruction alone;

vi) That the acting CEO Catherine Namuye, and the Chairman to the YEDF Board, Mr. Bruce Odhiambo changed the signing mandate and empowered acting CEO YEDF to sign alone vide their letter Ref. YEDF/CEO/1339/2015 dated 17th February, 2015 addressed to the manager Chase Bank;

vii) That the change of mandate was illegal as it was done by two individuals and not the full board members who should be at least 7 members to form a quorum during a board meeting;

viii) That this action was intended to conceal the fraudulent actions from the other signatories and the YEDF board;

ix) That on 23rd February, 2015, Chase Bank rolled over Kshs. 402,095,890.40 from a previous YEDF's call deposit which had matured to a new call deposit vide account No. 0017054604027;

x) That on 23rd February, 2015, Chase bank transferred Kshs. 115,710,000 to account No. 0052075584001 in the name of Quorandum Limited on the strength of acting CEO's letter Ref. YEDFB/CEO/1316/2015 dated 11thFebruary, 2015 and the new mandate;

xi) That on 27th April, 2015 the acting CEO Catherine Namuye, transferred Kshs. 64,654,789 to the account of Quorandum Limited vide her letter Ref. YEDF/CEO/1504/2015 dated 27th April,2015 leaving a new balance of Kshs. 219,815,054;

xii) That the total amount paid to Quorandum Limited is Ksh. 180,364,789 and not Kshs. 180,894,946 which is the total figure on the two letters, a difference of Kshs. 530,157;

xiii) That all these payments were fraudulent as there was no contract between YEDF and Quorandum Limited

xiv) That there was a conspiracy to defraud YEDF by the acting CEO Catherine Namuye, the Chairman Bruce Dominic Odhiambo and Mukuria Ngamau of Quorandum Limited

xv) That CEO Catherine Namuye made documents without authority by writing the two fund transfer letters without the authority of the board;

xvi) That the chairman Bruce Dominic Odhiambo and the then acting CEO Catherine Namuye made a document without authority by writing the letter to change signatory mandate without the authority of the board;

xvii) That Catherine Namuye, Bruce Odhiambo and Mukuria Ngamau jointly stole Kshs. 180,364,789 the property of Youth Enterprise Development Fund; and

xviii) That Ethics and Anti-Corruption Commission are also investigating this matter and had gotten possession of all the original documents which they subjected to forensic examination and issued a report.

Recommendations to ODPP

350. In view of the evidence contained in the file, the ODPP recommended that the case be merged with one opened by Ethics and Anti - Corruption Commission and the suspects be charged for the following offences among others recommended by EACC: -

COUNT ONE: Conspiracy to defraud contrary to Section 317 of the Penal Code

1. **Catherine Akello Namuye**
2. **Bruce Dominic Odhiambo**
3. **Mukuria Ngamau**

351. On unknown dates and place within the Republic of Kenya, jointly with others not before Court conspired with intent to defraud by falsely pretending that Quorandum Limited had done consultancy services on Information and Communication Technology for Youth Enterprise Development Fund.

COUNT TWO: Making a document without authority contrary to Section 357(a) of the Penal Code.

1. **Catherine Akello Namuye**

352. On or about the 11th February, 2015, while within Nairobi County, with intent to defraud, without lawful authority or excuse made a letter Ref. YEDFB/CEO/1316/2015 for the transfer of Kshs. 115,710,000 from the call deposit account of Youth Enterprise Development Fund to account No.0052075584001 of Quorandum Limited in Chase Bank purporting it to have been authorized by the Youth Enterprise Development Fund Board.

COUNT THREE: Making a document without authority contrary to Section 357(a) of the Penal Code.

1. **Catherine Akello Namuye**
2. **Bruce Dominic Odhiambo,**

353. On or about the 17th February, 2015 while within Nairobi County, with intent to deceive, without lawful authority or excuse made a letter Ref. YEDF/CEO/1339/2015 for the change of the signatories' mandate to the call deposit account of Youth Enterprise Development Fund in Chase Bank purporting it to have been authorized by the Youth Enterprise Development Fund Board.

COUNT THREE: Making a document without authority contrary to Section 357(a) of the Penal Code.

1. **Catherine Akello Namuye**

354. On or about the 27th day of April, 2015 while within Nairobi County, with intent to defraud, without lawful authority or excuse made a letter Ref. YEDFB/CEO/1504/2015 for the transfer of Ksh. 65,184,946 from the call deposit account of Youth Enterprise Development Fund to account No. 0052075584001 of Quorandum limited in Chase bank purporting it to have been authorized by the Youth Enterprise Development Fund Board.

COUNT FOUR: Stealing contrary to Section 268(a) as read with Section 275 of the Penal Code.

1. **Catherine Akello Namuye**
2. **Bruce Dominic Odhiambo**
3. **Mukuria Ngamau**
4. **Quorandum Limited**

355. On 23rd February, 2015 and 27th April, 2015 at Chase Bank in Nairobi within Nairobi County, jointly with others not before court stole a total of Kshs. 180,364,789 the property of Youth Enterprise Development Fund.
356. After investigations were complete, the duplicate inquiry file on the matter was forwarded to DPP for advice vide a letter CID/IB/SEC/4/3/1/VOL.VII/63 dated 5th May, 2016.
357. Among other recommendations were to merge the case with one opened by Ethics and Anti-Corruption Commission No. EACC/FI/INQ/118/15 and on receipt of their file.
358. The DPP vide his letter DPP/CAM/2/756 dated 13th May, 2016, addressed to the CEO EACC and copied to DCI sought to find out the status of the EACC file in order to make an informed decision.
359. On 22nd June, 2016, the DPP vide his letter ODPP/CAM/2/756 addressed to CEO, EACC and copied to DCI, forwarding copies of our duplicate inquiry file to CEO EACC, Director Asset Recovery Agency (ARA) and Commissioner General, Kenya Revenue Authority (KRA). In the letter he directed EACC to finalise investigations and submit their file to enable him make a holistic decision and avoid conflicting findings and recommendations by the two investigative agencies.
360. The DPP vide his letter ODPP/CAM/015/5/589 dated 23rd August, 2016 addressed to CEO EACC and copied to DCI acknowledged receipt of the EACC file which was submitted under cover of letter referenced EACC.6/27/2 VOL.X/(151) dated 8th July, 2016. In the letter returning EACC's duplicate inquiry file, the DPP was satisfied that there was sufficient evidence to sustain charges recommended by EACC. He directed that prosecution on the identified charges ensues and, in that regard, the ODPP and EACC teams meet to finalise on the charges and agree on the plea dates.
361. The suspects were arraigned before Court on 25th August, 2016 vide EACC Case No.148/20/2016 Court file No. 2518/2016.

362. Those charged were; -

1. **Catherine Akello Namuye**
2. **Bruce Dominic Odhiambo**
3. **Mukuria Ngamau**
4. **Doreen Waithera Ng'ang'a and**
5. **Quorandum Limited**

363. The charges preferred are: -

i) Conspiracy to commit an economic crime contrary to Section 47 (a) (3) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003;

ii) Unlawful acquisition of public property contrary to Section 45(1)(a) as read with Section 48(1) of Anti-Corruption and Economic Crimes Act No. 3 of 2003;

iii) Abuse of office contrary to Section 46 as read with Section 48(1) of Anti-Corruption and Economic Crimes Act No. 3 of 2003;

iv) Fraudulent making payment contrary to Section 45(2)(a)(iii) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003;

v) Making of false document contrary to Section 347(a) as read together with Section 349 of the Penal Code;

vi) Dealing with suspect property contrary to Section 47(1) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act.3 of 2003;

vii) The DCI wrote to the office of DPP and copied to CEO EACC our letter CID/IB/ECCU/SEC/4/4/1/VOL.XXIV/95 dated 28thSeptember, 2016 inquiring about the status of our inquiry file. In response, the DPP in his letter ODPP/CAM/2/756(9) dated 5th October, 2016 stated that he had directed EACC to merge their file with ours. EACC submitted the merged file with recommendations of charges to be preferred against the suspects. The DPP in his letter directed that since the suspects were charged with offences under the Anti-Corruption and Economic Crimes Act, 2003 vide the merged EACC file, there would be no need to file and/or proceed with the charges in our inquiry file which he returned vide the same letter.

364. The investigating officers had also engaged the Financial Reporting Centre and Asset Recovery Agency through letter referenced CID/IB/ECCU/SEC/4/4/1/VOL.XXII/121 dated 8th April, 2016 who responded through letters referenced FRC/CORR/35/04/2016 dated 18th April 2016 and OAG&DOJ/ARA/GEN/2014 dated 16th May, 2016. Affidavits were sworn at the Asset Recovery Agency for filing of a case for the recovery of the identified assets in this case.

13.6 Submissions by The Office of The Director of Public Prosecutions Regarding the Implementation Status of The Recommendations Contained in The Report of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund

365. Mr. Joseph Riungu Ag. Deputy Director in the Department of Economic Organized and International Crimes appeared before the Committee to adduce evidence on the implementation status of the recommendations contained in the Report of the Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund.

Implementation Status

366. The Committee was informed that:

Under the specific recommendations on various persons of interest, the Committee recommended the investigation, charging, and prosecution of the following for various offences.

i. **Catherine Akello Namuye**
ii. **Bruce Odhiambo**
iii. **Mukuria Ngamau**
iv. **Doreen W. Ng'ang'a,**
v. **Quorandum Limited**
vi. **Hillary Kiprono Yegon**

367. The DPP independently reviewed the inquiry file and made the decision to charge the above-mentioned persons and legal person were charged with various offences as follows:

Count I: Conspiracy to commit an economic crime contrary to Section 47(a) (3) as read with Section 48(1) of ACECA.

Count II: Unlawful acquisition of public property contrary to Section 45(1)(a) as read with Section 48(1) of ACECA.

Count III: Providing false information to the Committee.

368. Following the demise of the first and second accused persons, the DPP reportedly withdrew Counts V, VI, VII, VIII, IX, XII, XIII, and XIV. Eventually, R vs Catherine Akello Namuye (CEO) (Deceased), Bruce Odhiambo (Deceased), Mukuria Ngamau & Quorandum Limited was prosecuted by SPPC Evah Kanyuira- Head, Voi County in which a conviction was secured.

369. The ODPP submitted that they had implemented the Committee's Report by the prosecution of the accused persons and subsequently secured a conviction. We hereby attach the requisite charge sheets, judgment, and sentence. While the DPP found no evidence of money laundering aspect in the National Youth Council case and therefore did not prefer charges under the Proceeds of Crime and Money Laundering Act (POCAMLA), the office had recorded the following cases with charges under the Proceeds of Crime and Money Laundering Act (POCAMLA). The following are some of the notable ones:

1) ACC No. E011 of 2024 Republic -VS- Mzalendo Kibunja & 6 others.
2) ACC No. E012 of 2024 Republic -Vs- Mwangi Wa Iria & 9 others.
3) ACC No. E029 of 2021 Republic -Vs- Dunstone Indimuli & 5 others.
4) ACC No. 22 of 2019 Republic -vs- Ferdinand Waititu Babayao.

1. The office had also implemented the following measures under POCAMLA

a) Trainings

370. The office in collaboration with stakeholders and development partners reportedly organized several trainings on proceeds of crime and money laundering to enhance capacity. These are some of the trainings attended:

i) Training on the Prosecution of Economic Crimes, Anti-Corruption and Money Laundering held at Movenpick Hotel, Nairobi on Twelfth to 15th March, 2024. The training fully sponsored by USDOJ;

ii) Training on the Prosecution of Economic Crimes, Anti-Corruption and Money Laundering held in Kisumu on 12th -15th September, 2023;
iii) Training on the Prosecution of Economic Crimes, Anti-Corruption and Money Laundering held at Nakuru on 30th July 2023, sponsored by USDOJ;
iv) Training of Trainers on The Prosecution Economic Crimes Anti-Corruption, Money Laundering, Tax Related Offences and Asset Recovery, Great Rift Valley Lodge - Naivasha from 13th -17th February, 2023 sponsored by USDOJ;
v) Training on the Prosecution of Economic, Anti-Corruption and Money Laundering Held at Sarova Woodlands Hotel, Nakuru from 31st Jul to 3rd Aug 2023.

13.7 Submissions by The Asset Recovery Agency Regarding the Implementation Status of The Recommendations Contained in the Report of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund

371. Mr. Kennedy Ogwengo (Deputy Director, ARA) appeared before the Committee to adduce evidence regarding the implementation status of the recommendations contained in the Report of the Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund. He was accompanied by Ms. Faith Mercy Irari (Senior State Counsel, ARA), Mr. Nicholas Mutua (Staffer, ARA) Mr. Timothy Nderitu (Under Secretary, ARA) Ms. Esther Muchiri (Senior State Counsel, ARA).

372. The Committee was apprised on the following:

1. Recommendations to Government Entities and Agencies

373. The Public Investments Committee recommended that the Assets Recovery Agency (ARA) established under POCAMLA to deal with matters of proceeds of crime and money laundering is under-funded by the Government and had never been fully operationalized. The National Treasury and the Attorney General should ensure that the agency is adequately funded and fully operationalized to enable the institution adequately fulfil its legal mandate.

Status of Implementation of The Recommendation

374. The Committee was informed that the operationalization of the Assets Recovery Agency was ongoing. The Agency requires more funds to be fully operational.

375. The Public Investments Committee recommended the amendment of sections 23 and 24 of the Proceeds of Crime and Anti-Money Laundering Act to enable the tracking of proceeds of crime especially to the real estate sector in Kenya.

Status of Implementation of The Recommendation

376. The Committee on Implementation was informed that real estate agencies are categorized as part of the designated non-financial businesses or professions and are reporting institution under POCAMLA. Reporting institutions are obligated under POCAMLA to report suspicious or unusual transaction to Financial Reporting Centre.

2. Specific recommendations on various persons of interest namely;

i). Mr. Mukuria Ngamau, Director and shareholder of Quorandum LTD, The Committee recommended that the Director Assets Recovery Agency obtains an injunction against transfer of Duplex Apartment No. C16 at Duchess Park Apartments located along Hatheru Road, Lavington Nairobi. The said property having been purchased by Quorandum Limited from Duchess Park Limited using of Kshs. 180,364,789 from YEDF.

Status of Implementation of The Recommendation

377. The investigations conducted established that Kshs. 180,364,789 was unlawfully transferred from the Youth Enterprise Development Fund (YEDF) Bank account to (Quorandum Limited) bank account.
    i) The unlawful transfer of Kshs. 180,364,789 was facilitated by Ms. Catherine A. Namuye (now deceased), former acting Chief Executive Officer of YEDF, who unlawfully contracted Quorandum Limited to provide consultancies services without complying with procurement laws.
    ii) Quorandum Limited used part of the Kshs. 180,364,789 to purchase the Duplex Apartment No. C16 at a cost of Kshs. 48,500,000 from Duchess Park Development Company Ltd.
    iii) Following the findings of the investigations, the Agency instituted recovery proceedings in NRB Misc. App No 4 of 2017 Assets Recovery Agency –Vs- Quorandum Limited & Ezekiel Owuor for recovery of the Duplex Apartment No. C16.
    iv) The matter was determined and on 21st September 2018, the High Court rendered its judgement and declared the Apartment Number C16 as proceeds of crime and the same to be forfeited to the State.
    v) The Agency had also instituted recovery proceedings in NRB Misc. App No. E021 OF 2023 Assets Recovery Agency –vs- Quorandum Limited seeking forfeiture of Kshs. 1,075,083 traced in Quorandum Limited bank's account. The said amount is part of the funds fraudulently transferred from YEDF. The matter is pending determination in Court.
378. Mr. Mukuria Ngamau was charged with several counts in Criminal Case No. ACC 13 of 2016 namely;
    i) Unlawful acquisition of public property contrary to Section 45(1)(a) as read with Section 48(1) of the Anti-corruption and Economic Crimes Act
    ii) Conspiracy to commit an economic crime contrary to Section 47A (3) as read with Section 48(1) of the Anti-corruption and Economic Crimes Act.
    iii) Making of false document contrary to Section 347(a) as read together with Section 349 of the Penal Code.
    iv) The court found Mr. Mukuria culpable for the above offences and he was convicted.

ii). Ms. Catherine A. Namuye suspended AG CEO, YEDF

379. The Committee recommended that Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violations of provisions of Public Procurement and Disposal Act and Public Finance and Management Act.

Status of Implementation of The Recommendation

380. Ms. Catherine A. Namuye was charged with several counts namely:
    i) Conspiracy to commit an economic crime contrary to Section 47A as read with Section 48(1) of the Anti-corruption and Economic Crimes Act;
    ii) Abuse of office contrary to Section 46 as read with Section 48(1) of Anti-corruption and Economic Crimes Act;
    iii) Fraudulent making payment contrary to Section 45(2)(a)(iii) as read with section 48(1) of the Anti-corruption and Economic Crimes Act;

iv) Making of false document contrary to Section 347(a) as read together with Section 349 of the Penal Code

v) Dealing with suspect property contrary to Section 47(1) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act;

2. During the investigations, no assets in the name Ms. Catherine A. Namuye's were traced.

iii). Mr. Bruce Dominic Odhiambo, former YEDF Board Chairperson

381. The Committee recommended that Mr. Bruce Dominic Odhiambo to be investigated, charged and prosecuted for conspiracy to defraud YEDF. The Inspectorate of State Corporation was required to liaise with the Assets Recovery Agency to ensure recovery of Ksh. 1,034,014.65

Status of Implementation of The Recommendation

382. Mr. Bruce Dominic Odhiambo (now deceased) was charged with several counts namely:

i) Making of false document contrary to Section 347(a) as read together with Section 349 of the Penal Code;

ii) Abuse of Office contrary to section 46 as read with Section 48(1) of Anti-corruption and Economic Crimes Act;

iii) Dealing with suspect property contrary to Section 47(1) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act; and

iv) During the investigations, no funds were traced in Mr. Bruce Dominic Odhiambo's accounts.

Other Persons of Interest

383. The Committee recommended that Mr. Ezekiel Owuor to surrender the outstanding balance owed to Mr. Mukuria Ngamau to the Assets Recovery Agency.

Status of Implementation of The Recommendation

384. The investigations established that Mr. Mukuria Ngamau transferred Kshs. 8,800,000 to Mr. Ezekiel Owuor purportedly as a loan. Mr Ezekiel confirmed receiving the Ksh. 8,800,000 which he claimed was a loan to be paid back to Mr. Mukuria Ngamau.

385. The Agency instituted recovery proceedings in NRB Misc. App No 4 Of 2017 Assets Recovery Agency –Vs- Quorandum Ltd & Ezekiel Owuor for recovery of the Ksh. 8,800,000 from Mr. Ezekiel.

386. The matter was determined and the Court ordered that the Ksh 8,800,000 should be forfeited to the State. The Agency had recovered Ksh 1.1million out of the Ksh 8.8 and is pursuing recovery of the outstanding balance.

Committee on Implementation Observations

387. **The Committee made the following observations:**

i) That the funds the Asset Recovery Agency had recovered amount to Kshs 1.1million out of the Kshs 8.8 million from NRB Misc. App No 4 Of 2017 Assets Recovery Agency –Vs- Quorandum Limited & Ezekiel Owuor and is pursuing recovery of the outstanding balance;

ii) During the investigations, no funds were traced in Mr. Bruce Dominic Odhiambo's accounts - he is deceased; and

iii) That no assets in the name Ms. Catherine A. Namuye's were traced - she is now deceased.

Committee on Implementation Recommendation

388. **The Committee notes that the matter concerning charges and prosecution of the persons of interest had taken the full course of the law and the issues had been concluded.**

14 THE 19TH REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS, VOL. I REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF AGRICULTURAL FINANCE CORPORATION (AFC) FOR THE FINANCIAL YEARS 2003/2004 TO 2011/2012

14.1 Background

389. The Public Investments Committee examined the report of the Auditor-General on the audited accounts of the Agricultural Finance Corporation (AFC) for the financial years 2003/2004 to 2011/2012.

390. In its Report, the Public Investments Committee made the following recommendations on various audit queries.

i. On Consultancy Services: FY 2003/2004 Accounts

391. The Public Investments Committee Recommended that the Managing Director pursues the recoverability of the debt and report status of recovery to Parliament within six months after adoption of the Report.

ii. On Loan to Farmers: FYs 2004/2005 to 2005/2006 and 2009/2010 to 2011/2012 Accounts

392. The Committee recommended that: -

i) The Corporation puts in place measures to recover the debts and report status of recovery to Parliament in six months after adoption of this report.

ii) Debt recovery should be a target in the Performance Contract of the Managing Director for the Corporation so as to reduce the high debt portfolio and improve the performance of the Corporation.

iii. On Receivables and Repayments: FY 2004/2005 ACCOUNTS

393. The Public Investments Committee Recommended that:

i). The Corporation should recover fully the unremitted rent from Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge including identifying their properties or estate for attachment in the clearance of the debt.

ii). Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge and their associated companies be barred from transacting any business with any State Corporation as a result of their conduct in the management of AFC Development House Property.

iii). The Chief Executive Officer of the Board should give the Status report of the Court case to the Committee within three months of adoption of this report.

iv. On Land and Buildings: FYS 2008/2009TO 2011/2012 accounts

394. The Public Investments Committee recommended that:

i). The Corporation liaises with the National Land Commission for the expeditious issuance of the title documents and the revocation of titles irregularly allocated to third parties.

ii). The Ethics and Anti-Corruption Commission investigates the circumstances surrounding the irregular allocation of public land belonging to the corporation to third parties.

v. On Budgetary Control: FYS 2008/2009 TO 2010/2011 ACCOUNTS

395. The Public Investments Committee Recommended that: -

1. The EACC investigates the circumstances surrounding the over-expenditure of Kshs.32,127,000.00 by the Corporation without the parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act (Cap. 446);
2. The Director of Public Prosecutions institutes criminal proceedings against the then Managing Director, Mr. Omurende Iyadi and the General Manager Finance, Mr. Lawrence Bokoro who authorized the over-expenditure for:
   i) Over-expenditure of Kshs. 32,127,000.00 without parent Ministry and Treasury approval contrary to Section 12 of the State Corporations Act (Cap. 446); and
   ii) Abuse of office contrary to Section 101 of the Penal Code and Section 12 of the Public Officer Ethics Act, 2003.

vi. On Loan to Staff: FYS 2009/10 TO 2011/12 ACCOUNTS

396. The Public Investments Committee Recommended that the management recovers the loans to staff within six months of the adoption of the Report failure to which the then Ag. Managing Director, Mr. Lawrence Bokoro and the Chief Accountant, Mr. Francis K. Maritim are held accountable for the debt.

vii. On Loans to Farmers: Short Term Loans To 13 Farmers: FYs 2009/10 To 2011/12 Accounts

397. The Public Investments Committee Recommended that:

i) The EACC investigates the circumstances and the process of loan issuance to the farmers including the role of the officers of the Corporation and the Land Ministry with a view to recommending prosecution of those found culpable.
ii) The officers of the Corporation and Kapsabet Land Registry implicated in the fraud should be surcharged or money recovered from them and barred from holding public office.

14.2 Implementation Status of the recommendations

398. The Committee on Implementation wrote to the Agricultural Finance Corporation (AFC) on 18th April, 2024 seeking to be apprised on the implementation status of the Report.
399. Mr. George Kubai – Managing Director, AFC appeared before the Committee on 27th April, 2024 to adduce evidence on the implementation status of the resolutions of the Public Investment Committee's (PIC) 19th Report on consideration of the Auditor-General's Report on the financial statements of State corporations. He was accompanied by the following officers:

1. Mr. David Etale - Liaison Officer for Parliament,
2. Mr. Tom Akeno Okeyo - Chief Finance and Investment Officer,
3. Mr. Onsongo Cornelius - Head of Finance
4. Mr. Augustine Christopher Wasike - Finance.

14.3 Submissions by the Managing Director

400. The Committee was informed that:

On Reports of the Auditor-General relating to the Financial Statements of Agricultural Finance Corporation (AFC) for the financial years 2003/2004 to 2011/2012

401. The Managing Director, AFC, Mr. Lucas Meso accompanied by General Manager Finance, Mr. Ismail Guyo; Chief Accountant Mr. Akeno Tom; Accountant Mr. Michael Kibathi; Personal Assistant to the Managing Director Mr. Bonano Bulla and Assistant Director of Agriculture Mr. Eliud Kamau representing the Ministry of Agriculture, Livestock and Fisheries appeared before the Committee to adduce evidence on accounts of the Corporation for 2003/2004 to 2011/2012 Financial Years.

Consultancy Services: FY 2003/2004 Accounts

402. The Committee heard that in October 2003, the former Managing Director (Mr. George Omari Nyamweya) without Board's approval hired an ex-employee of the Corporation as a consultant to carry out a recruitment exercise at a cost of Kshs 1,546,000.00 to the Board. It is not clear how the consultant was identified and the fee determined without competitive tendering. Though the Corporation indicated that they had asked the Office of the President to assist in the recovery of the money, no evidence of the request was seen.

Management Response

403. The Managing Director, Agricultural Finance Corporation (AFC) informed the Committee that the Corporation had requested the Office of the President vide letter ref. AFC/MD/9.1.1 dated 13th June 2005 to assist in the recovery of Kshs 1,546,000.00 from the former Managing Director.

Committee Observation

404. The Committee observed that the recovery of the money paid to the consultant had taken too long.

Committee Recommendation

405. The Committee recommends that:

i). the Managing Director pursues the recoverability of the debt and report status of recovery to Parliament within six months after adoption of this Report.

406. The Committee was informed on Response on Current Status that in line with the Committee's recommendations, the corporation had undertaken several measures to recover funds from the former Managing Director. These measures include:

i) Requesting assistance from the Office of the President via our letter referenced: AFC/MD/9.1.1 dated 13 June 2005.

ii) In April 2016, the former Managing Director Mr. Lucas Meso and the board chairman Mr. Franklin Bett jointly met with Mr. George Omari Nyamweya and discussed the matter with him. However, Mr. Nyamweya denied the allegations as per his letter dated April 7, 2016, attached herewith and labelled PIC 48.1 (a).

iii) Further, the corporation had reported him to the Credit Reference Bureau for action.

407. Since this matter remains active with the inspectorate, we have once again requested for an update, recognizing its prolonged duration.

Overpayment of the Former Chief Executive: FY 2003/2004 Accounts

408. The Committee heard that the former Managing Director (Mr. George Omari Nyamweya) received a salary of Kshs 1,166,120 per month instead of the approved gross of Kshs. 347,720.00 resulting to an overpayment of Kshs 3,273,600.00 in 2003/2004 under review and no recovery so far had been made.

Management Response

409. The Managing Director, AFC informed the Committee that the Corporation sought the assistance of the Inspectorate of State Corporations to surcharge the irregular payments to the former Managing Director Mr. George Omari Nyamweya.

Committee Observation

410. The Committee observed that: -

i) The Corporation and Inspectorate of State Corporations had taken too long to recover the money.

ii) There was no evidence of any effort by the management to recover the money.

Committee Recommendation

411. The Committee recommends that:

i) the Corporation and the Inspectorate of State Corporations pursues the recoverability of the debt and report status of recovery to Parliament in six months after adoption of this Report.

Response on Current Status

412. Further to our previous correspondence herein resting with our letters dated 20th May 2004, 13th June 2005, 16th January 2008, 22nd September 2010 and the letter from the inspectorate dated 14th July 2005, we have once again through our letter ref: AFC/MD/9.1.1 reminded the inspectorate of the need to bring the matter to closure and sought any progress made on the matter noting that it had been outstanding for long.

Loan to Farmers: FYs 2004/2005 To 2005/2006 & 2009/2010 To 2011/2012 Accounts:

413. The Committee heard that recovery of large and small-scale loans had not significantly improved. The non-recovery of the loans had resulted in a very high bad and doubtful debts provision of Kshs 4,536,086,000.00.

414. The Managing Director, AFC informed the Committee that old loans that were advanced to farmers prior to January 2003 were waived by the Government. In order to recover the outstanding arrears, the Corporation established a Debt recovery unit to specifically follow up the non-performing portfolio.

Committee Observation

415. The Committee observed that:

i). despite the foregoing, and the establishment of the Debt Recovery Unit, little progress had been realized in the recovery of debts leading to a high bad and doubtful debts provision.

Committee Recommendations

416. The Committee recommends that: -

i). The Corporation puts in place measures to recover the debts and report status of recovery to Parliament in six months after adoption of the Report; and

ii). Debt recovery should be a target in the Performance Contract of the Managing Director for the Corporation so as to reduce the high debt portfolio and improve the performance of the Corporation.

Response on Current Status

417. The Committee was informed that:

1. Earlier reports shared with the Committee indicated that the recovery of both large and small-scale loans issued before January 2003 had not shown improvement, resulting in the substantial loan provisions of Kshs 4,536,086,000 for bad and doubtful debts. Consequently, to address this issue, AFC established a dedicated debt recovery unit responsible for handling non-performing loan portfolios.
2. Clear recovery targets were outlined in performance contracts as recommended aimed at reducing the high debt levels and enhancing portfolio performance.
3. Additional measures have been implemented to recover the outstanding balances, including the engagement of a reputable debt collector to bolster recovery efforts.
4. As a result of these initiatives, AFC had seen a significant reduction in outstanding debts and associated loan provisions.
5. As of 31st March 2024, delinquency levels had dropped to 17%. The trend analysis from the audited accounts over the past five years is outlined below: -

Trends on Loan Provisioning					
Item/FY	2011/12 (B/f)	2019/20	2020/21	2021/22	2022/23
	Kshs '000'	Kshs '000'	Kshs '000'	Kshs '000'	Kshs '000'
Portfolio Size	6,657,542	9,347,368	9,783,128	9,892,054	10,323,339
Loan Provisions	4,536,086	455,409	475,964	447,530	334,584

Receivables and Repayments: FY 2004/2005 Accounts

418. The Committee heard that included in the receivables and prepayments balance of Kshs 101,224,000.00 is an amount of Kshs 51,150,596.00 in respect of auctioneers' fees and advertisement charges which had remained outstanding for a long time. Also, included is rent accrual of Kshs 40,018,000.00 in respect of Development House out of which Kshs 21,882,000.00 relate to the year 1999 and earlier. It's not clear why management had not taken adequate measures to recover.

Management's Response

419. The Managing Director, AFC informed the Committee that the Corporation had made a provision in respect to the outstanding auctioneer's fees and advertising charges given that the recoverability was doubtful. The rent arrears for Development House amounting to Kshs. 40 million consisted of arrears which related to the period prior to the 1998 bomb blast when most of the tenants vacated the building without clearing their debts. The Committee was further informed that the rent collector M/s Lustman & Company Ltd owned by Esther Mathenge and Natalie Njanja Mathenge defaulted in remitting rent to the Corporation to the tune of Kshs.6 million as at the time of termination of contract. The corporation sued the agent for recovery of the unremitted rent. The corporation had since engaged the firm of Nyaencha & Company Advocates to take over the matter to its logical conclusion. A new property manager had since been employed.

Committee Observation

420. The Committee observed that; the unremitted rent by Ms. Esther Mathenge and Ms. Natalie Nyanja Mathenge is still outstanding and that the matter is currently in Court.

Committee Recommendations

421. The Committee recommends that: -

i) The Corporation should recover fully the unremitted rent from Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge including identifying their properties or estate for attachment in the clearance of the debt.

ii) Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge and their associated companies be barred from transacting any business with any State Corporation as a result of their conduct in the management of AFC Development House property.

iii) The Chief Executive Officer of the Corporation should give the status report of the Court case to the Committee within three months of adoption of the Report.

Response on Current Status

422. As previously reported, the receivables balance included rent arrears totalling Kshs 6,586,753 for Development House Building, pertaining to the period prior to the 1998 bomb blast, during which period many tenants vacated the premises while owing outstanding debts.

423. In line with the Committee's recommendations, AFC instituted a legal suit against the agent to recover the unremitted rent, with the assistance of Nyaencha and Company Advocates. Subsequently, the defendant filed an application seeking arbitration, which was duly considered and our application ultimately dismissed.

424. Dissatisfied with this decision, AFC instructed the aforementioned law firm to review the case and filed another application for reinstatement of the suit. Unfortunately, this application was equally dismissed on 29th May, 2015.

Land and Buildings: FYs 2008/2009 To 2011/2012 Accounts

425. The Committee heard that the land and buildings include 20 developed plots, all of which the respective title deeds were not availed for audit review. It was further noted that five other undeveloped and unvalued plots had been re-allocated to third parties.

426. In the absence of ownership documents for the land as indicated above, it had not been possible to confirm the accuracy of the land and buildings balances of Kshs 356,129,000.00

427. The Managing Director, AFC informed the Committee that the Corporation had with the support of the board intensified its efforts in pursuing the ownership documents, and currently the title deeds have been obtained for land in Bungoma, Garsen, Iten, Meru and Bomet. The Corporation had written letters to respective counties and the National Land Commission to follow up on the land irregularly re-allocated to third parties.

Committee Observation

428. The Committee observed that; the corporation did not have ownership documents for some of its properties (land) and that some of the pieces of land had been irregularly allocated to private developers.

Committee Recommendations

429. The Committee recommends that: -

i) The corporation liaises with the National Land Commission for the expeditious issuance of title documents and the revocation of titles irregularly allocated to third parties; and

ii) The Ethics and Anti-Corruption Commission investigates the circumstances surrounding the irregular allocation of public land belonging to the corporation to third parties.

Response on Current Status

430. The Committee was informed that substantial progress had been made in pursuit of the AFC titles as evidenced by the attached correspondence from the National Land Commission labelled PIC 48.5 (a) to (d).

431. The Corporation had since secured the title deeds for Iten town, parcel No. 176, Bungoma, Kisumu and Molo. They had also extended the lease for Bomet Parcel LR No 8939/32 which had expired in January 1990. The lease was extended for a term of 66 years.

432. Further, the corporation informed the Committee that they were in communication with the National Land Commission and the Ministry of Lands with a view of getting title deeds for Kimilili and Busia plots.

433. As previously explained, the Nanyuki and Kerugoya plots were repossessed by the respective County Governments due to failure by the corporation to develop them within the stipulated time. The Kerugoya Plot had since been developed by the Judiciary.

434. Similarly, the Chogoria plot had been developed by Meru South Co-operative Union, and a building named Mwalimu Sacco Plaza erected.

435. To facilitate investigation by the EACC, the corporation through various correspondence followed up on the matter as recommended by the Committee. In addition, the corporation lodged a caution against the said parcel of land to forestall unauthorized access.

Budgetary Control: FYs 2008/2009 To 2010/2011 Accounts

436. The Committee heard that during the year under review, the corporation incurred an expenditure of Kshs.32,127,000.00 over and above the budgetary provisions for the year in nine expenditure items.

437. Although the management had explained that the over expenditure was subsequently considered and approved by the Ministry of Agriculture, Livestock and Fisheries and the Treasury together with the 2009/2010 FY estimates, no evidence supporting this was produced for audit verification.

Management Response

438. The Managing Director admitted that the payment was un-procedurally done and that Treasury and parent Ministry approval should have been sought.

Committee Observation

439. The Committee observed that; the Corporation incurred an over-expenditure of Kshs.32,127,000.00 without parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446

Committee Recommendations

440. The Committee recommends that:

i) The EACC investigates the circumstances surrounding the over-expenditure of Kshs.32,127,000.00 by the Corporation without parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act (Cap. 446); and

ii) The Director of Public Prosecutions institutes criminal proceedings against the then Managing Director, Mr. Omurende Iyadi and the General Manager Finance, Mr. Lawrence Bokoro who authorized the over-expenditure for:

a) Over-expenditure of Kshs. 32,127,000.00 without parent Ministry and Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446; and

b) Abuse of office contrary to Section 101 of the Penal Code and Section 12 of the Public Officer Ethics Act, 2003.

Response on Current Status

441. The Committee was informed that indeed, the Corporation had incurred expenditure over and above the budgetary provisions in the year under review and was in breach of the law. They however committed to adhere to the approved budget estimates henceforth in order to comply with the law.

Cash and Branch Collection Accounts: FYs 2009/2010 To 2011/2012accounts

442. The Committee heard that branch collection account balance included long outstanding un-reconciled items relating to remittances and receipts which had been outstanding since 2003. Thika, Narok and Kisumu collection accounts contained an un-reconciled figure of Kshs 234,000.00, Kshs 1,860,000.00 and Kshs 672,000.00 respectively, recorded as fraud committed by employees. A banker's order of Kshs. 410,600.00 during the Financial Year under review(2008/2009) was also fraudulently channelled to an ineligible account in Kisumu.

443. The Managing Director, AFC informed the Committee that the long outstanding un-reconciled items relating to remittances and receipts have since been identified and cleared.

444. The un-receipted credits in Thika, Kisumu and Narok branches had since been receipted to clients' accounts. The ex-staff who was responsible for the fraudulent transaction was reported to the police and after investigations were completed, criminal proceedings commenced.

445. The case was determined and the accused acquitted. The corporation also managed to recover Kshs 213,500.00 from the client.

Committee Observation

446. The Committee observed that; the corporation did not have in-house fraud prevention, detection and handling mechanisms thereby resulting in loss of public funds.

Committee Recommendations

447. The Committee recommended that:
    i) The corporation puts in place stringent mechanisms to prevent, detect and handle fraud; and
    ii) The EACC investigates the circumstances surrounding the fraud and the conduct of the then Managing Director, Mr. Omurende Iyadi, and General Manager – Finance, Mr. Lawrence Bokoro, that resulted in the loss of public funds in the accounts department and recommend prosecution for those found culpable.

Response on Current Status

448. The Committee observed that the Corporation did not have adequate in-house fraud prevention, detection and cash handling mechanism that resulted to the loss of public funds. On the basis of this observation, the Committee recommended that stringent mechanisms to avert similar frauds and other related risks be put in place. Consequently, the Corporation in accordance with the recommendations of the Committee instituted the following measures:
    i) Establishment of a controls and compliance section in charge of treasury management and internal controls;
    ii) Procurement of a robust banking system with higher capabilities on cash handling; and
    iii) Functional areas within our operations were segregated to facilitate maker checker transaction oversight.

Loan to Staff: FYs 2009/2010 To 2011/2012 Accounts

449. The Committee heard that Kshs. 40,241,000.00 owed by ex-staff, is in respect of house loans, car loans and staff advances. The corporation did not however clarify why the amount could not be offset against the final dues of the affected staff.

450. The Managing Director, AFC informed the Committee that the corporation had instituted various recovery measures including repossessing and disposal of motor vehicles, tracing staff and involving their current employers to recover the money and as a last resort taking legal action where other recovery measures have failed.

Committee Observation

451. The Committee observed that;
    i). The recovery of loans to staff had taken long and little effort had been undertaken by the management to recover the loans as indicated by the low level of recovery.

Committee Recommendation

452. The Committee made the following recommendation;
    i). That the management recovers the loans to staff within six months of the adoption of the Report failure to which the then Ag. Managing Director, Mr. Lawrence Bokoro and the Chief Accountant, Mr. Francis K. Maritim are held accountable for the debt.

Response on Current Status

453. The Committee heard that AFC had put in place mechanisms to recover loans advanced to staff. The outstanding ex–staff loan balances as at 30th June 2012 was Kshs 40,241,104.60 held by 32 ex- employees. He noted that the recovery efforts put in place had seen outstanding balance reduce drastically to Kshs 9,506,125.14 to date. The outstanding balances are made up of the following accounts which the Corporation continues to pursue:

454. The list of the accounts with outstanding balances are as indicated below:

Name	Loan Type	Balances as at 30.06.2012 Kshs	Balances as At 23.04.2024 Kshs	Status	Reference
Paul Muthini Kisio	House Loans	838,547.85	0.00	Repaid	PIC 48.8 (a)
Cyril Wayongo	Car Loans	244,031.00	315,636.79	Matter in court, case no. Milimani MCCC/6193/2009. The security already disposed	
Michael Goa	Car Loans	424,971.15	575,223.16	Case handed over to an external debt collector	PIC 48.8 (b)
Michael Goa	House Loans	5,577,747.15	7,928,597.51	The security was sold but it did not fetch enough money. Case handed over to an external debt collector	PIC 48.8 (b)
Cyril Wayongo	Personal Advances	254,088.20	255,315.93	Matter in court, case no. Milimani MCCC/6193/200. The security already disposed	
Mary Onyango	Car Loans	1,154,592.10	0.00	Account closed	
David Wekesa Khaemba	House Loans	1,729,147.20	0.00	Repaid	PIC 48.8 (c)
Francis Nyomboi Kigen	House Loans	1,885,450.10	0.00	Repaid	PIC 48.8 (d)
Wangui	Personal	271,816.95	199,682.96	There is an active	

Mwaniki	Advances			suit in court. Case number SCCCOMM/E6365/2023 Citation: AFC Vs Wangui Mwaniki. "	
George O Nyamweya	Personal Advances	224,292.50	231,668.79	Case handed over to an external debt collector	PIC 48.8 (b)
Total					

Loan to Farmers: Short Term Loans To 13 Farmers: FYs 2009/2010 To 2011/2012

Accounts:

455. The Committee heard that the balance of short-term loans to customers' of Kshs.2,980,347.00 includes an amount of Kshs.22,661,000.00 advanced to 13 farmers in Kapsabet. The Corporation advanced the amount against various collaterals in form of title deeds which appeared to be fraudulent.

Management Response

456. The Managing Director, AFC informed the Committee that the Corporation disbursed loans to the farmers in Kapsabet in accordance with the AFC policies. Farmers provided title deeds which were, on the face of it, genuine and confirmed through official searches in the land registry. The corporation later learnt that the titles given as security were fraudulent. The fraud was perpetuated with the connivance of the officials at the local land registry at Kapsabet. This matter was reported to the DCI office at Kapsabet for investigation.

Committee Observations

457. The Committee observed that:

i) The Corporation failed to undertake proper due diligence and did not put in place measures to ensure loans advanced were properly secured; and

ii) There was probable collusion between the farmers, employees of AFC and the land registry to defraud the Corporation.

Committee Recommendations

458. The Committee recommends that:

i) The EACC investigates the circumstances and the process of loan issuance to the farmers including the role of the officers of the Corporation and the Land Ministry with a view to recommending prosecution of those found culpable; and

ii) The officers of the corporation and Kapsabet Land Registry implicated in the fraud should be surcharged or money recovered from them and barred from holding public office.

Response on Current Status

459. The Corporation filed six (6) cases against the fraudsters, namely Eldoret HCC No 100, 102, 103, 104, 105 & 106 of 2011. Judgment was entered in favor of the corporation and decrees accordingly extracted.

460. Warranties were issued and the process of execution initiated. The Corporation reported that it was pursuing the properties of the 6 fraudsters for attachments and recovery. The corporation had fully provided for these cases in our accounts.

461. The Corporation had been seeking to enforce the judgement relying heavily on the Director of Criminal Investigations (DCI) because they have the machinery to pursue and apprehend the fraudsters. This being an active matter with the office of the Director of Criminal Investigation, the Corporation vide a letter dated 28th November, 2022 sought the investigation report from the DCI detailing the current status which had not been responded to.

Payables and Accruals: FYs 2009/2010 To 2011/2012 Accounts

462. The Committee heard that Payables and Accruals balance of Kshs.599,431,000.00 includes loan drafts outstanding balance and a Sundry Creditors' General balance which have not been supported with the relevant documents.

Management's Response

463. The Managing Director, AFC informed the Committee that the balances were carried forward during conversion from the Loan Accounting System to the new Equinox Banking system in 2007. These balances have since been identified and cleared.

Committee Observations

464. The Committee observed that: -

i) The Corporation's outstanding balances were as a result of the conversion of the Loan Accounting System to the new Equinox Banking system.

ii) The corporation did not appreciate the effects nor provide for safeguards for the conversion.

Committee Recommendation

465. The Committee recommends that the corporation should carry out due diligence while carrying out changes in its system and to provide for safeguards for the conversion.

Response on Current Status

466. As per the Committee's recommendations, the corporation put in place the following safeguards and measures to ensure seamless transitions during system change overs with minimal disruptions on operations and customer service:

i) Development of a detailed project plan outlining all aspects of the system changeover, timelines and milestones;

ii) Conducting of a thorough risk assessment to identify potential risks associated with the changeover process;

iii) Conducting of a thorough evaluation of the vendor's capabilities, track records and reputation;

iv) Development of a robust data migration plan to ensure complete data transfer;

v) Prior to changeover, extensive data tests are necessary to identify any issues and bugs;

vi) Robust security measures are put in place to protect sensitive customer data during the changeover;

vii) Conducting of a thorough risk assessment to identify potential risks associated with the changeover process;

viii) Conducting of a thorough evaluation of the vendor's capabilities, track records and reputation;

ix) Development of a robust data migration plan to ensure complete data transfer;

x) Prior to changeover, extensive data tests are necessary to identify any issues and bugs; and

xi) Robust security measures are put in place to protect sensitive customer data during the changeover. The Committee commended Agricultural Finance Corporation for receiving Unqualified Accounts in the FYs 2006/2007 and 2007/2008.

Committee on Implementation Observations

467. **The Committee made the following observations:**

i) **The recoverability of Kshs 4,536,086,000.00 lent to farmers in the FYs 2004/2005 to 2005/2006 & 2009/2010 to 2011/2012 remains in doubt unless a radical recovery strategy is used; and**

ii) **There are issues of concern in the report that require input from the EACC including the alleged collusion between farmers and officials of the Lands Registry in Kapsabet to produce questionable land title deeds that were then used to secure loans from the Corporation.**

Committee on Implementation recommendations

468. **The Committee made the following recommendations:**

i) **Recognizing that AFC had a cardinal role to play in Kenya on food security, the economy and employment opportunities, all measures necessary should be undertaken to ensure AFC does not fail.**

14.3 Submissions from the Inspectorate of State Corporations Concerning the Implementation Status of the Resolutions of the Public Investment Committee's (Pic) 19th Report on Consideration of the Auditor-General's Report on The Financial Statements of State Corporations (Agricultural Finance Corporation (AFC)

469. Mr. James Mungai Warui the, then Ag. Inspector-General of State Corporations, appeared before the Committee to adduce evidence on the implementation status of the resolutions of the Public Investment Committee's (PIC) 19th Report on consideration of the Auditor-General's Report on the financial statements of State Corporations (Agricultural Finance Corporation (AFC). He was accompanied by Ms. Nanjala B. Christine and Ms. Grace Mwaniki.

Implementation Status

470. The Committee was informed that as per the resolutions of the Public Investment Committee's (PIC) 19th Report on consideration of the Auditor-General's Report on the financial statements of State Corporations (Agricultural Finance Corporation (AFC), the Inspectorate (Corporations) was to:

i) Pursue the recoverability of Kshs. 3,273,600 from the former Managing Director, Mr. George Omari Nyamweya, who had received a salary of Kshs. 1,166,120 per month instead of the approved gross of Kshs. 347,720 resulting to an overpayment in the FY 2003/2004; and

ii) Surcharge an amount Kshs. 22,661,000 which had been advanced to 13 farmers in Kapsabet against fraudulent collateral in the form of title deeds. The amount was to be recovered from officers of the corporation and of Kapsabet Land Registry found culpable after investigations by the Ethics and Anti-corruption Commission (EACC).

471. The Committee was informed that the Inspector-General (Corporations) was not able to implement the recommendations of the 19th PIC Report because of the following reasons:

i) The Office of the Inspector-General (Corporations) had over the years suffered from chronic underfunding of its operations. Consequently, the department is beset by inadequate human and financial resources as well as other facilities. This had adversely impacted Inspectorate of State Corporation's ability to effectively discharge its statutory mandate;

ii) The power of the Inspector-General (Corporations) to surcharge as stipulated in Section 19 of the State Corporations Act had lain dormant from the year 2014 following the inquorate membership of the State Corporations Appeals Tribunal (SCAT). SCAT is a statutory body established under Section 22 of the State Corporations Act to consider and determine appeals from individuals aggrieved by the decision of the Inspector General (Corporations) to surcharge; and

iii) The Office of the Inspector-General (Corporations) had for the most part since the year 2014 not been duly filled either substantively or in acting capacity thereby legally compromising its ability to operate.

Way forward

iv) The Office of the Inspector-General (Corporations) had embarked on efforts to revamp its operations with the primary aim of effectively and efficiently discharging its constitutional mandate.

v) The Executive had since appointed the chairperson and members of the State Corporations Appeals Tribunal (SCAT). This will strengthen the capacity of the Inspector-General (Corporations) to take a more proactive role in combating corruption and misappropriation of public funds in state corporations given his statutory mandate is to surcharge.

Committee on Implementation observations

472. **The Committee observed that;**

i) Officials of the Inspectorate of State Corporations have mostly been in acting capacity;

ii) The Inspectorate status (acting) for officials is hindering effective oversight since an acting Inspector-General cannot surcharge;

iii) There exists a gross underfunding and understaffing within the Inspectorate which hampers service delivery and effective oversight; and

iv) Having nineteen (19) officers of the Inspectorate to inspect 300 state corporations is a daunting task that results in ineffective service delivery.

Committee on Implementation Recommendations

473. **The Committee recommends that within sixty (60) days upon tabling and adoption of this report, the relevant appointing authority should ensure that officials of the ISC are in substantive appointive positions and not acting capacity which curtails service delivery. This is more evident especially when enforcing matters such as surcharging individuals involved in financial malpractices.**

15 THE IMPLEMENTATION STATUS OF THE 13TH REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE (SFAC) ON STATUS OF THE EQUALIZATION FUND

15.1 Background

474. The Special Funds Accounts Committee examined the Reports of the Equalization Fund as contained in the 13th Report.

Allocations to the Equalization Fund

475. The Special Funds Accounts Committee recommended that the Cabinet Secretary in charge of the National Treasury expedites allocation of funds to the Equalization Fund as provided in the Constitution.

Implementation of Projects

476. The Special Funds Accounts Committee recommended that the Equalization Fund ensures approved and incomplete and/or stalled projects are fully implemented. This will ensure that mitigation measures towards improving quality of life to the citizens in the marginalized areas are realized as envisaged in the Constitution.

Administration of the Equalization Fund

477. The Special Funds Accounts Committee recommended that an amendment to the Public Finance Management (Equalization Fund Administration) Regulations, 2021 expressly provide for the person to be appointed as the Fund Administrator and the Accounting Officer of the Equalization Fund Advisory Board.

Representation to the Equalization Fund Advisory Board

478. The Special Funds Accounts Committee recommended that the Equalization Fund Advisory Board adequately facilitates representatives of Parliament through provision of functional physical offices at the Equalization Fund Advisory Board secretariat. This is to ensure that the representatives are reachable to Members of Parliament and resolve issues of concern to their representatives; and each House of Parliament to provide liaison services with representatives at the board for effective resolution of concerns that may arise from Members.

15.2 Implementation Status of the recommendations

479. The Committee on Implementation wrote to the Principal Secretary, The National Treasury and Chief Executive Officer, Equalization Fund Advisory Board on 31st January 2024 seeking the implementation status of the 13th Report of the Special Funds Accounts Committee (SFAC) on the status of the Equalization Fund.

480. Mr. Samson Wangusi, CBS the Principal Administrative Secretary, National Treasury and Mr. Guyo Boru, Chief Executive Officer, Equalization Fund Advisory Board appeared before the Committee on 10th February, 2024. The following officers accompanied them:

1. Ms. Isabella Kogei, FA, CPA - Director Parliamentary Affairs National Treasury
2. Ms. Emily Muema - Economist, Equalization Fund
3. Mr. Kennedy Otieno - Liaison Officer, Equalization Fund

15.3 Submission by the Chief Executive Officer

1. Actual Transfers to the Fund as at 31st January, 2024 Vis a Vis the Total Summary Entitlement of the Equalization Fund

481. The Committee was informed that:

i) In the first three financial years after its establishment i.e., 2011/12, 2012/13 and 2013/14, the Equalisation Fund had no allocation since the first policy identifying the marginalized areas had not been developed by the CRA;

ii) The total entitlement to the Fund since inception is **Kshs. 62,403,758,050.** The total allocation to the Fund (approved by Parliament) since inception is Kshs. **33,597,717,433.** Out of this, **Kshs.12,400,000,000** was appropriated through the Equalisation Fund Appropriation Act 2018;

iii) Out of the outstanding **Kshs 21,197,717,433, Ksh.10,330,317,433** had been appropriated through the Equalisation Fund Appropriation Act 2023 being EF allocation for FY 2021/22 (Kshs 3,261,843,222) and FY 2022/23 (Kshs 7,068,474,211) and outstanding balance of Kshs. 10,867,400,000 considered in Equalisation Fund Appropriation Bill, 2023 currently in the legislative process;

iv) However, the amount appropriated in the Equalisation Fund Appropriation Act 2023 **Kshs.10,330,317,433** being EF allocation for FY 2021/22 and FY 2022/23 was not transferred to the Equalisation Fund since the allocation was reduced to zero during the Supplementary budget of 2022/2023 FY. Therefore, the total arrears entitled to Equalisation Fund amount to Kshs. 39,136,358,050 (Kshs. 28,806,040,617+ Kshs.10,330,317,433);

v) It is important to note that the FY 2023/24 allocation of Kshs. 10,867,400,000 will be applied to implement Equalisation Fund Appropriation Act 2023;(need to confirm status of Bill)

482. The table below tabulates the total entitlement to Equalization Fund and the Allocation approved by Parliament since inception to the FY 2023/2024.

Table 1: Equalisation Fund Entitlement and Allocation since Inception

S/N.	Financial Year	Most recent audited revenues approved by the National Assembly		Equalization Fund Allocation (Kshs.)	Equalization Fund Entitlement (0.5% of most recent audited and approved revenues) (Kshs.)	Amount Reflected in the DORA
		Base Year for most recent audited revenues approved by National Assembly	Audited and approved revenues by National Assembly (Kshs.)			
	(a)	(b)	(c)	(d)	(e)	
1)	2011/12	2008/2009	468,151,970,000	0	2,340,759,850	0
2)	2012/13	2009/2010	529,300,000,000	0	2,646,500,000	0

3)	2013/14	2009/2010	529,300,000,000	0	2,646,500,000	0
4)	2014/15	2009/2010	529,300,000,000	400,000,000	2,646,500,000	3,400,000,000
5)	2015/16	2012/2013	776,900,000,000	6,000,000,000	3,884,500,000	6,000,000,000
6)	2016/17	2013/2014	935,653,000,000	6,000,000,000	4,678,265,000	6,000,000,000
7)	2017/18	2013/2014	935,653,000,000	0	4,678,265,000	7,727,000,000
8)	2018/19	2013/2014	935,653,000,000	0	4,678,265,000	4,700,000,000
9)	2019/20	2014/2015	1,038,035,000,000	0	5,190,175,000	5,760,000,000
10)	2020/21	2016/2017	1,357,698,000,000	0	6,788,490,000	6,788,490,000
11)	2021/22	2016/2017	1,357,698,000,000	3,261,843,222	6,788,490,000	6,825,317,433
12)	2022/23	2017/2018	1,413,694,840,000	7,068,474,211	7,068,474,200	7,068,474,211
13)	2023/24	2019/2020	1,673,715,000,000	10,867,400,000	8,368,574,000	8,368,574,000
GRAND TOTAL			**12,480,751,810,000**	**33,597,717,433**	**62,403,758,050**	**62,637,855,644**

483. The National Treasury committed to pay the arrears as follows:

Table 2. Proposed Plan on Appropriation of Equalization Fund Arrears

Financial Year (A)	Budget Estimates (B)	Equalization Fund Arrears (C)
2023/24	8,368,574,000	-
2024/25	8,368,574,000	9,976,766,000
2025/26	9,590,000,000	9,976,766,000
2026/27	10,960,000,000	9,976,766,000
2027/28	14,393,000,000	9,976,766,000
Grand Total	**51,680,148,000**	**39,907,064,000**

Committee's Observation

484. The Committee observed that;

i). there was need for impact assessment done to determine the efficacy of the Equalization Fund projects and programmes in Kenya.

2. Progress of Implementation of First Marginalization Policy Projects

485. The Committee was informed that:

i) as a pre-condition to the utilization of the Equalisation Fund, Article 216(4) of the CoK requires that the Commission on Revenue Allocation (CRA) determines, publishes and regularly reviews a policy in which it sets out the criteria by which to identify marginalized areas for purposes of Article 204 (2);

ii) The First Marginalization Policy was developed in 2013 and was approved by Parliament in December 2014;

iii) Based on the triangulation of data, fourteen (14) counties were identified as marginalized and have since benefited from the Fund;

iv) Since inception to November 2019 the EF was administered ***directly*** through the nullified Guidelines published in 2015. During this period the First Policy was implemented directly by the National Government through Ministry Department Agencies;

v) However, the implementation of the First Marginalisation Policy stalled due to the High Court ruling on Petition no. 272 of 2016 which declared the EF Guidelines as unconstitutional, null and void. This in effect disbanded EFAB and barred any further expenditure from EF hence delay in completion of the projects;

vi) In order to ensure completion of ongoing projects under the first Marginalisation Policy, Regulation 3(d) of the Equalisation Fund Regulations, 2021 provides for completion of projects;

vii) As at 31st January, 2024, and based on submission from MDAs, a total of 354 projects were financed by allocation to the Equalisation Fund for the FYs 2014/15, 2015/16 & 2016/17 as appropriated through Equalisation Fund Appropriation Acts 2017 and 2018;

viii) The projects are at different stages of implementation. Out of the 354 projects:

a) 189 projects are 100% complete and ready for handover
b) 87 projects between 75% and 99%
c) 25 projects between 50% and 74%
d) 28 projects below 50%
e) 24 projects in inception stage
f) 1 project Stalled.

ix) The details of each project for each of the **14 counties** is as per Equalisation Fund Appropriation Act 2018 and submissions by implementing MDAs.

Table 3: First Marginalization Policy Equalization Fund Projects

Implementing MDA	No. of Projects	Inception	Stalled	<50 %	50%-74%	75%-99%	100% Completed
Ministry of Health	84	11	1	5	9	51	7
State Department for Infrastructure, through KERRA	84	6	0	12	1	6	59
State Department for Irrigation	30	0	0	0	1	10	19
Ministry of Water and Sanitation	122	1	0	9	14	18	80
State Department for Technical and Vocational Training	4	3		1	0	0	0
State Department for Early Learning Basic Education	10	3	0	0	0	2	5
Ministry of Energy	20	0	0	1	0	0	19
Total	**354**	**24**	**1**	**28**	**25**	**87**	**189**

x) The completion of all the First Policy projects had been ongoing and the Fund expected the implementing MDAs to conclude implementation by end of the 2023/2024Financial Year.

Disbursements from the Equalization Fund to date

486. Based on the Equalization Fund Appropriation Act 2018 which appropriated Kshs.12,400,000,000, the National Treasury had to date disbursed a total of Kshs. 10,956,075,433 in various FYs to the MDAs implementing the identified projects in the 14 marginalized counties as shown below:

Table 4: Total Disbursements from the Equalization Fund as at 31st January, 2024

No.	Financial Year	Amount in Kshs
1.	2016/17	942,313,944
2.	2017/18	6,937,847,293
3.	2018/19	2,466,411,814
4.	2022/23	585,228,546
5.	2023/24	24,273,836
	TOTAL	**10,956,075,433**

Table 5: Disbursements from the Equalization Fund to Specific Implementing MDAs from FY 2018 to Date

No.	Ministry	Amount Disbursed (Kshs.)
1	State Department for Medical Services	**1,803,199,253**
2	State Department for Technical, Vocational Education and Training	**160,499,975**
3	State Department for Transport	**3,791,095,723**
4	State Department for Energy	**556,450,000**
5	State Department for Irrigation	**1,082,284,823**
6	State Department for Water and Sanitation	**3,562,545,659**
	Total	**10,956,075,433**

487. Out of the total allocation for the Equalisation Fund Appropriation Act 2018, Kshs.12,400,000,0000, Kshs.11,971,837,433 was development expenditure. The total disbursed to implementing MDAs is Kshs. 10,956,075,433. Therefore, the amount due for payment of pending bills and the completion of ongoing projects is Kshs.1,015,761,637;

488. The disbursement to the implementing MDAs is subject to provision of payment certificates, project implementation status report and approved works.

Committee Observation

489. The Committee observed that there was still need for impact assessment to be carried out to determine the efficacy of the Equalization Fund projects and programmes in Kenya.

3. Progress of Amendment to the Public Finance Management (Equalization Fund Administration) Regulations, 2021 for the Appointment of the Fund Administrator and Accounting Officer of the Equalization Fund Advisory Board

i) Section 18 (1) of the Public Finance Management Act 2012 provide that the National Treasury shall administer the Equalisation Fund in accordance to Article 204 of the Constitution. Additional, Section 24 (5) provide that the Cabinet Secretary National Treasury to designate a person to administer every national public fund established under Section 24 (4);

ii) In view of the above, the CEO Equalisation Fund was appointed by the Cabinet Secretary National Treasury as the administrator of the Fund;

iii) However, Regulation 20 (i) of the Public Finance Management Act Regulations 2015 provide that the accountant-General Department shall be responsible for administering the Consolidated, Equalization and Contingencies Funds; and

iv) It is important to note that currently there are two Bills which are in different stages of legislation process before Parliament.

a) The Equalization Fund (Administration) Bill (Senate Bills No.14 of 2023)

490. The Bill proposes to establish administrative structures for the management of the Equalisation Fund to ensure efficient and effective mechanisms are in place for smooth implementation or utilization of the Fund. The Bill was passed by the Senate on 12/10/2023 with amendments and referred back to the National Assembly.

b) The Equalisation Fund Bill, 2022

491. The Bill sponsored by Hon. Kassait Kamket, MP underwent First Reading on 30th November, 2022 and committed to the Departmental Committee on Finance and National Planning.

492. The Objective of the Bill was to;
    a) Operationalize the Equalization Fund as established under Article 204 of the Constitution; and
    b) Establish a board to administer the Fund in instances where the Fund is directly used for the provision of basic services to marginalized areas;
493. Therefore, to avoid multiple legislations on administration of the Fund the process of amendment of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 is pending the finalization of the two Bills.
494. Additionally, the Fund recommends for amendment of Regulation 20 (i) of the Public Finance Management Act Regulations 2015 which provides that the Accountant-General department shall be responsible for administering the Equalisation Fund to expressly appoint the Chief Executive Officer, Equalisation Fund to be the Fund Administer and the Accounting Officer of Equalisation Fund.

4. Steps Taken to Ensure That the Equalization Fund Advisory Board Provides Adequate Facilitation, Including Functional Physical Offices at the Secretariat, to Parliament Representatives

495. The Committee was made aware that Section 4 (1) of the Public Finance (Equalisation Fund Administration) Regulations 2021 established an Advisory Board charged with the responsibility of providing policy and strategic direction;
496. The board as outlined comprises of nine (9) members who are:
    a) The Chairperson who shall be appointed by the Cabinet Secretary;
    b) The Principal Secretary to the National Treasury or his representative designated in writing;
    c) The Principal Secretary responsible for matters relating to devolution or his or her representative designated in writing;
    d) One person from a pastoralist community nominated by the National Assembly;
    e) One person nominated by the Senate;
    f) One person nominated by the Council of Governors drawn from the areas defined as marginalised;
    g) The Chief Executive Officer who shall be the secretary to the board; and
    h) Three other persons nominated from organizations working in Equalization Fund beneficiary counties and special interest group, appointed by the Cabinet Secretary.
497. The Equalisation Fund Advisory Board was constituted as per the Regulations and as at 31st January, 2024 the board had held a total of 16 board meetings.
498. The Public Finance (Equalisation Fund Administration) Regulations 2021, provides for appointment by the Cabinet Secretary of two nominees of Parliament; National Assembly and the Senate respectively.
499. The nominees were competitively nominated by Parliament and appointed by the Cabinet Secretary National Treasury and Economic Planning for a non-renewable term of six years.
500. As per the provision of the Equalisation Fund Administration Regulations 2021, the nominees are board directors upon appointment.

501. The facilitation, benefits and board allowances of the board directors are as guided by Mwongozo the Code of Governance for State Corporations, National Government Circulars. Additionally, the Equalisation Fund Board Charter provides for the role, responsibilities, and functions of the board in the governance of the Equalisation Fund.
502. Nevertheless, the Equalisation Fund Secretariat is expected to seek guidance from the Salaries and Remuneration Commission on the benefits that can accrue to the Board Directors especially for Parliament nominees considering the competitive nature of nomination and the fixed term of non-renewable six years.

Committee Observation

503. The Committee noted that the Fund's tenure as originally intended was to lapse in 2032, however, Parliament could extend the life of the Fund, subject to an impact assessment exercise.

5. Status of Development of the Second Marginalisation Policy

504. The Committee was informed that the PFM (Equalisation Fund Administration) Regulations 2021 operationalized the EF which shall be utilized indirectly as conditional grants to the affected counties in accordance with the Division of Revenue Act and the EF Appropriation Act for the respective FY.
505. The County Technical Committees and all other lower tier committees as stipulated in PFM (Equalisation Fund Administration) Regulations, 2021 have been established in the 34 beneficiary counties and the committees have since been sensitised and inducted.
506. The Second Policy on Marginalization was developed and published in 2018. The area of analysis changed from county to sub location. There are 7,131 sub locations across the 47 counties. The Policy identified 1,424 marginalized areas as planning units spread in 366 wards, 111 constituencies and 34 counties: Turkana, West Pokot, Narok, Mandera, Wajir, Samburu, Garissa, Baringo, Kilifi, Marsabit, Tana River, Kajiado, Kitui, Kwale, Migori, Isiolo, Homa-Bay, Laikipia, Nandi, Elgeyo Marakwet, Kericho, Bungoma, Lamu, Tharaka-Nithi, Siaya, Meru, Kisumu, Bomet, Busia, Taita Taveta, Machakos, Trans Nzoia, Nakuru and Murang'a.
507. The implementation of the Second Marginalisation Policy had commenced and is applied against the Equalisation Fund Appropriation Act 2023 enacted on 30th June, 2023 of Kshs.10.3 billion (Copy attached);
508. The implementation of the Second Marginalisation Policy was delayed due to the following challenges:

1. Court Cases:

i) Petition No. 003 of 2023 in the High Court of Kenya at Garissa and court order dated 31st May, 2023. In the Petition, Sahal Sugow Muhamud, Abdi Madow Elmi, Muhamud Mohamed Abdi and Kusuw Degow Maow have petitioned Equalisation Fund Board, Commission on Revenue Allocation, Controller of Budget, the National Treasury and Office of the Attorney General.

The questions for determination were:

a) That the Commission on Revenue Allocation (CRA) published the Second Marginalisation Policy and criteria for sharing revenue among Marginalised areas without conducting effective and efficient public participation as prescribed in Article 10 of the Constitution; and

b) That CRA and Equalisation Fund Board have discriminated against Dadaja Ward in Wajir South Constituency by comparatively allocating it a lower revenue allocation compared to other wards in Wajir South Constituency as a result of discrimination and political interference in contravention to Article 27 of the Constitution of Kenya

ii) Petition No. 4 of 2023 in the High Court of Kenya at Garissa. In the Petition, Sahal Sugow Muhamud, Rashid Billow Adan, Muhfuda Hajji, Mahat Mohamed, Mohamed Ibrahim Hussein and Ayub Abdi Osman have petitioned Equalisation Fund Board, the National Assembly, the Senate, Commission on Revenue Allocation, Office of the Attorney General and Controller of Budget.

The questions for determination were:

a) What criteria was used by the respondents (Equalisation Fund Board, the National Assembly, the Senate, Commission on Revenue Allocation, Office of the Attorney General and Controller of Budget) in omitting certain wards in Wajir County from the Equalisation Fund Appropriation Bill, 2023 yet there was no public participation in the entire county;

b) What was the basis of allocation of funds under the Bill and the creation of fake wards (Ganyure and Wagalla) in Wajir County; and

c) Why was public participation not carried out in Wajir County and what was the basis of allocating funds in that county. The Appropriation Bill, 2023 mentioned Ganyure and Wagalla wards as beneficiaries. They do not exist in Wajir county.

iii) In the Petitions, the Court ordered that pending the hearing and determination of the applications:

a) An order restraining the respondents from implementing the Commission on Revenue Allocation Second Marginalisation Policy and Criteria 2022/2023 for sharing revenue amongst marginalised areas;

b) Conservatory orders issued restraining the Controller of Budget from authorising the withdrawal of Equalisation funds; and

c) Conservatory orders issued restraining the National Treasury from disbursing the Equalisation funds.

iv) This had delayed implementation of the Second Marginalisation Policy.

2. Tight fiscal space to allocate and appropriate all Equalization Fund entitlement.

509. The allocation to Equalisation Fund appropriated in the Equalisation Fund Appropriation Act 2023 was reduced to zero during the Supplementary budget II of 2023.

510. The Court order was vacated on 26th November, 2021 and this signalled commencement of implementation of the Second Marginalisation Policy.

511. The Committee was informed that as at 31st January, 2024, the Equalisation Fund Advisory Board received project proposals from 30 beneficiary counties: Baringo, Busia, Bungoma, Elgeyo Marakwet, Homa Bay, Isiolo, Laikipia, Lamu, Kisumu, Kwale, Kilifi, Kitui, Kajiado, Machakos, Marsabit, Mandera, Meru, Migori, Nandi, Nakuru, Narok, Turkana, Trans Nzoia, Taita Taveta, Tharaka Nithi, Tana River, Samburu, Siaya, Wajir and West Pokot.

512. Out of the 34 beneficiary Counties, 4 counties: Bomet, Garissa, Murang'a and Kericho are yet to submit their project proposals to the Equalisation Fund Advisory Board;

513. As at 31st January, 2024, the Equalisation Fund Advisory Board analysed, considered, and approved 644 projects from 14 Counties: Baringo, Busia, Homa Bay, Laikipia, Kisumu, Meru, Nandi, Tharaka Nithi, Samburu, Marsabit, Mandera, Siaya, West Pokot, and Tana River. The board resolutions were communicated to the counties to begin implementation of the projects.

514. Projects Proposals from 16 counties are as follows: Bungoma, Elgeyo Marakwet, Isiolo, Kwale, Kilifi, Kitui, Kajiado, Lamu, Narok, Machakos, Migori, Nakuru, Turkana, Trans Nzoia, Taita Taveta and Wajir have been analysed pending Board's consideration and approval.

Table 6: Analysis of County Project Proposals from 14 Counties Per Sector Priority

S/N	Sector	Number of Projects	Budgeted Amount	Percentage (%)
1.	Education	93	327,834,842	7.4
2.	Energy	54	370,693,796	8.4
3.	Health	120	924,170,798	21.0
4.	Water	155	1,466,088,614	33.3
5.	Roads	220	1,298,410,386	29.5
6.	Others	2	21,367,000	0.5
	Total	644	4,408,565,436	100.0

515. Regulation 30(3) of the PFM (Equalisation Fund Administration) Regulations 2021 provides that the authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund account in accordance with the authorization and instructions given.

516. Further Regulation 30(4) provides that all withdrawals made from the Fund under Sub-Regulation (1) shall be deposited into the respective spending counties account;

517. Therefore, the disbursements of the funds to the respective marginalised counties for implementation of the Second Marginalisation Policy will commence upon implementation of the projects and guidelines issued by the Controller of Budget.

Committee on Implementation observations

518. **The Committee made the following observations:**

i). That there was no clear picture whatsoever of the nature and measurability of the Fund's projects and the efficacy levels of the programmes put in place;

ii). That there was a gap emanating from climate change dynamics and the impact on food security and the safety of livelihoods in Kenya; and

iii). That areas that were initially not zoned as hardship zones are currently undergoing challenges that require the re-classification and re-direction of resources to uplift the living conditions of residents.

Committee on Implementation Recommendations

i) **That within sixty (60) days upon tabling and adoption of this report, an assessment of the Equalization Fund's projects be done to evaluate its impact on the local communities; and**

ii) **That within sixty (60) days upon tabling and adoption of this report The Fund carries out an impact assessment survey to gauge the efficacy of the Fund's projects, priorities and advise accordingly on the way forward including the extension of its tenure (Sunset Clause) among other key determinants.**

16 REPORT ON THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENTS COMMITTEE'S (PIC) 21ST AND 23RD REPORTS ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS: COAST WATER WORKS DEVELOPMENT AGENCY

16.1 Background

519. The Public Investments Committee examined the report of the Auditor-General on the audited accounts of Coast Water Works Development Agency (Coast Water Services Board) FY 2012/2013 – 2014/2015.

520. In its 21st Report, the Public Investments Committee made the following recommendations on various audit queries:

On Property, Plant and Equipment - 2012/2013 – 2014/2015 Financial Years Accounts

521. The Public Investments Committee made the following recommendations:

i) That Ministry of Water and Irrigation ensures that the transfer of assets from the National Water Conservation and Pipeline Corporation to CWSB and other water service boards across the country is finalized within six (6) months of adoption of the Report;

ii) The Ministry of Water and Irrigation engages the Ministry of Lands and the National Land Commission with the aim of acquiring ownership documents of the said parcels of land;

iii) The CEO ensures that the Board maintains an asset register as a financial prudence measure.

iv) The CEO seeks a court order for immediate eviction of the illegal occupants from its parcels of land and Shanzu Staff Housing and puts a caveat on its properties.

On Trade and Other Receivables: FY 2012/2013- 2014/2015 Accounts

522. The Public Investments Committee made the following recommendations:

i) The CEO ensures that the Board regularly reconciles payables and receivables between CWSB and the six water service providers it serves and ensures that all reconciliation and outstanding debts are well documented.

ii) The Board reviews the policies in place governing management of debts in the CWSB to establish areas of weaknesses and recommend prudent debt management system, debt restructuring and write-off if any under the Limitation Act.

iii) The County Governments of Mombasa, Kilifi, Kwale, Taita Taveta and Lamu under whose jurisdiction the indebted WSPs fall come up with measures to bail out the companies and fully settle the debts owed to CWSB within six (6) months of adoption of this Report.

iv) The parent Ministry of Water and Irrigation intervenes and ensures that the County governments settle the debts owed by their respective WSPs.

v) The CEO ensures that the outstanding imprest owed by ex-staff members are fully recovered from their terminal dues and further enforces the Board's policy on surrender of imprest by staff in addition to section 92 of the Public Finance Management Act Regulations of 2015 which allows surcharging of officers for any imprest held beyond the stipulated seven (7) days after return to the work station.

On Trade and Other Payables: FY 2012/2013 Accounts

523. The Public Investments Committee made the following recommendations:
   i) The board reviews its water tariffs charged on WSPs to enhance its revenue and enforce debt collection measures to obtain revenue to enable it meet its financial obligations and cover for losses.
   ii) The CEO ensures that the board maintains its operational costs below its revenue.

On World Bank Loan: FY 2013/2014 & 2014/2015 Accounts

524. The Public Investments Committee made the following recommendations:
   i) The board requests the Water Service Regulatory Authority (WASREB) to increase water tariffs so as to factor in a loan repayment component in the new proposed water tariffs; and
   ii) The CEO CSWB requests the National Treasury to negotiate for rescheduling of the loan repayment period as the board explores alternative sources of revenue to repay the loan.

On Board Expenses: FY 2014/2015 Accounts

525. The Public Investments Committee made the following recommendations:
   i) That the CEO seeks post-facto approval of Kshs. 5,094,049 from the National Treasury for the over-expenditure in FY 2014/2015;
   ii) The CEO ensures that the board complies with the Section 10 of the State Corporations Act and the Mwongozo Code of Governance for State Corporations on remuneration of board's Chairpersons and Directors; and
   iii) The CEO ensures that the board Chairman refunds the sitting allowances amounting to Kshs. 99,790 for his failure to attend the training.

On Other Matter: FY 2014/2015

526. The Public Investments Committee recommended that the Water Services Regulatory Board provides a justification for exemption of Tana River County from payment of water services provided by the Coast Water Services Board. The Water Services Regulatory Board should also provide a time frame for which the county is exempted from such payments.

On Other Matter: Property Plant & Equipment (FY 2015/16)

527. The Public Investments Committee recommended that the management should follow up the matter with the National Land Commission to secure titles for the land within three months of adoption of this Report. The Committee on Implementation should follow up the matter pursuant to its mandate.

On Trade and Other Receivables FY 2015/16 To FY 2017/18
Water Debt and Salary Advances and Imprest

528. The Public Investments Committee made the following recommendations:
   i) The board should sue counties which undertook to clear their long outstanding water bills but had failed to do so;
   ii) The presidential directive on clearance of all pending bills should be implemented; and Management should seek write off for imprest held by deceased staff after ascertaining that it cannot be recovered from their estate.

Audit Issue: World Bank Loan FY 2015/16 To FY 2017/18

529. The Public Investments Committee made the following recommendations:

i) The board should disconnect water to entities that were not paying their water bills as the lack of revenue was impacting the board's ability to meet its financial obligations; and

ii) All the counties that owe CWSB should pay all the pending pills as per the presidential directive and Treasury Circular.

Audit Issues: Board Expenses FY 2015/16 To FY 2016/17

530. The Public Investments Committee recommended that the then board of CWSB should be reprimanded for over expenditure without approval from the National Treasury pursuant to Section 12 of the State Corporations Act.

16.2 Implementation status of the recommendations

531. The Committee on Implementation wrote to the Ag. Chief Executive Officer, Coast Water Works Development Agency on 31st January 2024 seeking the implementation status of the recommendations by the Public Investment Committee's (PIC) 21st and 23rd Reports.

532. Eng. Martin Tsuma, Ag. Chief Executive Officer, Coast Water Works Development Agency (CWWDA), appeared before the Committee on 10th February 2024. He was accompanied by the following officers:

1. Mr. Hamadi Mwazito - Internal Audit, CWWDA
2. Mr. Stephen Masai - Head of Finance, CWWDA
3. Mr. Sidney Chihanga - Hydrologist, CWWDA

16.3 Submissions by the Ag. Chief Executive Officer

a) Property, Plant & Equipment

1. **The Ministry of Water and Irrigation ensures that the transfer of assets from the National Water Conservation and Pipeline Corporation to CWSB and other water service boards across the country is finalized within six (6) months of adoption of this Report.**

533. The Ag. Chief Executive Officer Eng. Martin Tsuma informed the Committee that no transfer of assets had been done to date. However, the Agency had undertaken searches and registering restrictions and instituted Court matters through the EACC (Filed Pleadings).

534. The agency had lodged complaints to the National Land Commission (NLC) and the EACC on behalf of the Ministry of Water and National Water. Additionally, the agency had placed restrictions on these lands while investigation by EACC is ongoing.

2. **The Ministry of Water and Irrigation engages the Ministry of Lands and the National Land Commission with the aim of acquiring ownership documents of the said parcels of land;**

535. The Ag. CEO informed the Committee that they had initiated a consultative meeting between the Ministry of Lands, NLC, EACC to create a road map on reclaiming the grabbed and asset and liability transfer;

536. The agency had in place a grounds' report that provides individual details of the property within their jurisdiction.

3. **The CEO ensures that the Board maintains an asset register as a financial prudence measure.**

537. The Ag. CEO informed the Committee that the agency had an asset register in place as per the prescribed format of the National Treasury which is submitted on quarterly basis to National Treasury.

4. **The CEO seeks a court order for immediate eviction of the illegal occupants from its parcels of land and Shanzu Staff Housing and puts a caveat on its properties.**

538. The Committee was informed that, the matters are being handled by EACC, with orders being sought will invoke the evictions.

Committee's Observations

539. The Committee observed that:

i). The Agency did not have ownership documents for the land it claims

ii). among the alleged land grabbers were government officials as well as absentee landlords who lived in the Gulf but still collected rent from the buildings set up on the grabbed land.

iii). If demolitions and evictions were effected as a recovery measure for the 19 parcels of grabbed land belonging to the Coast Water Works Agency, approximately 1,000 people would be affected, which would not be the ideal situation.

Committee's Recommendations

540. The Committee recommended on the following:

i). Tabling a Motion in Parliament aimed at the recovery of grabbed government land; and

ii). The Ministry to come up with a carefully executed out-of-court settlement, which would be the ideal scenario.

b) Trade and other Receivables: FY 2012/2013- 2014/2015 Accounts

1. **The CEO ensures that the Board regularly reconciles payables and receivables between CWSB and the six water service providers it serves and ensures that all reconciliation and outstanding debts are well documented.**

541. The CEO informed the Committee that he constituted a team to undertake both the trade and other receivables from WSP's, who regularly meet and undertake this exercise.

2. **The Board reviews the policies in place governing management of debts in the CWSB to establish areas of weaknesses and recommend prudent debt management system, debt restructuring and write-off if any under the Limitation Act.**

542. The CEO informed the Committee that reviews of the policies would be completed by June 30, 2024.

3. **The County Governments of Mombasa, Kilifi, Kwale, Taita Taveta and Lamu under whose jurisdiction the indebted WSPs fall come up with measures to bail out the companies and fully settle the debts owed to CWSB within six (6) months of adoption of this Report.**

543. The CEO informed the Committee that several meetings have been conducted between the governors and the board to come up with ways for the WSP's to settle their bills with the Agency but no tangible results have been achieved.

4. **The parent Ministry of Water and Irrigation intervenes and ensures that the County governments settle the debts owed by their respective WSPs.**

544. The CEO informed the Committee that reconciliatory meetings were constantly held to address this issue and that the matter was pending. The Ministry was to be notified by Monday, 12th February 2024 to take up the matter.

5. The CEO ensures that the outstanding Imprest owed by ex-staff members are fully recovered from their terminal dues and further enforce the Board's policy on surrender of Imprest by staff in addition to section 92 of the Public Finance Management Act Regulations of 2015 which allows surcharging of officers for any imprest held beyond the stipulated seven (7) days after return to the work station.

545. The CEO informed the Committee that recovery for imprest by ex-staff was yet to be recovered as final dues had not been claimed. The Committee was told that the concerned staff had passed on and the family is yet to claim. The CEO further submitted that the management had enforced the Board's policy on surrender of imprest by staff within the stipulated time.

c) Trade and Other Payables: FY 2012/2013 Accounts

1. The Board reviews its water tariffs charged on WSPs to enhance its revenue and enforce debt collection measures to obtain revenue to enable it meet its financial obligations and cover for losses.

546. The CEO informed the Committee that a new water tariff had been gazetted effective November 2024 with a loan repayment component. Once implemented the component of loan repayment was to be set aside.

2. The CEO ensures that the Board maintains its operational costs below its revenue.

547. The Committee was informed that this had been complied with and the agency ensures its operational costs are below the revenues generated. Additionally, the agency is in the process of implementing an Alternative Energy source for Baricho and Tiwi bulk water systems to reduce the over reliance on expensive power.

d) Trade and Other Payables: FY 2012/2013 Accounts

The Committee recommends that the CEO ensures that the Board undertakes reconciliation of its accounts regularly and further avails all the documents to the Auditor- General for verification during the audit process.

548. The CEO informed the Committee that the issue was well noted and complied with accordingly. Reconciliations are to be done quarterly, and reports submitted to the Auditor-General annually for Audit.

e) World Bank Loan: FY 2013/2014 & 2014/2015 Accounts

1. The Board requests the Water Service Regulatory Authority (WASREB) to increase water tariffs so as to factor in a loan repayment component in the new proposed water tariffs.

549. The Committee was informed that a new water tariff had been gazetted and is effective from November 1, 2024, with a loan repayment component. The WSPs and the Agency will deposit money in a designated loan repayment account.

2. **The CEO CSWB requests the National Treasury to negotiate for rescheduling of the loan repayment period as the Board explores alternative sources of revenue to repay the loan.**

550. The CEO informed the Committee that the Agency was undertaking reconciliation with the National Treasury on the loan balances and the actual position would be reported once the exercise is completed, and that the Agency would further negotiate for rescheduling of loan repayment.

f) Other Matter - 2013/2014 Financial Year Accounts

The Committee recommends that the CEO ensures that the board complies with the International Public Sector Accounting Standards in preparing its financial statements.

551. The CEO informed the Committee that the observation was noted and the agency had applied the format prescribed by the Public Sector Accounting Standards Board on the presentation of financial statements in the subsequent financial years.

g) The Board Expenses: FY 2014/2015 Accounts

1. The CEO seeks post-facto approval of KES 5,094,049 from the National Treasury for the over-expenditure in FY 2014/2015.

552. The CEO informed the Committee that the agency was yet to receive concurrence from the Ministry of National Treasury and Economic Planning on the approval and would step up the follow up so that the matter can be closed by end of the Financial Year.

2. The CEO ensures that the Board complies with the Section 10 of the State Corporations Act and the Mwongozo Code of Governance for State Corporations on remuneration of board's Chairpersons and Directors.

553. The CEO informed the Committee that the Agency is compliant with Section 10 of the State Corporations Act and the Mwongozo Code of Governance in handling remuneration for the chairperson and the directors.

3. The CEO ensures that board chairman refunds the sitting allowances amounting to Kshs. 99,790 for his failure to attend the training.

554. The CEO informed the Committee that the chairman was yet to refund the funds though he was notified accordingly. A follow up was to be done to ensure the matter is closed by end of the financial year.

Committee on Implementation Observations

555. **The Committee observed that the Coast Water Works Agency had reached out to the former board chairman and expressed concern over the failure of the board chairperson who was paid the Kshs. 99,000 and his reluctance to refund the money.**

Committee on Implementation Resolutions

556. **That the Coast Water Works Development Agency writes a letter to the said former board chairperson demanding why he was unwilling to refund the money.**

h) Local Travel and Accommodation: FY 2014/2015 Accounts

1. The Committee recommends that the CEO avails all documents to the Auditor-General for verification during the audit process.

557. The Committee was informed that the matter was well noted and complied with accordingly in all subsequent years.

i) Other Matter: FY 2014/2015

The Committee recommends that the Water Services Regulatory Board provides a justification for exemption of Tana River County from payment of water services provided by the Coast Water Services Board. WASREB should also provide a time frame for which the county is exempted from such payments.

558. The Committee was informed that:

i) the agency bills WSPs for water supplied to cover the operational costs of water systems. The agency had not been operating and maintaining the water systems in some counties, including Tana River County. Tana River County was still overseeing the operations and maintenance of all its water systems. For this reason, the agency could not charge water service charge.

ii) The agency used to charge only Administrative/Lease fees up to 2018 but this had stopped after the enactment of the Water Act 2016.

FY 2015/16 TO FY 2017/18

a) Other Matter: Property Plant & Equipment (FY 2015/16)

1. Management should follow up the matter with the National Land Commission to secure titles for the land within three months of adoption of this report.

559. The CEO informed the Committee that the Agency had lodged complaints to the National Land Commission (NLC) and the EACC on behalf of the Ministry of Water and National Water. Additionally, the agency had placed restrictions on these lands while investigation by EACC is ongoing.

Committee on Implementation Observations

560. **The Committee noted that amongst the alleged land grabbers, were government officials as well as absentee landlords who lived in the Gulf but still collected rent from the buildings set up on the grabbed land.**

Committee on Implementation Recommendations

561. **The Committee recommended that within sixty (60) days upon tabling and adoption of this report the EACC and other relevant bodies follow up with the matter of recovery of lands from the said parties including government officials in court with the intention of pursuing the matter to its logical conclusion, and further that responsible government officials who aided and abated the land grab be held responsible for their actions.**

b) Trade and Other Receivables FY 2015/16 TO FY 2017/18

i) **The Board should sue Counties which undertook to clear their long outstanding water bills but had failed to do so.**

562. The CEO informed the Committee that several meetings were held between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency.

2) The presidential directive on clearance of all pending bills should be implemented

563. The Committee was informed that WSP's do pay partly their water bills to KPLC and at the same time remit partly to CWWDA. Follow ups were also done by the revenue collection team of CWWDA.

3) Management should seek write off for imprest held by deceased staff after ascertaining that it cannot be recovered from their estate.

564. The Committee was informed that the recovery had not yet been done as family is yet to claim final dues. Management endeavours to comply to recover full un-surrendered imprest within the stipulated time as stated in the PFMA.

c) Trade & Other Payables FY 2015/16 TO FY 2016/17

The authority should expeditiously reconcile the audit fees and settle the matter

565. This matter was resolved.

d) World Bank Loan FY 2015/16 TO FY 2017/18

1) The Board should disconnect water to entities that were not paying their water bills as the lack of revenue was impacting the Board's ability to meet its financial obligations.

566. The CEO informed the Committee that several meetings were held between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency. Reconciliations have been done two times in FY 2012 and FY 2024.

2) All the counties that owe CWSB should pay all the pending bills as per the presidential directive and Treasury Circular

567. The CEO informed the Committee that WSP's do pay partly their water bills to KPLC and at the same time remit partly to CWWDA. Follow ups are also done by the revenue collection team of CWWDA. The current board and management had also constituted a team to follow up on the same and have managed to meet with all the Governors.

Committee on Implementation Observations

568. **The Committee noted that there was a trend in which several counties at the Coast still owed the Coast Water Works Agency money accruing from unpaid water bills.**

Committee on Implementation Recommendations

569. **The Committee recommended that within sixty (60) days upon tabling and adoption of this report:**

i). The Chief Executive Officer, Coast Water Works Development Agency should resolve pending bills arising from unpaid water bills; and

ii). The Coast Water Works Development Agency should invite all governors from counties owing the Coast Water Works Agency to explain why and outline their payment plans for the debts.

e) Board Expenses FY 2015/16 TO FY 2016/17

The then board of CWSB should be reprimanded for over expenditure without approval from the National Treasury pursuant to Section 12 of the State Corporations Act

570. The CEO informed the Committee that CWSB Management will confirm with Ministry of National Treasury and Economic Planning on the status of the approval

f) Other Matter FY 2015/16

The Board should desist from having staff acting for more than 6 months.

571. This was well noted and complied with accordingly.

Committee on Implementation Observations

572. **The Committee noted that the current Coast Water Works Agency CEO was in acting capacity for two-and-a-half years (2 ½) yet it should ideally not be more than six (6) months as stipulated in the Public Service Commission Act, 2017, 34(3).**

Committee on Implementation Recommendations

573. **The Committee recommends that the appointing authority should comply with the provisions of Section 34(3) of the Public Service Commission Act, 2017, which states that: "An officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months."**

g) Other Matter FY 2016/17

The explanation given was satisfactory and the query resolved.

574. The CEO informed the Committee that this matter was well noted and complied with accordingly.

h) Finance Costs FY 2017/18

The board should use an amortization schedule provided by Treasury and adjust its books accordingly.

575. The CEO informed the Committee that this matter was well noted and complied with accordingly in subsequent financial statements.

16.4 Submissions by The Ethics & Anti-Corruption Commission Regarding the Implementation Status of The Public Investment Committee's (PIC) 21st And 23rd Reports on Consideration of The Auditor-General's Report on The Financial Statements of State Corporations

576. Mr. Pascal Mweu, the Director Investigations, Ethics & Anti-Corruption Commission (EACC) submitted the following in response to the implementation status of the report by the Public Investment Committee's (PIC) 21st and 23rd Reports on Consideration of the Auditor-General's Report on the Financial Statements of State Corporations.

a) Recovery Suits for Various Properties Belonging to Coast Water Works Development Agency

577. The Committee was informed that on 9th September, 2021, Coast Water Works Development Agency (CWWDA) lodged a complaint with the Ethics and Anti-Corruption Commission.

578. The report alleged that there had been illegal alienation of public land belonging to CWWDA and issuance of Titles No. MN/1/10401 and MN/1/9647 to private entities. The parcels of land are within Coast Water Works Development Agency's Shanzu Staff Quarters.

579. The Commission commenced investigations on the complaint and established that Coast Water Works Development Agency's Shanzu Staff Quarters was well reserved in the Development Plan for the entire Shanzu area, in the Development Plan number CT/112/25/88/1 dated 15th January 1988.

580. The complaints resulted into 15 investigation files out of which 3 suits were filed in Court for recovery of properties worth approximately Kshs. 365 million while 12 cases are under investigation at various stage. The particulars of each case and status thereof are as follows:

b) Cases pending before Court

1) EACC/MSA/AT/INQ/25/2023

581. Inquiry into the allegation of irregular alienation of public land MN/I/10401 entities. The said land is situated in Shanzu and belongs to the Kenya Water Harvesting and Storage Authority-a government agency to whom the land is vested upon. The land is valued at Kshs. 300,000,000.00

Status: Recovery suit E023/2023 filed for asset recovery of land MN/I/10401 at Environment and Land Court Mombasa (pending hearing).

2) EACC/MSA/AT/INQ/13/2023

582. Inquiry into allegation of irregular alienation of public land MN/I/9648. The said land is situated in Shanzu and belongs to the Kenya Water Harvesting and Storage Authority-a government agency to whom the land is vested upon. The land is valued at Kshs. 30,000,000.00.

Status: Recovery suit ELC LC 39/2023 – suit for asset recovery of land MN/I/9648 at Environment and Land Court Mombasa (pending hearing).

3) EACC/MSA/AT/INQ/12/2023

583. Inquiry into allegation of irregular alienation of public land MN/I/9647. The said land is situated in Shanzu and belongs to the Kenya Water Harvesting and Storage Authority-a government agency to whom the land is vested upon. The land is valued at Kshs. 35,000,000.00.

Status: Recovery suit ELC LC 40/2023 – suit for asset recovery of land MN/I/9647 at Environment and Land Court Mombasa (pending hearing).

584. In the above cases, the Commission is seeking the following orders from Court:

a) A declaration that the letters of allotment for the said properties are illegal, null and void *ab initio;*
b) An order for cancellation and revocation of the Letters of Allotment;
c) A declaration that the excision and creation of the suit properties were illegal, null and void *ab initio;*
d) A declaration that the issuance of grant was incapable of vesting an interest in land or proper title to land to the private entities; and
e) An order for compensation for loss of use of the suit property; among others

c) Cases under Investigation

585. The Commission is currently undertaking investigation relating to 12 properties belonging to Coast Water worth approximately Kshs. 576 million broken down as follows:

a) MN/I/16701, MN/I/16702 and MN/I/16703 situated in Nyali;
b) MN/I/9620, MN/I/9621, MN/I/9623 in Shanzu;
c) LR.NO. MSA/BLOCK/XXV/121 and MSA/BLOCK/XXX/121;
d) MSA/BLOCK/XXV/169 occupied by Coast Car Park;

e) MSA/BLOCK/XXV122 which is registered under Nakumatt Investments Limited; and

f) MN/10121 (CR.32130) in Shanzu.

Committee on Implementation observations

586. **The Committee observed that:**

i). The EACC was itself incapacitated in its quest to obtain crucial documents needed for the land cases; and

ii). EACC only recorded success in obtaining the documents through searching the local lands offices.

Committee on Implementation recommendations

587. **The Committee recommends that within the shortest time possible upon tabling and adoption of this report; Judiciary should set up a special tribunal to handle land matters that relate to government land disputes involving grabbers for the purpose of speedy recovery and conclusion of such cases.**

17 THE STATUS OF IMPLEMENTATION ON THE RESOLUTIONS OF THE HOUSE ON MOTION SPONSORED BY MEMBER FOR KAKAMEGA COUNTY, THE HON. ELSIE MUHANDA, MP, THAT THE MINISTRY OF EDUCATION DEVELOPS A SCHOOL FEEDING POLICY TO COVER BASIC EDUCATION FOR PUPILS AND SUSTAINS THE PROGRAMME IN ORDER TO ENSURE THAT CHILDREN ARE MAINTAINED IN SCHOOLS FOR EFFECTIVE LEARNING AND IMPROVE THEIR WELL-BEING

17.1 Background

588. The National Assembly by a resolution passed on Wednesday, November 2, 2022, approved a Motion sponsored by the Member for Kakamega County, the Hon. Elsie Muhanda, M.P, resolving that the Ministry of education develops a school feeding policy to cover basic education pupils and sustains the program in order to ensure that children are maintained in schools for effective learning and improve their well-being.

589. **The House Resolved;**

That aware the school meals are an important safety net for vulnerable children from food-insecure household and communities in Kenya: appreciating that school meals have multiple benefits, such as increased school enrolment and attendances as well as a significant and a positive contribution to reducing hunger and improving nutritional intake noting that primary school completion rates have been found to be higher in schools with meals provided thus school meals remain a core development intervention to support the country's achievements in the education sector, recognizing that some county governments have adopted direct and community-led initiatives for ECDE school feeding programmes; concerned that the exercise is not supported by a clear policy and budgetary framework and does not support pupils in primary and secondary schools who the basic education ecosystem; cognizant of the fact that, where school meal programmes have been initiated, it had been noted that they encounter different challenges that impede their effectiveness, including insufficient resources due to low budgetary allocation and budget cuts, lack school feeding policy, inadequate safe cooking and drinking water, drought and famine, poor food storage, a lengthy procurement process, insecurity and dilapidated infrastructure, among others; this House therefore resolves that the ministry of Education, through the relevant State Department, immediately develops a school feeding policy to cover basic education pupils and sustain the program in order to ensure that children are maintained in schools for effective learning and improve their well-being.

20.2 Implementation Status of the resolutions

590. The Committee on Implementation wrote to the Cabinet Secretary, State Department for Basic Education in the Ministry of Education on 24th May, 2024 concerning the status of implementation on the resolutions of the House on the Motion sponsored by Member for Kakamega County, The Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being.

591. Dr. Belio R. Kipsang, CBS, the Principal Secretary from the State Department for Basic Education appeared before the Committee on 11th June, 2024 to apprise it on the status of implementation on the resolutions of the House relating to the Motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being. He was accompanied by the following officers:

1. Ms. Florence Amoit -Sec. Administration. State Dept. Basic Education,
2. Ms. Dorothy Kamwilu - Policy Advisor, PS's Office,
3. Mr. Masini Ichwara - Dir. Planning – Basic Education
4. Mr. Stephen Barongo - Director – Primary Education,
5. Mr. Harun Yussuf- CEO-National Council for Nomadic Education
6. Ms. Millicent Ochola - National School Meals Coordinator

20.3 Submissions by the Principal Secretary, State Department for Basic Education - Ministry of Education

592. On the status of implementation of the House resolutions on the Motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being.

Implementation Status

The Principal Secretary submitted that:

593. The School Meals Programme in Kenya started in 1979, after the country was hit by a severe drought that affected 80% of the population and resulted in school dropouts. The programme was undertaken by the Government of Kenya in partnership with the World Food Programme (WFP), starting with 240,000 school children. By the 1990s, the number of children in the School Meals Programme had steadily expanded, with the Government committing to meeting 50% of the cost of land transport, storage and handling of the food commodities. Following the introduction of free and compulsory primary education in 2003, the number of learners joining primary school expanded exponentially. In 2018, the programme was fully taken over by the Government of Kenya (from the WFP).

594. The programme had expanded gradually after the transition, to cover a total of 2.6 million learners in 8,185 schools across the country as of 2024. This covers 26 ASAL counties and informal urban settlements. In 11 of those counties, that is, Mandera, Tana River, Garissa, Wajir, Marsabit, Isiolo, Samburu, Baringo, West Pokot, Lamu and Turkana, NACONEK provides in-kind support by providing food to the schools. In the other 15 counties, NACONEK provides cash transfers to selected public schools. These counties are Baringo, Elgeyo Marakwet, Embu, Nyeri, Kajiado, Narok, Kilifi, Kwale, Machakos, Kitui, Makueni, Tharaka Nithi, Laikipia, Nairobi, Taita Taveta. The programme also covers all special needs education schools and refugee camp-based schools in Kenya.

595. Over time, the programme had demonstrated a significant impact on school attendance, retention, transition and completion rates in the Arid and Semi-Arid Lands, Pockets of Poverty Areas and Urban Informal Settlements of Kenya. Ensuring that children are well fed, healthy and able to learn is essential to the effectiveness of an education system.
596. Recognizing the critical role of school feeding as both a safety net and protective measure for ensuring vulnerable children can have seamless access to basic education, the Government increased the national budget for this programme from Kshs. 1.96 billion in the FY 2022/2023 to Ksh. 5.4 billion in the FY 2023/2024. However, in the FY 2024/2025, the budget had been reduced to Ksh. 3.0 billion.
597. As a member of the Global School Meals Coalition, Kenya had committed to achieve universal school feeding by 2030, by increasing the current coverage from 2.6 million to 10 million learners. The Ministry implements the School Meals Programme through the National Council for Nomadic Education in Kenya (NACONEK), which is established under the Basic Education Act, 2013.
598. That the Ministry already had a draft Policy document in place. The draft is titled the "Kenya School Meals Policy." The draft had been developed through a collaborative approach involving the Ministry of Education, the United Nations World Food Programme, NACONEK, the Rockefeller Foundation and the Ministries of Health; Agriculture, Livestock and Fisheries; Water, Sanitation and Irrigation.
599. The overall goal of the policy is to provide a framework for implementation and management of the school meals programme in Kenya. The policy provides for the establishment of the programme based on clear goals, strategic objectives and principles.
600. The policy provides for key thematic areas. These include access, equity and inclusion, through which the government commits to provide diversified and healthy school meals to all learners, including those with special educational needs. The second thematic area is food safety and quality, under which the government commits to ensure enhanced food safety and quality in the school meals programme. The third thematic area is nutrition and health. Under this, the Government commits to provide safe, diverse and nutritious meals as part of a comprehensive package of school health and nutrition services.
601. The fourth thematic area was on sourcing of food commodities. Under this, the policy commitment is to promote provision of accessible and affordable locally available food commodities. The other thematic area is on partnerships, collaborations and linkages. The Government commits to promote a coordinated approach through partnerships, collaborations and linkages.
602. That the draft policy document also provides for its implementation. It had provisions on resource mobilisation, to ensure the sustainability of the programme, and for monitoring, evaluation and research. The draft document also outlines the institutional arrangement for the implementation of the policy. The policy will be implemented through existing Ministry of Education structures at the national and county levels.
603. In line with the requirements of the Constitution, the draft policy will be subjected to stakeholder validation and public participation, prior to its publication and adoption. The stakeholder validation and public participation are scheduled for July, 2024.

604. Upon the stakeholder validation, the views and comments obtained through the process will be incorporated into the draft Policy. The revised draft policy document will then be presented to the Cabinet for approval, after which it will be formally published and adopted. The Ministry further agreed to targets to have the policy in place by September, 2024.

Committee on Implementation Observations

605. **The Committee observed that:**

i) **The school feeding programme is not new, having been incepted in Kenya in 1979;**

ii) **The government had traditionally focused school feeding efforts in areas classified as ASAL and urban informal settlements;**

iii) **The areas traditionally classified as ASAL had expanded due to climate change;**

iv) **The government had varied the budget for the school feeding programme from Kshs. 1.96 billion in the 2022/2023 Financial Year to Kshs. 5.4 billion in the 2023/2024 Financial Year and down to Kshs. 3.0 billion in the 2024/2025 Financial Year;**

v) **That even as priority is given to schools in ASAL areas, some school still miss out on the food distribution exercise;**

vi) **That the Ministry of Education and National Council for Nomadic Education in Kenya (NACONEK) had not been clear on the quality, quantity, cost and nutritional value of the food supplied through the school feeding programme.**

vii) **That the criteria used by the Ministry of Education and National Council for Nomadic Education in Kenya (NACONEK) in determining whether cash transfers or food supplies are ideal on case-to-case basis for schools, remains unclear and susceptible to abuse by the authorities handling it;**

viii) **That as per the current model of food distribution to basic education schools across the country, targets of reaching the intended pupils are not being achieved due to inefficiencies in the distribution chain;**

ix) **That in Kenya, only 2.6 million children out of an estimated total of 10 million children in basic education schooling, benefit from the school feeding programme;**

x) **That as per the Ministry of Education definition of "targeted" intervention, the utilization of the feeding programme is selective hence leaving out a sizeable number of vulnerable leaners;**

xi) **That the Ministry of Education had developed a draft policy and targets to have the Kenya School Meals Policy in place by September, 2024; and**

xii) **That the Ministry of Education vide the State Department of Basic Education is in the process of formulating a Kenya School Meals Policy in partnership with other government entities and Non-Governmental Organizations to provide a clear framework for articulation of key thematic areas of meals provision in schools: access, equity and inclusion.**

Committee on Implementation Recommendations

606. **The Committee recommends within sixty (60) days upon tabling and adoption of this report:**

i) **That cognizant that the poverty index cuts across all regions in Kenya hence the need to implement a wholesome school feeding programme for children across the country and not just focused on ASAL areas, the Ministry should present a plan to the relevant Departmental Committee outlining how it intends to roll out a wholesome school-feeding programme across the country;**

ii) **That the government revises its definition and zoning of ASAL and hardship areas to include new locations whose food security situation had been negatively impacted by climate change;**

iii) **That the Ministry of Education targets to have the Kenya School Meals Policy in place within 6 months after the adoption of this report; and**

iv) **That a consideration be made for the school feeding programme to be incorporated through existing channels in the NG-CDF pipeline to cure gaps in the existing NACONEK framework.**

18 THE IMPLEMENTATION STATUS REGARDING A MOTION ON THE ESTABLISHMENT OF THE NATIONAL SWAHILI COUNCIL IN KENYA BY THE CABINET SECRETARY, MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE

18.1 Background

607. The National Assembly by a resolution passed on Wednesday, November 2,2022, approved a Motion sponsored by the Member for Kamukunji Constituency, the Hon. Abdi Yussuf Hadsan, MP, resolving that National Government, through the Ministry of Tourism, Wildlife and Heritage establishes the National Swahili Council in Kenya and launch specific strategies, methods and the National Swahili Council in Kenya and launch specific strategies, methods and policies needed to promote and develop Kiswahili in the country and collaborate, with national and private bodies in the country that are involved in development of Kiswahili language.

The House resolved;

That pursuant to provisions of Article 7 of the Constitution of Kenya that Kiswahili is the only national language as well as an official language alongside English in Kenya. That the Government is tasked with protecting and promoting various languages in Kenya and the promotion of indigenous languages in Kenya; recognizing that Kiswahili is one of the official languages of the African Union, and that Articles 119 and 137 of the Treaty of the Establishment of the East African Community that mandates the East African states develop and promote Kiswahili as a unifying language of East Africa; understanding the Tanzania set up the National Kiswahili Council ,Baraza la Kiswahili la Kitaifa (BAKITA) in 1967, and Zanzibar came up with the Zanzibar Kiswahili Council, Baraza la Kiswahili la Zanzibar (BAKIZA) in 2004, with the purpose of promoting and developing Kiswahili in Tanzania and Zanzibar; cognizant to the third Kenyan Cabinet meeting of 14th August 2018 that resolved that there be a Kiswahili Council pursuant to Article 137 of the Treaty of the Establishment of the East African Community; given that Kiswahili is the first language for communities living at the coastal provinces of Kenya and that majority of Kenyans are Kiswahili speakers; recognizing that English had a strong presence in official communication, and therefore contributing to the decline of the use of Kiswahili language; cognizant that the Cabinet resolution on the formation of the Kiswahili Council in Kenya had not been implemented, and that this Parliament is urging the Government through the Ministry of Gender, Culture, the Arts & Heritage to come up with strategies and policies required to promote and develop Kiswahili and collaborate with other government agencies to promote constitute Kiswahili.

18.2 Implementation status of the recommendations

608. The Committee on Implementation wrote to the Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage on 24th May, 2024 seeking the implementation status on a Motion sponsored by Member for Kamukunji Constituency, the Hon. Yusuf Hadsan, MP, urging the Government to establish the National Swahili Council in Kenya and launch specific strategies, methods and policies needed to promote and develop Kiswahili in the Country.
609. Hon. Aisha Jumwa Katana, EGH the then Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage appeared before the Committee on Thursday 6th June 2024 to apprise it on the Implementation status regarding the Motion. She was accompanied by:
    1. Dr. Kiprop Lagat - Ag. Secretary, Culture
    2. Mr. George Njoroge - Ass. Director, Department of Culture
    3. Ms. Elizabeth Kyallo - Ass. Director, Department of Culture
    4. Ms. Brenda Risambu - PA to the CS
    5. Ms. Serah Nyaki - Assistant Director Public Communication cs office
    6. Mr. Hamisi Juma - Deputy Director Public Communication CS's office

18.3 Submissions by the Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage

The Committee was informed that:

610. Kiswahili is designated in the Constitution of Kenya as a national language as well as one of the two official languages in Kenya.
611. That as a means of emphadizing the importance of Kiswahili as a language in Kenya, the East African Community and Africa as a whole (Article 7, the East African Community and the African Union Agreement), the National Assembly passed a Motion on 2nd November, 2022 urging the National Government through the Ministry of Sports, Culture and Heritage to institute strategies and put policies in place to promote and develop Kiswahili as a language in conjunction with other private entities involved in the development of Kiswahili language.
612. Efforts to set up the National Kiswahili Council of Kenya began in 2018. At the time, the Cabinet Secretary to the relevant Ministry in charge of Culture nominated a technical committee from various ministries and universities to kickstart formation of this Council. This committee embarked on collecting views from members of the public in four (4) counties in Kenya as provided by the Constitution of Kenya. This led to the compilation of the Draft National Kiswahili Council Bill 2023.
613. On March 21st 2023, the Cabinet through CAB. MEMO NO. 22(88) passed a resolution for the formation of the National Kiswahili Council of Kenya. On 23rd November 2023, this Bill was submitted to the Attorney General for further fine tuning.
614. On 18th January, 2024 the Office of the Attorney General presented the National Kiswahili Council Bill,2024, after further improvements. This Bill had been improved as per the guidelines provided which had stipulated that the Council be comprised of nine

(9) members. The Attorney General also proposed that the amended Bill be translated to Kiswahili.

615. As per the resolutions, the Department of Culture, Arts and Heritage had identified a Kiswahili expert for translation of this Bill, which was forwarded to the Attorney General through a letter (Ref. No. SDCH.7/21/(C) Vol.I/43 dated 3rd June, 2024.

616. Additionally, the Department of Culture, Arts and Heritage had endeavoured to prioritize Kiswahili and had put in place measures and strategies to this end. Among the strategies the department is putting in place the Languages of Kenya Policy that identifies Kiswahili as a language capable of uniting Kenyans, and a language capable of promoting commerce, technology and education as well as enhance cultural integration in Kenya. Several workshops have been held across Kenya with an aim promoting Kiswahili.

617. The Department is also collaborating with like-minded entities such as the National Caucus for Kiswahili (Chama Cha Kiswahili Cha Taifa -CHAKITA). For instance, on March 7th and 8th, 2024, the department took part in the 24th CHAKITA Conference held at the Masinde Muliro University of Science and Technology.

618. Kiswahili had been recognized the world over, for instance, the United Nations Educational Scientific and Cultural Organization (UNESCO) set aside the 7th of July every year as a day to celebrate Kiswahili. Specific celebrations have been held in twice in Tanzania (2022) and Uganda (2023) and Kenya is slated to mark the day in 2024. The Department of Culture, Arts and Heritage will host this event in conjunction with the Commission of Kiswahili in Africa (Kamisheni ya Kiswahili ya Afrika Mashariki) alongside other stakeholders.

619. The Committee received an invitation to attend the *Kiswahili Day* Celebrations in Mombasa, Kenya from 5-7 July, 2024. The climax will be the Swahili night that will showcase cultural aspects such as food and music.

Committee on Implementation observations

620. **The Committee noted that:**

i) **That the Ministry opted to have the Kiswahili Council formed by way of a Bill and not through a gazette notice;**

ii) **That for a Bill to be passed in Parliament for the Constitution of the Kiswahili Council in Kenya, it would take more time than by way of *Gazette* notice;**

iii) **That Kenyan schools only teach Swahili as a subject but do not use it as a language to instruction in school as it happens with English in Kenya and Kiswahili in Tanzania;**

iv) **That Tanzania constituted its own Swahili Council (Baraza la Kitaifa la Kiswahili, BAKITA in 1967 and Baraza la Kiswahili la Zanzibar in 2004) yet Kenya is yet to have its own council;**

v) **That Thursday was set aside as a day in which business in Parliament would be transacted in Kiswahili. However, the resolution had not been upheld as per the date of this meeting;**

vi) **That an independent council dedicated to the development and advancement of Kiswahili would be more productive as opposed to having Kiswahili issues addressed from a department within the Ministry; and**

vii) **That as per the Cabinet Secretary of the Ministry, the challenge facing the promotion of mother tongue in Kenya is the unintended negative impact on nationhood.**

Committee on Implementation recommendations

621. **The Committee made the following recommendation:**

i) **That within sixty (60) days upon tabling and adoption of this report, the Ministry in conjunction with the Office of the Attorney General fast tracks the enactment of the Draft National Kiswahili Council Bill 2023 for purposes of setting up the National Kiswahili Council of Kenya within the shortest time possible; and**

ii) **That the Ministry contacts the Attorney General reminding them of finalization of the Draft National Kiswahili Council Bill, 2023.**

19 MOTION SPONSORED BY THE MEMBER FOR MARAGWA CONSTITUENCY, THE HON. MARY WAMAUA, MP, URGING THE GOVERNMENT TO ESTABLISH DATABASE CENTRES IN ALL CIVIL REGISTRATION CENTRES FOR PURPOSES OF STORING ALL THE NECESSARY INFORMATION REQUIRED FOR ISSUANCE OF BIRTH CERTIFICATES TO ALL CHILDREN

19.1 Background

622. On Thursday, December 3, 2020, the National Assembly by a resolution adopted a Motion sponsored by the Member for Maragwa Constituency, the Hon. Mary Wamaua, MP urging the Government to establish database centres in all Civil Registration Centers for purposes of storing all the necessary information required for issuance of birth certificates to all children and to put in place administrative mechanisms to ensure that every child is automatically issued with a birth certificate before the child attains the age of three years.

The House resolved;

623. That, aware that the Constitution and the Kenya Citizenship and Immigration Act, 2011 provide that every citizen is entitled to any document of registration and identification issued by the State to citizens including birth certificate; further aware that, Article 53(2) of the Constitution of Kenya provides that a child's best interest are a paramount importance in every matter concerning the child; cognizant of the fact that issuance of birth certificates during civil registration associated with children is a challenge across the country due to among other issues, missing information for the parents and children as a result missing and improper documentations, damaged manual documents, and lack of children born outside hospital environments; deeply concerned over the delays and long queues at the civil registration centres and the challenges affecting registration of children by the ministry of education using the National Education Management Information System (NEMIS) in the country; this House urges the Government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children and puts in place administrative mechanisms to ensure that every child is automatically issued with a birth certificate before the child attains the age of three years.

19.2 Implementation Status of the Recommendations

624. The Committee on Implementation wrote to the Cabinet Secretary - Ministry of Interior and National Administration on 24th May, 2024 concerning the implementation status of the recommendations of a Motion, sponsored by the Member for Maragwa Constituency, the Hon. Mary Wamaua, MP, urging the Government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children.

625. Mr. Paul Mwangemi, Secretary at the Civil Registration Services, representing the Cabinet Secretary - Ministry of Interior and National Administration, appeared before the Committee on 4th June, 2024 to adduce evidence on the implementation status of the House resolutions. He was accompanied by Mr. Leonard Nang'ole from the Integrated Population Registration Database System (IPRS).

19.3 Submissions by The Principal Secretary, State Department for Immigration and Citizen Services - Ministry of Interior and National Administration

The Committee was informed that:

626. The status of implementation of the aforementioned Motion on the establishment of database centres in all Civil Registration Centres in the country is as below:

627. The Civil Registration Services are currently operational in One Hundred and Fifty-nine (159) Sub-counties against a possible four hundred and six (406) sub-counties countrywide. This is an increase of thirty-four (34) sub-county offices since 2021.

628. The Department had put up a 3-year plan to ensure that all two hundred and ninety (290) constituencies have operational offices. This means that the department will strive to operationalize a total of one hundred and thirty-one (131) offices in the remaining constituencies which do not currently have a civil registration office. This will bring services closer to the members of the public.

629. In all the operational sub-counties, the Department had established databases although, some are manual in nature. The Department had therefore embarked on the process of digitizing and automating its processes to ensure efficient storage, application and processing of certificates.

630. The Civil Registration Department had implemented a web-based system to allow members of the public to be issued with a Unique Personal Identifier (UPI) (Maisha Number) at birth. The system will subsequently allow members of the public to apply for certificates online, make payment through e-Citizen and download their certificates. The UPI will also allow for integration of the civil registration database with other government databases to provide for efficient service delivery. The implementation of this system had, however, been challenged in court and the department is looking forward to its implementation once it is cleared.

Committee on Implementation observations

631. **The Committee noted that:**

i) **Since 2021, the coverage of civil registration services centres countrywide had increased by 34 from 125 to 159;**

ii) **The main challenge facing the acquisition of crucial identification documents was the absence of civil registration centres in all areas of the country particularly in the far flung and remote areas;**

iii) **The primary document used for the generation of the civil registration database was a birth certificate;**

iv) **The Department had a three-year plan of ensuring all two hundred and ninety (290) constituencies have operational offices;**

v) **In all the operational sub-counties, the Department had established both manual and digital databases;**

vi) **Geographical areas and population are among the parameters used to set up civil registration centres;**

vii) **That the Department lacked clear timelines for the setting up of civil registration databases across the country;**

viii) **That setting up of the (UPI) was challenged in court on grounds of not meeting the public participation threshold. The case was mentioned but the**

department informed the Committee that it held more than 800 meetings on the matter;

ix) **The Department had 50 million records of data such as birth documentation of Kenyans, out of which 36 million have been digitized. Another 10 million existed in manual format with a target of digitizing the remaining records in the next one (1) year;**

x) **That illiteracy levels, remoteness of certain regions and internet penetration levels (the digital divide) pose a significant challenge to the establishment of database centres owing to the proportion of births at home rather than in health facilities;**

xi) **That the Department was considering using an offline module in the digitization of civil registration services and also facilitating assistant chiefs with data bundles to ensure timely submission of information to civil registration centres on births, deaths and identity card processing; and**

xii) **That civil registration services still had a gap in accessing the services particularly in the Eastlands areas of Nairobi such as Kasarani, Ruaraka, Embakasi East, Embakasi West and Embakasi Central which are high population density areas.**

Committee on Implementation recommendations

632. **The Committee resolved that:**

i) **The Department for Immigration and Citizen Services should put strict and definite timelines in place to enable timely implementation of the passed resolutions and follow up on the status of implementation;**

ii) **Within sixty (60) days upon tabling and adoption of this report Civil registration services should expand access to services particularly in the Eastlands areas of Nairobi such as Kasarani, Ruaraka, Embakasi East, Embakasi West and Embakasi Central which are high population density areas;**

iii) **The Department for Immigration and Citizen Services should acquaint itself with the dynamics of setting up civil registration centres such as geographical location and access by citizens to the centres, the socio-economic and literacy level of the residents, and the access to internet services as a way to avoid disadvantaging sections of Kenyans from accessing the services and on boarding into the database meant to store all information as outlined by the resolutions of the Motion; and**

iv) **The Department reports the progress of their three-year plan of ensuring all two hundred and ninety (290) constituencies have operational offices that offer civil registration services to the relevant Departmental Committee within one year of the tabling and adoption of this report.**

20 REPORT OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE VISIT TO RIYADH, SAUDI ARABIA ON A FACT-FINDING MISSION ON THE WELFARE OF MIGRANT KENYAN WORKERS IN THE KINGDOM OF SAUDI ARABIA FROM FEBRUARY 27 TO MARCH 3, 2019

20.1 Background

633. In line with this mandate, the Departmental Committee on Labour on its own motion resolved to undertake a fact-finding mission to Saudi Arabia with the following objectives: -

i. To establish the welfare of Kenyan workers in the Kingdom of Saudi Arabia, in the face of widespread media reports of mistreatment and even deaths of Kenyans arising from their employment; and

ii. To ascertain the implementation of the Bi-lateral Labour agreement between Kenya and the Kingdom of Saudi Arabia in order to participate in the promotion of the Kingdom as a destination country for migrant Kenyan workers.

Departmental Committee on Labour Recommendations

634. The Departmental Committee on Labour recommended: -

i. That, the Ministry of Labour and Social Protection and the National Employment Authority must ensure thorough vetting of employment agencies to ensure Kenyans travel to Saudi Arabia and other destinations through official recognized channels. The Immigration Department must be equally vigilant on movement of persons to these countries to ensure only Kenyans with MUSANED (an automated system through which the Saudi Ministry of Labour monitors compliance of employers of domestic workers with established employment practices) compliant employment contracts are permitted to travel;

ii. That, the Ministry of Labour and Social Protection and that of Foreign Affairs must continuously monitor the implementation of the Bilateral Labour Agreement to ensure that the measures initiated to protect Kenyans working in Saudi Arabia are fully adhered to. The office of the Labour Attaché must be strengthened and allocated adequate resources in order to fully monitor employment trends in the Kingdom of Saudi Arabia;

iii. That, the National Employment Authority and the Directorate of Diaspora Affairs, Ministry of Foreign Affairs should embark on a rigorous campaign to market Saudi Arabia as an important destination country for foreign employment. The current notion that foreign workers in Saudi Arabia go through suffering need to be corrected and the citizens sensitized on the correct procedure of travel to Saudi Arabia;

iv. That, the National Employment Authority should as a matter of priority seek for more opportunities, other than for domestic workers, in Saudi Arabia. The Authority should use the Labour attaché office to solicit for opportunities in conjunction with both Kenyan and Saudi Arabia employment agencies; and

v. That, the Ministry of Labour should initiate and strengthen pre- departure training to prepare Kenyans travelling to Saudi Arabia for the challenges expected in Saudi Arabia as a way of assisting them to fit in well into the Saudi social system.

20.2 Status of Implementation of the Departmental Committee on Labour Report

635. On 9th April, 2024, the Committee on Implementation wrote to Ms. Roseline K. Njogu, CBS Principal Secretary, State Department for Diaspora Affairs, Mr. Shadrack Mwangolo Mwadime, MBS Principal Secretary Labour and Skills Development Ministry of Labour & Social Protection and Ms. Edith Okoki - Director General, National Employment Authority inviting them to brief the Committee on the implementation status of the recommendations of The Report of The Departmental Committee on Labour and Social Welfare on The Visit to Riyadh, Saudi Arabia on a Fact-Finding Mission on The Welfare of Migrant Kenyan Workers.

Submissions by The Principal Secretary, State Department for Labour and Skills Development - Ministry of Labour & Social Protection and The Director General National Employment Authority to Deliberate on The Report of The Departmental Committee on Labour and Social Welfare on The Visit to Riyadh, Saudi Arabia On A Fact-Finding Mission on The Welfare of Migrant Kenyan Workers in The Kingdom of Saudi Arabia From February 27 To March 3, 2019

636. Mr. Shadrack M. Mwadime - Principal Secretary - Labour and Skills Development, Ministry of Labour and Social Protection appeared before the Committee on Thursday 18th April 2024 to brief it on the implementation status of the Report. He was accompanied by Ms. Mary M. Wamoko -Ag. Director, Labour Migration, Ms. Edith Okoki - Ag. Director General, National Employment Authority, and Mr. Festus Mutuse - Ag. Director, Strategy and Quality Assurance - National Employment Authority.

637. The Committee was apprised on the implementation status of the following resolutions:

1. **The Ministry of Labour and Social Protection and the National Employment Authority must ensure thorough vetting of Employment Agencies to ensure Kenyans travel to Saudi Arabia and other destinations through officially recognized channels. The immigration Department must be equally vigilant on movement of persons to these countries to ensure only Kenyans with Musaned (an automated system through which the Saudi Ministry of Labour Monitors compliance of employers of domestic workers with established employment practices) compliant employment contracts are permitted to travel.**

a) Licensing and Certification System of Private Employment Agencies

638. The Committee was informed that the Inter-Ministerial Vetting Committee is established under section 54A of the Labour Institutions Act, 2007. The law requires every Employment Bureau or Agency to seek and obtain government approval prior to sending Kenyan Citizens for employment outside Kenya.

639. The Committee is responsible for advising the Cabinet Secretary responsible for labour on matters related to vetting the application for registration made by employment bureaus and agencies. The Committee, with representation from key government agencies vets all the Private Employment Agencies in the country prior to their registration.

640. The Ministry of Labour and Social Protection chairs the Committee and it comprises of officers from: The Ministry responsible for Labour; Immigration; Internal Security-Interior, DCI, NIS and Kenya Police; Foreign Affairs; and the Office of the Attorney General.

641. In order to enhance the vetting process, the Committee had undertaken certain reforms.

b) Requirement to Appear in Person

i) The Committee was told that The Ministry had reviewed the Terms of Reference and Operating Procedures for the Vetting Committee. The vetting process now requires anyone seeking to open/operate an Employment Agency or renew the license to appear in person for vetting.

ii) This is meant to ensure that only qualified employment agencies are licensed and that existing recruitment agencies have fulfilled the criteria set out in the laws and legal notice No.110 Labour Institutions (Private Employment Agencies) Regulations 2016 before their licenses are renewed.

iii) This requirement had enabled the Ministry to identify and root out rogue employment agencies including the ones run by foreigners using proxies. In addition, employment agencies are required to give proof of financial capability.

iv) A total of five hundred and thirty-five (535) Private employment Agencies have active licence to date. Information on Private Employment Agencies can be verified via the website www.neaims.go.ke. Twenty-one (21) recruitment agencies have been deregistered or denied registration due to various reasons.

c) Enhanced Monitoring of Activities of Recruitment Agencies

i) The Committee was informed that in order to ensure that private employment agencies adhere to the legal framework, a monitoring mechanism had been established.

ii) The mechanism involves increased frequency of physical snap inspections of the Private Employment Agencies' premises and their records as well as building the capacity of enforcement agencies, thus promoting effective responses against fraudulent recruitment practices.

642. Other Measures to regulate Private Employment Agencies.

d) Oversight and Community Feedback Mechanism

i) The Committee was informed that the Ministry in collaboration with the International Organization for Migration (IOM) had established an Oversight Mechanism and a Community Feedback Mechanism to facilitate continuous monitoring of Private Employment Agencies.

ii) A distress reporting mechanism had been established through a Web Portal under NEAIMS and a **Toll-Free Line 0800222223** to report Migrant workers distress cases as well as fraudulent activities by recruitment agencies.

iii) To ensure adequate awareness creation of the established mechanisms at the community level, 277 resource persons have been trained on the Oversight and Community Feedback Mechanism in the five pilot counties of Nairobi, Mombasa, Kilifi, Nandi and Busia.

e) Capacity Building of Private Employment Agencies on Ethical Recruitment

i) The Ministry with support from International Organization for Migration (IOM) is implementing a Programme geared towards capacity building of Private Recruitment Agencies (PRAs) to enable adoption and adherence to the International Recruitment Integrity System (IRIS) standards.

ii) The IRIS standards relate to the entire recruitment process, from recruitment, deployment, employment and return/onward migration.

iii) A total of 162 Private Employment Agencies (PEAs) have been trained on introductory International Recruitment Integrity, 18 PEAs enrolled in the

International Recruitment Integrity System (IRIS) capacity building Programme and 4 PEAs audited for compliance with international standards. In addition, the Ministry had supported recruitment agencies to form five associations and Code of Conduct

f) Code of Conduct for Private Employment Agencies

i) The Committee was informed that the Ministry of Labour and Social Protection had supported recruitment agencies to form five (5) associations and develop a code of conduct. The Code of Conduct seeks to enhance self-regulation among the recruitment agencies.

ii) It aims to establish acceptable recruitment standards, uphold high standards of ethical and professional conduct, enhance integrity, professional and fair practice; maintain and uphold respect for human rights; and enhance terms and conditions of employment for migrants. The Code of Conduct will be reviewed periodically to address any emerging issues.

g) Information on Recruitment Agencies

643. Further, the Committee was informed that the list of registered recruitment agencies is available and accessible on the NEA website https://neaims.go.ke/ . The list includes registration status of employment agencies.

h) Use of Musaned & Clearance of Workers

i) The Committee was informed that Kenya embraced the MUSANED- an electronic platform developed by the Government of Saudi Arabia to facilitate recruitment of domestic workers in 2019.

ii) The system had enhanced transparency and protection of our migrant workers. Negotiations are ongoing to integrate the Musaned with other information system such as NEAIMS to enhance seamless flow and sharing of information. In addition, the scope of use of the Musaned system had been expanded to include other categories of workers.

iii) The Ministry of Labour and Social Protection and that of Foreign Affairs must continuously monitor the implementation of the Bilateral Labour Agreement to ensure the measures initiated to protect Kenyans working in Saudi Arabia are fully adhered to. The office of the Labour Attache must be strengthened and allocated adequate resources in order to fully monitor employment trends in the Kingdom.

a) Bilateral Labour Agreements (BLAs)

i) Bilateral Labour Agreements (BLAs) have emerged as important instruments in enhancing the protection or migrant workers. There are currently four (4) signed Bilateral Labour Agreement with Governments of Qatar (2012), United Arab Emirates (2018), Kingdom of Saudi Arabia (2017) and concluded and signed a Bilateral Labour Agreement (BLA) on 29th July, 2021 with the United Kingdom of Great Britain and Northern Ireland on recruitment of Health Care Worker.

ii) The BLAs with Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates (UAE) have been reviewed to improve terms and conditions of service, enhance protection of Kenyan Migrant Workers and increase the cadres of skilled and professional workers covered by these agreements.

644. The status of development of BLAs is summarized in the table below:

Status of Bilateral Labour Agreements (Blas) and Memorandums of Understanding (MoUs) on Employment of Kenyan Migrant Workers with key countries of destination

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
	FOUR (4) SIGNED BILATERAL LABOUR AGREEMENTS	
1.	Bilateral Labour Agreement between the Government of the Republic of Kenya and. Government of the United Kingdom of Great Britain and the Northern Ireland for Collaboration on Health Care Workforce	• The BLA was signed in September, 2021 and Guidelines developed. The Guidelines have been cleared by the office of the Attorney General and forwarded to UK for consideration. • 280 Nurses have been employed in UK through the agreement. • A total of five (5) Private Employment Agencies have been identified and names submitted to UK National Health Services (NHS) for listing. • There is Need to create awareness among interested Kenyan Health Care workers on the UK National Health Services (NHS) requirements (language testing and the immigration process).
2.	Bilateral Labour Agreement between the Government of Kenya and the Government of Kingdom of Saudi Arabia on Recruitment of Domestic Workers	• The Agreement was **signed in May, 2017** covering recruitment of Domestic Workers. • The agreement had been reviewed and finalized in-cooperating counter proposals from both parties. The Kingdom of Saudi Arabia notified the Ministry of labour on its willingness to sign the reviewed agreement. The Ministry is awaiting the confirmation of the exact date for signing.
3.	Memorandum of Understanding on Labour Cooperation between the Republic of Kenya and the United Arab Emirates (UAE)	MOU was **signed in April 2018** and is operational. • The Joint Implementation Committee held a virtual meeting on 31st October,2023. During the meeting, both parties affirmed their commitment to implement the MOU.
4.	Draft Bilateral Agreement between the Government of the Republic of Kenya and Government of the State of Qatar on Regulation and Employment of Kenyan migrant workers	• Initial Agreement was signed in 2012. The Agreement was to remain in force for a period of three (3) years renewable for a similar period. • The first (initial) Agreement had since expired and the Ministry submitted a revised draft BLA to the State of Qatar for consideration. eeting was held in August, 2023 with the Chargé d'Affaires of the Embassy of Qatar in Kenya where it was agreed that a negotiating team be constituted and propose dates for the negotiation for confirmation by the Qataris.
	EN (7) NEW DRAFT BILATERAL LABOUR AGREEMENTS - NEGOTIATIONS COMMENCED	

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
5.	Agreement between the Republic of Kenya and the Federal Republic of Germany on employment of Kenyan Workers. ***(Proposed BLA name: Agreement on a comprehensive migration and mobility partnership)***	• A taskforce drawing membership from the two countries was launched on the 13th of February, 2024 to commence negotiations during the official engagements between the Cabinet Secretary, Ministry of Labour and Social Protection and the Commissioner for Migration, for the Federal Republic of Germany. • Germany officially submitted their counter proposal in response to the draft agreement submitted by Kenya. Their counter proposal is an agreement on a comprehensive migration and mobility partnership. The agreement seeks to address the whole cycle of migration including a return and Readmission framework • The 1st round of official negotiations took place in Berlin, Germany from 5th- 7th, March 2024. The Kenyan delegation was led by the Principal Secretary for Labour and Skills Development while the German Delegation was led by the Commissioner for Migration, The Federal Republic of Germany. • Officials from various agencies in both governments deliberated on the counter proposal from the German Government. Due to the complexity and the sensitivity of issues that the agreement seeks to address, the 2nd round of technical negotiations have been scheduled for Nairobi in May, 2024.The second round seeks to look into areas that both governments have requested for more time to allow for further consultations. • The Bilateral Agreement is due for signing in mid-2024. • The targeted group are students and apprentices, and skilled workers
6.	Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Sultanate of Oman on Regulation of Employment.	• An agreed negotiated Draft MOU between the two countries had been finalized, and forwarded to the heads of the Ministries in charge of Labour in the respective countries for approval and signing. • The Government of Kenya and the Sultanate of Oman held two (2) days of bilateral meetings on the 7th and 8th June,2023 and concluded negotiations on the draft MOUs. • The final BLA is awaiting signing.
7.	MOU between the Government of the Republic of Kenya and the Government of	• MOU approved by Office of the Attorney General and the National Treasury. The MOU was forwarded

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
	the Kingdom of Bahrain on Regulation of Employment of Kenyan workers	to and comments received from the Kenyan Embassy in Kuwait • The MOU had been revised to incorporate comments received from the Kingdom of Bahrain and was re-submitted to the Kingdom of Bahrain for further consideration
8.	Memorandum of Understanding between the Government of Kenya and the United Republic of Tanzania on labour matters	• A draft BLA was prepared and submitted to MFA on 15th December, 2022 for onward submission to the United Republic of Tanzania. • The draft MOU was discussed during the high-level Bilateral forum between the Government of Kenya and Republic of Tanzania held in April,2023 and is awaiting finalization.
9.	Bilateral Labour Agreement between the Government of the Republic of Kenya and the Government of the Republic of Austria on Recruitment and Employment	• A draft BLA had been prepared and was submitted to MFA for onward submission to the Republic of Austria • The Ministry held a consultative discussions with the Director General for Labour in Austria and agreed to include Labour Clauses in the Economic Agreement with Kenya. • Even though the process of negotiations is still on-going, the labour migration had started taking place as Austrian employment agencies are in collaboration with the Private Recruitment Agencies in Kenya. • There is also an MOU between Austria and Mount University of Kenya in sourcing for 40 nurses every year from Kenya to provide their services and skills in the health industry for Austria.
10.	Cooperation between the Government of Canada and the Republic of Kenya.	• The Ministry submitted a Draft BLA to the Government of Canada and was advised by the Canadian High Commission officials to engage directly with the Government of the provinces of Manitoba, Saskatchewan and Alberta as labour migration issues are devolved in Canada. • Advisory from the Canadian Minister for International Cooperation for Kenya to consider exploring employment opportunities using the Atlantic and Rural Immigration Programmes which provide for easy entry requirements for migrants because they are employer driven. • The State Department for Diaspora Affairs had since shared two draft MOUs with provinces of Nova Scotia and New Brunswick for their consideration. The

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
		provinces have acknowledged receipt and committed to send their responses.
11.	Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Republic of Serbia on Regulation of Employment	• The draft BLAs have been forwarded to Ministry of Foreign Affairs and Diaspora Affairs for onward submission to Serbia for consideration. • There is already an on-going negotiation between the Kenya National Chambers of Commerce and Industry (KNCCI) and the Republic of Serbia on the modalities of the recruitment process.
	rteen (14) NEW DRAFT BILATERAL LABOUR AGREEMENTS – AWAITING NEGOTIATIONS	
12.	Agreement on Recruitment and Employment of Kenyan Workers between the Government of the Republic of Kenya and the following Countries of Destination: • Kingdom of the State of Kuwait • United Kingdom • Kingdom of Saudi Arabia • Hadhemite Kingdom of Jordan • Republic of Poland • Republic of Ireland (Nursing and Midwifery Workforce) • Arab Republic of Egypt • Republic of Kazakhstan • Republic of Rwanda • Federal Republic of Ethiopia • Republic of Malta • State of Israel • Vietnam • Russia	• The draft BLAs have been forwarded to Ministry of Foreign Affairs and Diaspora Affairs for onward submission to the Countries of Destination for consideration. • The Ministry is yet to receive feedback or counter-proposals from the identified countries of destination. • These BLAs are focusing on employment of Kenyans skilled and professional cadres. • The Kingdom of Saudi Arabia had acknowledged the receipt of the draft BLA and had affirmed commitment to submit their counter proposal in due course. • The Framework Agreement between Kenya and Israel is on the temporary recruitment and employment of Kenyans to work in the Agricultural sector in the state of Israel.

b) Policy and legal Reform

645. The Committee was informed that the Ministry of Labour and Social Protection finalized the National Policy on Labour Migration. The Policy aims to provide a framework for promotion of inclusive and sustainable development of the country through safe, orderly and productive labour migration.

646. The Policy outlines strategies whose implementation will enhance protection of Kenyan migrant workers. The Policy was approved by the Cabinet and is awaiting approval by the National Assembly.

647. The Ministry in consultation with the stakeholders had developed the Labour Migration Management Bill, 2024 which seeks to promote safe, ethical and orderly recruitment; and safeguard the rights and the welfare of migrant workers.

648. The Bill seeks to make recruitment agencies more accountable and periodically report on the welfare of the migrant workers recruited.

649. The Bill underwent public participation in September, 2023 where comments received have been considered and incorporated, The Office of Attorney General is yet to finalize the legal drafting of the Bill, it will then be submitted to Cabinet before submitting to Parliament for approval and enactment.

c) **Kenyan Migrant Workers Welfare Fund**

650. The Cabinet approved the establishment of a Kenyan Migrant Workers Welfare Fund in February 2021. Executive order No.1 of 2023 directed that the Ministry of Labour and Social Protection establish a Kenyan Migrant Workers Welfare Fund (KMWWF).

651. The main objective of the Fund is to provide protection, welfare and assistance to Kenyan migrant workers during migration, stay in destination country and upon return to the country. The establishment of the Fund is anchored under the Labour Migration Management Bill, 2024.

d) Operationalization of the Labour Migration Desk at the Major Airports

652. The Ministry with support from the Kenya Airports Authority (KAA) had operationalized the Labour Migration Desk at the Jomo Kenyatta International Airport. The purpose of the desk is to ensure compliance with Labour Migration Procedures before exiting the country and upon returning. This is expected to curb irregular migration, unethical recruitment, and human trafficking to ensure the realization of safe, orderly, regular labour migration for all Kenyans.

653. The desk is manned by officers from the State Department of Labour and Skills Development, National Employment Authority (NEA) in collaboration with the immigration officers and the Kenya Airports Authority. A total of 3590 migrant workers have been cleared the Labour migration desks.

e) Development of Information Handbooks

654. The Committee was informed that the Ministry had also developed Information handbooks for Bahrain, Kuwait, Qatar, Oman, Jordan, United Arab Emirates, Saudi Arabia, United Kingdom (for health care workers) have been developed to provide information to prospective health care workers.

655. The Committee learnt that the Ministry had also initiated development of information handbooks for Canada, Australia and Poland. The handbooks are meant to empower Kenyan migrant workers by providing factual information on the country of destination, and assist them in setting realistic goals and developing the key skills and attitudes needed to succeed in their new work environment. The information include geography to basic laws, healthcare system, and cultural. Such background will help any potential migrant, worker or family member, in mitigating any risk (including sociocultural shocks).

656. The National Employment Authority (NEA) is also upgrading the Kenya migrant worker website (https://kmw.nea.go.ke/). The website is dedicated to provide migrant workers with country specific information.

f) Return and Re-Integration Programme

657. The Committee was informed that the Ministry through the National Employment Authority (NEA) with support from the International Labour Organization (ILO) had operationalized five (5) Migrant Resource Centres to offer redress to migrant workers and returnees. The MRCs are in located in Nairobi, Mombasa, Kisumu, Eldoret and Thika.

658. The Ministry with support from the International Organization for Migration (IOM) had developed Standard Operating Procedures (SOPs) and guidelines to ensure the implementation of dignified return and sustainable reintegration programmes that entail economic, social and psychosocial dimensions, as well as provide a holistic and a needs-based response at the individual, community and structural levels.

2. The National Employment Authority and the Directorate of Diaspora Affairs, Ministry of Foreign Affairs should embark on a rigorous campaign to market Saudi Arabia as an important destination country for foreign employment. The current notion that foreign workers in Saudi Arabia go through suffering need to be corrected and the citizens sensitized on the correct procedure of travel to Saudi Arabia.

Marketing Saudi Arabia as Preferred Destination Country

659. The Committee was informed that the ministry had aggressively embarked on marketing of Saudi Arabia as the preferred labour destination country.

a) Visit to the Kingdom of Saudi Arabia

660. The Committee was informed that the delegation engaged various stakeholders (Government officials, recruitment agencies and stakeholders) in order to gain insights into the experiences of the agencies on labour migration management.

661. During these engagements, the delegation deliberated on the challenges faced by Kenyan Migrant Workers as well as good practices that can assist the government in designing and implementing appropriate strategies on labour migration with a view to enhancing the promotion of safe and orderly migration of our workers to the Kingdom. The team also gained useful insights on grievance reporting and handling procedure, which is key in addressing issues arising from the employment contracts.

662. Arising from the visit, the Ministry picked four Priority Areas. These are:

a) Strengthening the capacities and monitoring operations of Private Recruitment Agencies;
b) Review and complete overhaul of pre-departure training;
c) Restructuring of the attestation and management of foreign contracts; and
d) Development and integration of labour migration information management systems.

i) The two countries have been holding bi-weekly meetings to discuss issues affecting labour migration. The discussions are already yielding positive results as the reported number of Kenyan migrant workers in distress in KSA had drastically reduced.

b) Visit to Saudi Arabia in December 2023

663. The Committee was informed that in December 2023, a delegation visited the Kingdom of Saudi Arabia (KSA) to among others things discuss the possibility of increasing Kenya's share in the Kingdom's vast labour market. The delegation held discussions with various state and non-state actors. A major outcome of the visit was the offer of 2,500 job opportunities for Nursing professionals.

c) Visit by a Delegation from Saudi Arabia

664. Further, the Committee was informed that a delegation from Takamol (Musaned) visited Kenya in December 2023 and held consultations with the Ministry of Labour and other stakeholders on enhancing safe and orderly labour migration from Kenya to Saudi Arabia. Arising from these consultations, the two countries have embarked on integration of Musaned with NEAIMS as well as other systems. This initiative will facilitate sharing of information between the two countries.

d) Engagements with Other Countries

665. The Committee was informed that the Ministry had embarked on various strategies to secure decent employment opportunities with a number of countries and had been able to source for jobs in different sectors such as Health, Agriculture, Construction, Hospitality and Domestic among others.

Germany:

666. The Committee was further informed that the engagement with the Federal Republic of Germany marks a significant milestone in the government's efforts to expand employment opportunities for Kenyan workers. The Ministry reported that it was working towards establishing a robust Labour mobility and migration partnership.

667. This partnership seeks to create pathways for Kenyan workers to access employment opportunities in Germany through various channels, including apprenticeship programs, university pathways, skilled worker visas, and the Opportunity Card initiative. In March 2024, there was an exchange of proposals between the special commissioner for migration in Germany and the Ministry of Labour and Social Protection. A second round of technical negotiations was scheduled for May 2024 in Nairobi, aimed at advocating for increased employment opportunities for Kenyan workers in Germany.

Canada:

668. The Committee learnt that market assessment was conducted in the Atlantic Provinces of Canada, namely New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island. This assessment aimed to identify employment opportunities and labor shortages in key industries within these provinces, laying the groundwork for potential collaboration and the export of Kenyan labour to Canada.

669. The Committee was also informed that Kenya had initiated discussions with the Provinces of Nova Scotia and New Brunswick, to explore employment opportunities for Kenyan workers through the Provincial Nominee Programs (PNPs) and other immigration pathways

Republic of Austria:

670. The Committee was informed that the Ministry had initiated engagements with the Republic of Austria with an intention of seeking enhanced cooperation in labour mobility, apprenticeship, student training, and employment.
671. Austria reportedly submitted a draft agreement outlining areas of potential collaboration between our two countries. In response, Kenya reviewed the proposal and formulated a counter-proposal aimed at furthering mutual interests and strengthening bilateral ties.
672. Job orders were reportedly secured with different countries, and recruitment had been on-going.

3. The Ministry of Labour should initiate and strengthen pre-departure training to prepare Kenyans travelling to Saudi Arabia for the challenges expected in Saudi Arabia as a way of assisting them fit in well into the Saudi Social Economic System.

a) Pre-Departure Training programmes for Kenya Migrant Workers

673. The Committee was informed that the Ministry through the National Industrial Training Authority (NITA) had put in place a comprehensive pre-departure and orientation programme for migrant workers.
674. The Home Care Management Curriculum for domestic migrant workers is being implemented to address the challenges faced by workers locally and abroad. The curriculum had 4 Courses including Pre-Departure Training for out-bound migrant workers and aims at creating a qualified, productive, healthy workforce with practical knowledge and skills in homecare management.

b) Review of The Homecare Management Training Course

675. The Committee learnt that in January 2023, a delegation from Kenya led by the Ministry of Labour and Social Protection visited the Kingdom of Saudi Arabia (KSA) to address labour migration issues.
676. During the visit, it was noted that whereas KSA employers appreciate the professionalism and productivity nature of Kenyan migrant workers, there are a few concerns which appear to constrain full exploitation of the potential benefits of labour migration to both countries and in particular the migrants and respective employers.
677. NITA embarked on the review of the current homecare management curriculum and was supported by the International Labour Organization (ILO). In June 2023, NITA released a draft of the reviewed curriculum for piloting.
678. A number of changes were proposed in the revised curriculum which include;
    a) Renaming of the programme from Homecare Management course Syllabus and Regulations to Homecare Assistant III Curriculum;
    b) The duration of the curriculum was reviewed from 360 to 400 hours consisting of; 200 hours institutional training while the other 200 hours shall be workplace placement (industrial attachment);
    c) Inclusion of a formative assessment accounting for 10% of the final grade that will be internally carried out by the training institution;
    d) Inclusion of an additional assessment (final assessment) after industrial attachment to determine award of NSC-I Certificate;
    e) Inclusion of the requirements for resource persons (teachers) and accreditation of training institutions (schools);

f) Inclusion of specific content as proposed by the stakeholders including; Saudia culture and laws, social media management, Customer service techniques, Practical home management practices for modern house, Basic Arabic and Employment contracts.

679. The Committee was informed that following further engagements with the Saudi Arabian authorities in December 2023, further proposals were done on the reviews to the curriculum. A key proposal was the reduction of the processing time for unskilled domestic workers from the average of 60 days to less than 30 days. In essence, this meant that the training duration had to be affected. Consequently, the following was done:

a) Development of two training structures for homecare management training based on the agreements with the Saudi authorities, A 14-day training programme (112 hours) for KCSE holders and a 21-day training programme (174 hours) for KCPE holders. The two structures were piloted during Cohort-31 and Cohort-32.

b) Development of an independent 40-hour (5 days) module for pre-departure training targeting cross cutting occupations to include recommendations from the KSA team.

c) Introduction of aadditional sub units to reinforce training on Saudi Culture and Customs. These are: Introduction to the Kingdom of Saudi Arabia, Saudi Culture. Arabic Conversation, Arabic non-verbal expression, Arabic numbers and symbols, Employment Contract, Ministerial Decision No. 605 - Transfer of Domestic Workers, trained 176 resource persons (industry specialists) from 75 institutions on the revised curriculum module enhance their capacity to deliver the same.

d) Adoption of the training and assessment of the pre-departure training by NITA as a Stand-alone course applicable to all persons migrating for work to the Kingdom of Saudi Arabia.

i) To enhance efficiency in predeparture training NITA had:

a) Developed a registration portal where details of all prospective domestic migrant workers are uploaded for training in various schools. The system captures name, ID, recruitment agency and schools the migrant worker will be enrolled in for Pre-Departure training;

b) Developed a transcript with security features including a QR reader to ensure it is not duplicated elsewhere;

c) Resulted to submission of results to all schools through an administrator log. This ensures only authorised persons or school directors can access the transcript. The log in details for transcripts are different from that of registration to ensure security of the transcript;

d) Set strict timelines which ensure no students are uploaded un-procedurally into the system; and

e) Integrated their systems with NEA to enable the prospective migrant workers be recruited through the NEA portal which also enables the results release for processing for travel.

f) Domestic migrant workers headed to Saudi Arabia are only approved by NEA through the Musaned System, once they have been assessed and certified by the

National Industrial Training Authority (NITA), and the successful candidates are accessed by NEA through the integrated system.

g) NEA in collaboration with NITA and the Ministry, conducts Physical inspections in the Accredited Training Institutions offering Pre-departure training to check on the quality of training being offered and the safety and health of the trainees.

ii) Since its inception, the following are the key achievements:

a) Trained 217,200 Domestic workers.

b) Accredited 136 specialized training institution for migrant workers with a combined capacity of 10,238 trainees.

c) Trained 667 resource persons (industry professionals) for ToT to enhance their capacity to roll-out training of migrant workers by September 2023.

d) Regulated 32 training Cohorts (for Module-I) during which 227,536 migrant workers were trained and assessed as of 15th April 2024.

Support Required from the Committee:

i) Fast tracking of the approval and enactment of Labour Migration Management Bill, 2024 after the approval by the AG and Cabinet.

ii) Establishment of Safe Houses in the Gulf Region (Cities of Riyadh, Jeddah, Dammam in Saudi Arabia and State of Qatar) with priority in the Kingdom of Saudi Arabia where numerous distress cases have been reported.

iii) Support towards establishment of additional Labour Attaché Offices in key labour destination countries (Cabinet approved the establishment of 7 Labour Attaches Offices in February, 2021 however this had been hampered by lack of allocation.

iv) Adoption of Sessional Paper on National Policy on Labour Migration.

v) Support in Establishment of the Kenya Migrant Workers Welfare Fund

vi) Additional resources on local and international travel to pursue the Bilateral Labour

vii) Financial supports of Kshs.ksh.353,500,000 towards the development of Bilateral Agreements (BLA)

Committee on Implementation Observations

680. **The Committee observed that:**

i). **All staff accompanying the PS – State Department for Labour and Skills Development (Ms. Mary M. Wamoko -Ag. Director, Labour Migration and Ms. Edith Okoki - Ag. Director General – National Employment Authority) were all in acting capacity). Committee was informed that a civil society group had gone to court to block a recruitment requirement that stipulated a CEO be below 35 years old.;**

ii). **The substantive NEA Director General was in court over corruption allegations although interviews to fill the position were underway;**

iii). **The Committee noted that the challenge facing Kenya in addressing the welfare of its migrant worker citizens was failure by partner countries such as Oman and Qatar to sign bilateral labour agreements (BLAs);**

iv). **The Ministry had initiated formulation of the Labour Migration Management Bill, 2024 which seeks to promote safe, ethical and orderly recruitment. However, the Bill was still at the Attorney-General's Office pending fine tuning;**

v). **The figures provided for workers employed through BLAs only showed 280 Nurses have been employed in UK through the agreement.**

vi). **That 200,000 jobs have been advertised on the National Employment Authority's (NEA) website though the uptake had been low; and**

vii). **The National Employment Authority has limited funds for publicity, awareness and civic education of Kenyans concerning available opportunities.**

Committee on Implementation Recommendations

681. **The Committee recommended that:**

i). **The State Department for Labour partners with Parliament to aid in raising awareness of employment opportunities for Kenyans. This can be done through setting aside a day in Parliament dedicated to this cause;**

ii). **The State Department for Labour finds ways of accessing niche areas such as opportunities for veterinary doctors, pastoralist and livestock keepers in areas such as Saudi Arabia where their services are needed. This would give Kenyans a variety of job opportunities to take advantage of;**

iii). **The relevant appointing authority ensures that staff do not stay for inordinately lengthy periods of time in acting capacity in the state departments and ministries as this impedes service delivery; and**

iv). **The State Department for Labour takes a forefront approach in championing for employment opportunities in Kenya through disseminating accurate information to Government and members of the public.**

21 REPORT OF THE DEPARTMENTAL COMMITTEE ON ENERGY RELATING TO A PUBLIC PETITION REGARDING THE DEGRADATION OF THE ENVIRONMENT ALONG THE SONDU-MIRIU DAM DUE TO THE FAILURE BY KENGEN TO FULLY COMPLY WITH THE ENVIRONMENTAL IMPACT ASSESSMENT OF 1995

21.1 Background

682. The Public Petition No. 002 of 2022 by Mwangaza-Abunya Community Development Group regarding the degradation of the environment along the Sondu-Miriu dam due to the failure of KenGen Company to fully comply with the Environmental Impact Assessment Report of 1995 was conveyed to the House by the Hon. Speaker on 12th February 2022.

683. Construction of Sondu-Miriu Hydropower Station began in 1999 and was officially commissioned in 2007. The Petition was formulated since KenGen had failed to comply with some recommendations that were highlighted in an Environmental Impact Assessment (EIA) Report of 1995.

684. The Departmental Committee on Energy considered the Petition and tabled its Report before the House on 26th May 2022.

21.2 Prayers by the Petitioners

685. Investigate the issues raised over the current state of the dam and the effects it had caused on the Communities living around it and make recommendations to KenGen to:
    i) Supply clean, safe and adequate water to the communities living both on the Left and Right banks for domestic use;
    ii) Remove all the hippo grass that had covered the bank of the river to ensure the safety and security of the members;
    iii) To clear all the bushes within the forest along the river bank areas to ensure safety and security; and
    iv) To construct a Health Centre at Mamboleo Grounds to provide health services to the local community due to increased disease prevalence in the region caused by stagnant water along the bank.

686. To find out the extent to which the Environmental Impact Assessment (EIA) Report of 1995 was implemented and recommend to KenGen:
    i) To open up all the access roads along the dam, grade them and Murram more so to the roads which were blocked due to outward extension of the water from the dam;
    ii) Construct bridges and culverts to these access roads to ease movement along the dam and its environs; and
    iii) Construct a bridge in Kawuor Location between Kisumu and Homa Bay Counties at Wath Karoko Canoe Point to link Abuoye Primary and St Anthony's Secondary School Kajimbo to prevent frequent deaths arising due to hippo grass.

687. To find out all the projects KENGEN had implemented under Corporate Social Responsibility (CSR) to the affected communities living majorly in Kodhoch West and Kawuor Locations since its inception to date and recommend to KenGen to:
    i) Link with Last Mile Connectivity Project to supply Electricity to the affected communities so that the community can at least gain the advantage of the

project around us;

ii) Uplift the faces of the schools in the affected areas namely Abuoye, Nyandolo, and Ogeka Primary Schools by constructing classrooms and provision of learning materials; and

iii) Release all the title deeds for the communities held in their offices since they were taken to date. We also pray that they help the community in processing title deeds to the parcels that have not been finalised.

21.3 Committee Observations as per Petitioners' Prayers

688. In relation to the current state of the dam and the effects it had caused to the Communities living around it as regards safe and clean water, removal of hippo grass, bush clearing and construction of health centres:

a) The EIA report cited notes that a number of residents would have been affected by the project and they would have to be compensated in cash or alternative settlements. Despite the report noting that surveys were unreliable, there were no disputes regarding compensation, save for the balance of remaining title deeds.

b) The EIA report further notes under Clause 4.5.5 that under infrastructure and services, the area had poor communication networks limiting the growth of small trading centres. None of the roads were tarmacked and most were impassable during the rainy season. KenGen can therefore not be held liable for the state of the roads in the area since post-project, they had in fact rehabilitated and improved some of the roads.

c) The EIA report further notes under Clause 4.5.5 that Sondu-Miriu River is the main source of water for all purposes in the area. The growth of hippo grass, attributed to the silting of the dam had therefore impeded unrestricted access to the water by residents.

d) Under the same Clause, the report notes that there was no electricity supply in the project area. Being hosts of the project, the Committee observed that it is noble for KenGen to assist the residents enjoy benefits of this project, despite not having the direct mandate to supply or distribute electricity.

e) On education and sanitation, the report under Clause 4.5.6 noted low standard schools and health facilities, with poor road access to them. Malaria was observed as being of high incidence, as well as waterborne vectors and liver parasites. The Committee observed that Clause 6.2.5 noted that fluctuation of water levels in the reservoir may serve as a semi-effective management technique for the control of vectors. Furthermore, the prerogative to preventive and curative health initiatives lay with the Ministry of Health and the County Governments, while educational facilities were the mandate of the national government.

f) Although Clause 6.2.6 discounts the possibility of restricted access to the reservoir water by residents, the petitioners demonstrated the presence of steep edges that made it risky for residents in some of the areas along the banks to access water.

689. In regards to the extent to which recommendations of the EIA report of 1995 were implemented:
   a) Specific to the EIA report recommendations, the Committee observed that recommendations A, B, C, D, E, F, H, I, J, K, L and M had no demonstrable violations on the part of KenGen.
   b) The EIA report recommendations G, N which calls for an irrigation component and removal of aquatic weeds (in this case hippo grass) have not been addressed by KenGen.
   c) The Committee also noted that the cited EIA report of 1995 was done pre-project.

690. On all the projects KenGen had implemented under Corporate Social Responsibility (CSR) to the affected communities living majorly in Kodhoch West and Kawuor Locations:

691. Through CSR, the following had been done by the company so far, in the subject locations:
   i) 7-tonne bridge connecting the two counties at Kshs. 25 million.
   ii) 20 university scholarships at Kshs. 6.4 million.
   iii) Donation of the 5000-litre water tank to Ogeka Primary School and twelve 1000-litre water tanks to the community.
   iv) Construction of a girls' dormitory at St. Anthony Kajimbo Secondary School at Kshs. 1.7 million.
   v) Rehabilitation of Kolweny-Nyamarimba-Sondu intake road at Kshs. 16 million.
   vi) Two classrooms at St. Mary's Nyamarimba Girls School at Kshs. 3 million.
   vii) Roofing of four classrooms at Apoko Primary School at Kshs. 1 million.

692. On the issue of title deeds, the Committee observed that a total of 353 title deeds had been earmarked for processing, out of which 306 had been completed and issued to the holders. The balance of 47 had been impeded by succession issues but was being addressed by the office of the public trustee and a surveyor had been engaged for the stipulated purpose.

693. The Committee also noted that there was an intention to escalate the project to smallholder irrigation activities.

i. **Departmental Committee on Energy Recommendations**

694. The Committee made the following recommendations:

695. On the First Prayer, the Committee recommended as follows:
   a) KenGen should conclude the tender process towards dredging of the silt, and removal of all resultant hippo grass, along the intake area and the banks, within 90 days of tabling of this report;
   b) KenGen should construct safe access points to the reservoir by residents for human and domestic use, by 31st December 2022; and
   c) The petitioners should further canvas priority CSR projects to include the construction of a health centre at Mamboleo grounds with the stakeholder's coordination committee, and the County Government of Homa-bay.

696. On the Second Prayer, the Committee recommended as follows:
   a) KenGen should construct adequate bridges as part of the discharge channel construction as noted under Clause 6.2.2 of the EIA report within the next financial year;

b) KenGen should repair patches of untarmacked sections on the Kolweny Nyamarimba-Anding'o Opanga road; and

697. KenGen should consider rehabilitation and construction of other feeder and access roads, bridges and culverts in Kodhoch West and Kawuor Locations in the next financial year.

698. On the Third Prayer, the Committee recommended as follows:

a) KenGen should liaise with KPLC and REREC towards ensuring neighbouring communities, especially those in Kodhoch West and Kawuor Locations, are connected to the grid through last mile connectivity in the next financial year;

b) The petitioners should canvass for priority CSR projects with the stakeholder's coordination committee; and

c) KenGen should hadten the process of issuance of all pending title deeds and ensure they are issued by 31st December 2022.

21.4 Implementation status of the recommendations

699. The Committee on Implementation wrote to the Kenya Electricity Generating Company on 9th October, 2023 seeking the implementation status of the Report.

700. Eng. Peter Njenga the CEO/Managing Director appeared before the Committee on 16th October, 2023. He was accompanied by the following officers:

1. Eng. Julius Odumbe - General Manager Operations- KenGen
2. Eng. Alfred Abiero - Manager, Power Generation- KenGen
3. Mr. Joshua Were - Manager, Environment & Sustainable Development -KenGen
4. Grace Chepkwony - Community Relations Manager- KenGen

21.4.1 Submission by the CEO/Managing Director- KENGEN

On recommendation that KenGen should conclude the tender process towards dredging of the silt, and removal of all resultant hippo grass, along the intake area and the banks, within 90 days of tabling of this report

Implementation Status:

701. The CEO/Managing Director submitted that the length of the Sondu-Miriu Regulating Pond (dam) is approximately 6 km. Dredging was split into 3 phades (Phade I, II & III) for ease of budgetary allocation.

Phase I Tendering and Progress

702. The Contract was signed on 19.09.2022 while the work commenced on 12th October 2022. Phade I of the contract involves desilting and removal of hippo grass at Sondu-Miriu Power Station intake area which constitutes 40% of the entire project scope, covering the intake area and extending upstream to about 1Kilometre. It involves the removal of 150,000m2 of hippo grass and dredging 180,000m3 of silt and slurry. Hippo grass removal is ongoing as well as pumping of the silt slurry (desilting) which is currently at 70%. The contract duration was one year, and this had been extended to cover the remaining work.

Phase II Tendering and Progress

703. The second phade covers 30% of the entire project scope. A tender was awarded to the Phade I contractor through competitive bidding in accordance with Public Procurement and Asset Disposal Act of 2015 and a contract was signed on 21.09.2023. It involves the removal of 70,000m2 of hippo grass and the dredging of 330,000m3 of silt and slurry.

Phase III

704. Phase III of the Tendering will cover 30% of the entire project scope and will be reviewed and tendered after phase II completion. These will be implemented in the 2024/25 financial year.

Committee on Implementation Observations

705. **The Committee observed that KENGEN is implementing the recommendation, making it possible for the people living near the reservoir to access the water.**

The Committee recommended that KenGen should construct safe access points to the reservoir by residents for human and domestic use by 31st December 2022.

Implementation Status:

706. The CEO/Managing Director submitted that the mapping of safe access points to the reservoir had been done. A total of eight access points; four on each bank, had been identified. KenGen reported that they were in the process of scoping and designing the access points in readiness for construction. It will be done in phades due to budget constraints, starting with two access points in the 2024/2025 fiscal year.

Committee on Implementation Observation

707. **Arising from submission by the CEO/Managing Director the Committee observed that KenGen had failed to provide safe access points to the reservoir within the recommended timelines.**

Committee on Implementation Recommendations

708. **That within sixty (60) days upon tabling and adoption of this report, the Board of KenGen should ensure that recommendations are fully implemented in the 2024/2025 Financial Year.**

On the recommendation that the petitioners should further canvass priority CSR projects to include the construction of a health centre at Mamboleo grounds, with the stakeholder's coordination committee and the County Government of Homa-Bay.

Management Response

709. The CEO/Managing Director submitted that the Stakeholders' Coordination Committee (SCC) was informed of the recommendation. KenGen, during the period 2021-2023, spent over KShs.70 million in undertaking Corporate Social Initiatives (CSI) within the project area environs. Additionally, KenGen was reviewing the scope and considering the option to develop a dispensary for 20,000 people in the 2024/2025 fiscal year and therefore, sensitization on the subject matter is ongoing.

Committee on Implementation Observations

710. **Arising from the submission by the CEO/Managing Director the Committee observed that:**
    i) **There are no tangible projects undertaken through Corporate Social Initiatives (CSI) by KenGen; and**
    ii) **The water points in place had no water.**

Committee on Implementation Recommendation

711. **That within sixty (60) days upon tabling and adoption of this report KenGen Management should engage the community to identify suitable projects to be undertaken by the KenGen within 60 days of the adoption of this report.**

On recommendation that KenGen should construct adequate bridges as part of the discharge channel construction, as noted under clause 6.2.2 of the EIA report, within the financial year, 2022/23.

Implementation Status

712. The CEO/Managing Director submitted that a total of seven (7) bridges were incorporated into the design of the outlet channel during the construction of the Sang'oro Power Station. The bridges provided access to vehicles and human beings.

Committee on Implementation Observation

713. **The Committee noted that the recommendation had been implemented.**

On recommendation that KenGen should tarmac the sections of untarmacked roads and repair sections of Kolweny Nyamarimba-Anding'o Opanga road.

Implementation status

714. The CEO/Managing Director submitted that KenGen engaged KeRRA on 13th October 2023 on the subject matter. KeRRA confirmed the availability of a budget within the 2023/2024 fiscal year for the rehabilitation of the untarmacked sections on the Kolweny-Nyamarimba-Adingó Opanga road (C757). In case KeRRA runs out of budget, KenGen will support the rehabilitation of about 4km of the road in the 2024/2025 fiscal year.

Committee on Implementation Observations

715. **Arising from the submission by the CEO/Managing Director the Committee observed that:**
    i) **KenGen had delayed the implementation of the recommendation considering that KenGen is earning a lot of income from the project.**
    ii) **KenGen had not repaired patches of the untarmacked sections of the Kolweny-Nyamarimba-Adingó Opanga road.**

Committee on Implementation Recommendations

716. **Within sixty (60) days upon tabling and adoption of this report KenGen should:**
    i) **Engage KERRA on behalf of the community to seek support to construct the road; and**
    ii) **Make the untarmacked sections motorable.**

On recommendation that KenGen should consider rehabilitation and construction of other feeder and access roads, bridges and culverts in Kodhoch West and Kawuor Locations, in the 2022/23 financial year.

Implementation Status

717. The CEO/Managing Director submitted that in 2022 KenGen rehabilitated Ramula-Intake Road (left Bank) and Intake-Jogoo Centre in Anding'o-Opanga (Right Bank).

Committee on Implementation observations

718. **Arising from the submission by the CEO/Managing Director the Committee observed that the majority of the feeder roads have not been rehabilitated.**

Committee on Implementation Recommendations

719. **That within sixty (60) days upon tabling and adoption of this report, KenGen should engage KeRRA and the County Government on behalf of the community to seek support to gravel the feeder and access roads in Kodhoch West and Kawuor Locations.**

On recommendation that KenGen should liaise with KPLC and REREC towards ensuring neighbouring communities, especially those in Kodhoch West and Kawuor Locations, are connected to the grid through last mile connectivity, in the 2022/23 financial year

Implementation Status

720. The CEO/Managing Director submitted that KenGen is working with other players in the energy sector to address this. It was noted that KenGen engaged REREC vide a letter dated 24th April 2023 to consider implementation of the last mile project on areas around KenGen installations. Further, the follow-up confirmed that REREC had done a budget estimate in the 2024/2025 fiscal year for electricity connection to the local community.

Committee on Implementation Observation

721. **The Committee observed that the recommendation had not been implemented. Further, the Committee noted that a home next to the power station was not connected to the grid.**

Committee on Implementation Recommendations

722. **That within sixty (60) days upon tabling and adoption of this report KenGen, KPLC and REREC management should jointly prepare an electrification implementation plan and present before the Committee on Implementation.**

On recommendation that the petitioners should canvass for priority CSR projects with the stakeholder's coordination committee

Implementation Status

723. The CEO/Managing Director submitted that KenGen had undertaken a scoping of work and is looking for funds to facelift the three schools. He also noted that during the period 2021-2023, the Company spent over KShs.70 million in undertaking Corporate Social Initiatives (CSI) within the project area environs.

Committee on Implementation Observations

724. **Arising from the submission by the CEO/Managing Director the Committee observed that:**
    i) **There working relationship between KenGen and the local community was not cordial; and**
    ii) **The amount of money set aside for Corporate Social Responsibility in the area was negligible compared to the revenue the company had earned and continues to earn over the years.**

Committee on Implementation Recommendations

725. **The Committee recommends that within sixty (60) days of tabling and adoption of this report the management of KenGen should meet with the Stakeholder's Coordination Committee and prepare the priority list of the projects to be undertaken in the area and present it before the Committee on Implementation.**

On the recommendation KenGen should hadten the process of issuance of all pending title deeds and ensure they are issued by 31st December 2022

Implementation Status

726. The CEO/Managing Director submitted that a total of 298 titles were to be processed and issued out to the local community:
    i) KenGen facilitated the processing and issuance of 227 titles to the local community; and
    ii) KenGen is following up on the processing of the following titles:
        a) 12 titles that had errors, requiring correction of particulars at the Lands Registry.
        b) 59 titles for deceased cases, requiring the appointment of Administrators.

727. The status of the titles with errors and for deceased persons cases is as follows:
    a) 59 titles for deceased persons cases:
        i) KenGen facilitated succession through the office of the Public Trustee;
        ii) KenGen is awaiting the families to appoint the administrators to proceed with the process;
        iii) In December 2022 and February 2023, KenGen engaged the Office of the Public Trustee in Kisumu and obtained confirmation that files relating to the deceased/succession cases were intact and ready for transmission to *bona fide* beneficiaries upon them presenting the duly appointed Administrators of the respective affected estates; and
        iv) In February 2023, KenGen convened six public barazas and sensitized members of the community on the actions they should undertake to have the titles processed by the office of the Public Trustee in Kisumu.
    b) 12 titles with errors requiring correction of particulars at the Lands Registry.
        i) KenGen is assisting to have the errors corrected at the Lands Registry.
        ii) Unfortunately, the Awasi Lands Registry was razed down by a fire incident on 18th February 2023 and it was subsequently Gazetted as having been closed.
        iii) KenGen had engaged the Land Registrar for the said Lands Registry and he advised that the Ministry of Lands is reconstructing Land Records after which they will inform the Public on reopening of the said Lands Registry.

Committee on Implementation Observation

728. **Arising from the submission by the CEO/Managing Director, the Committee observed that KenGen had not explored adequate options to facilitate the issuance of the 59 titles requiring the appointment of Administrators.**

Committee on Implementation Recommendations

729. **The Committee recommends that within sixty (60) days upon tabling and adoption of this report:**
   i). **KenGen should expedite the process of issuance of the 59 titles to the administrators within 60 days upon tabling and adoption of this report;**
   ii). **KenGen should fast-track the correction of errors in particulars at the Land Registry in the issuance of titles.**

KenGen should liaise with the Lake Basin Development Authority (LBDA), who have been involved in a number of conservation and smallholder irrigation activities in the region, to actualize this intention.

Implementation Status:

730. The CEO/Managing Director submitted that KenGen contacted the Lake Basin Development Authority (LBDA) intending to implement the recommendation. LBDA noted that currently, it is overseeing the Kimira-Oluch Smallholder Farm Improvement Project (KOSFIP) in Rangwe and Rachuonyo North sub-counties in Homabay County. The project, funded by African Development Bank & the Kenya Government, draws water from River Awach Tende and Awach Kibuon for irrigation purposes in an area covering approximately 3,685 acres.

Committee on Implementation Observation

731. **The Committee observed that the recommendation had not been implemented since no irrigation project is being supported by LBDA and KenGen along the Sondu-Miriu hydropower project outlet despite the provision for an irrigation outlet.**

Committee on Implementation Recommendations

732. **That within sixty (60) days upon tabling and adoption of this report KenGen and the Lake Basin Development Authority (LBDA) should implement irrigation projects to benefit the local community.**

On recommendation that the Environmental Impact Assessment study for the proposed dredging of the Sondu- Miriu Intake be completed.

Implementation Status

733. The ESIA license for the proposed dredging was issued by NEMA on 26th October 2022.

Committee on Implementation Observation

734. **The recommendation had been implemented.**

On recommendation that the provisions for mitigating measures for unforeseen negative consequences of the project be done as contained in the Environmental Impact Assessment (EIA) study report for the proposed dredging of the Sondu-Miriu Intake.

Management Response

735. The EIA report was given to the contractor awarded the tender for dredging of Sondu-Miriu Intake for implementation of the mitigation measures upon commencement of the works. Among the mitigation measures implemented during the dredging include: water pollution control through avoidance of repairs of equipment near the Sondu-Miriu regulating pond/river; maintaining the dredging equipment in good working condition to minimize noise emission and accidental spillage of oil in the water; provision and enforcement of Personal Protective Equipment; sourcing of unskilled labour from the local community; sensitization of the local community on safety hazards associated with the ongoing works; prohibition of works at night so as to enhance safety of workers and prevention of vegetation clearance by confining activities within the designated site (regulating ponds).

736. Further, the Assistant Manager of the Environment Western Region is a Project Implementation Team member and oversees the implementation of the mitigation measures.

Committee on Implementation Observation

737. **The recommendation had been implemented.**

22 REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEAR ENDED 30TH JUNE, 1997 TO 2012

22.1 Background

738. The Public Investment Committee considered the Auditor-General's Report on the Financial Statements of Kenya Tourist Development Corporation (Financial Year:1996/1997 – 2011/2012).
739. The (PIC) 19th Report considered the following audit issues:

Audit Issue: DEBTORS AND PRE - PAYMENT: FYS 1996/1997, 1997/1998, 1998/1999, 1999/2000, 2000/2001, 2004/2005, 2005/2006, 2006/2007, 2011/2012 ACCOUNTS

740. The Committee was informed that the Corporation had long outstanding debtors who were dormant for 3-8 years and whose recoverability was doubtful. The debtors included ex-staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi.

Committee Observations

741. The Committee observed that the Corporation had long outstanding debtors who include ex-staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi and whose recoverability was doubtful.

Committee Recommendations

742. The Committee recommended that the Managing Director ensures that all debts owed to the Corporation is recovered within six months of tabling of this Report.

Audit Issue: IRREGULAR PAYMENTS: FYS 1996/1997, 1997/1998, 1999/2000, 2000/2001, 2003/2004, 2005/2006 ACCOUNTS

743. The Committee was informed that irregular payments were made as follows:
    i). Rent was paid for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.
    ii). Sitting allowances and bonuses were paid to public servants receiving a salary.
    iii). Payment of legal fees that were higher than was advised by the Company Secretary.
    iv). Sitting allowances and Christmas bonuses paid to an expired board.
    v). Salary award without approval of the parent Ministry.
    vi). Consultancy fee paid to human resource company without competitive selection, approval of the Board and the parent ministry.
    vii). Directors' expenses exceeded budget without approval by Treasury.

Committee Observations

744. The Committee observed that KTDC management made irregular payments.

Committee Recommendations

745. The Committee recommended that: -

(i) The Corporation urgently recovers from the then Managing Director Directors' expenses that exceeded the budget and that was incurred without Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.

(ii) The Corporation urgently recovers monies paid as rent for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.

(iii) The then Managing Director/CEO be held responsible for abuse of office contrary to Section 11 of the Public Officer Ethics Act, 2003 and Section 101 of the Penal Code by awarding himself hefty house allowance instead of owner occupier house allowance.

(iv) The then Managing Director be held responsible and accountable for procuring consultancy services without Board and Ministerial approval and in contravention of Treasury Circular and Public Procurement and Disposal Act, 2005.

(v) The Corporation recovers monies paid as allowances and Christmas bonuses to representatives of the Permanent Secretary.

Audit Issue: PROCUREMENT OF MARINA PROJECT LAND: FY 2011/2012 ACCOUNTS

746. The Committee was informed that in the Financial Year 2012 the Corporation purchased land valued at Kshs. 35,000,000 and paid Kshs. 3,500,000 without details of compliance with the Public Procurement and Disposal Act.

Committee Observations

747. The Committee observed that the Corporation single sourced the purchase for land and paid for it in contravention of Article 10 and 226(5) of the Constitution; Section 74 of the Public Procurement and Disposal Act, 2005; and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.

Committee Recommendations

748. The Committee made the following recommendations:

(i) The EACC investigates the conduct of the then Managing Director and the Board (names) and the circumstances under which the purchase of land was single sourced and recommend prosecution by the Director of Public Prosecutions for:

a. Breach of Section 74 of the Public Procurement and Disposal Act, 2005 and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.

b. Abuse of office contrary to Section 101 of the Penal Code and Section 10 of Public Officer Ethics Act, 2003.

(ii) The then Managing Director and the Board be surcharged or money recovered from them to make good the loss incurred.

(iii)The then Managing Director and the Board should not hold any public office if found culpable.

Audit Issue: ADVANCE OF KSHS. 50 MILLION TO AN INVESTMENT COMPANY: FY 2011/12

749. The Committee was informed that the Corporation advanced Kshs. 50 million to an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

Committee Observation

750. The Committee observed that the Corporation advanced Kshs. 50 million to Lagoon Development Limited in Kilifi Creek, an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

Committee Recommendations

(i) The Committee recommended that the EACC investigates the circumstances surrounding the irregular and unlawful advance of Kshs. 50 Million and recommend prosecution by the Director of Public Prosecution of the then Managing Director and the Board for:

a. Acting beyond the mandate provided for under the Kenya Tourist Development Corporation Act.

b. Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Audit Issue: NON – CURRENT ASSETS LOANS: 2005/06/, 2007/08, 2008/09, 2009/10,

2010/11 AND 2011/12 ACCOUNTS

The Committee was informed that the Corporation issued loans to Buffalo Springs, an entity whose going concern could not be verified.

Committee Observations

751. The Committee observed that:

i). The premise from which Buffalo's spring operated from was leased to someone else thus crippling the operations of Buffalo Springs.

Committee Recommendations

752. The Committee recommends that the EACC investigates the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

22.2 Implementation status of the recommendations

753. The Committee on Implementation on 18th April 2024 wrote to the Ministry of Investments, Trade and Industry, the Director General - Kenya Development Corporation, the Ethics and Anti-Corruption Commission, the Auditor-General and the Inspectorate of State Corporations on the implementation status of the Report of The Auditor General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012.

754. Ms. Norah Ratemo the Director General Kenya Development Corporation appeared before the Committee on 27th April, 2024 to adduce evidence on the implementation status of the Report of The Auditor General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012.
755. She was accompanied by:
    1. Mr. Kennedy Wanderi - Acting Director, Corporate Services,
    2. Mr. Michael Koros - Portfolio Department,
    3. Mr. Dominic Lewa - Deputy Director, Strategy,
    4. Mr. John Karia - Deputy Director, Legal Services,
    5. Mr. John Mukuna - Assistant Manager, Accounts and
    6. Mr. Henry Wanga - Manager, Internal Audit.

22.3 Submissions by the Director General Kenya Development Corporation Regarding the Implementation Status of The Report of The Auditor General on The Financial Statement of Kenya Tourist Development Corporation for The Year Ended 30th June, 1997 to 2012

The Committee was informed that:

756. KDC was established to merge the operations of Tourism Finance Corporation (TFC), Industrial Commercial & Development Corporation (ICDC) and Industrial Development Bank (IDB Capital) which was done through the Kenya Development Corporation Limited (Vesting) Order, 2021. It is wholly owned by the Government of Kenya through the National Treasury & Economic Planning to serve as a strong single cross sector Development Finance Institution (DFI) that would be enabled with sufficient scale, scope and resources to play a catalytic role in Kenya's socio-economic development.
757. Tourism Finance Corporation (TFC) was established under Section 75 of the Tourism Act, 2011 as the successor to the Kenya Tourist Development Corporation (KTDC) which was established in 1965 through the Kenya Tourist Development Corporation Act, Cap 382 of the Laws of Kenya.

Revolving Fund Loans: FYs 1996/1997 And 1997/1998 Accounts

758. The Committee heard that during the years in question, the Corporation's recovery of Revolving Fund Loans was poor. Out of the total loan and accrued interest totalling Ksh.136,172,972 outstanding, only Ksh.6,172,074 had been recovered. The unrecovered loan as at 30th June 1997 was Ksh.89,296,064.

Management Response:

759. The Managing Director informed the Committee that some of the loans dated back to 1970's. The loans had gone up due to interest forcing the Corporation to write off the interests and getting twice the premiums as opposed to completely wring them off. However, the committee was informed that the board had cleared majority of the loans with only six remaining by the year 2010.

Committee on Implementation Observations

760. **The Committee observed that the recommendation had not been implemented fully.**

Committee on Implementation Recommendations

761. **The Committee recommends that within sixty (60) days upon tabling and adoption of this report:**
   i) **The Corporation recovers the loans and ensures that prudential guidelines are followed; and**
   ii) **The then Managing Director under whose tenure the loans were disbursed without prudential guidelines be surcharged for not undertaking due diligence on the issuance of the loans.**

Management Implementation Status

762. The Committee heard that:
   i) As at 30th June 2023, out of the six (6) Revolving Fund Loans outstanding arrears of Kshs 89,296,064, five (5) loan accounts had been redeemed (paid up) and closed. Only one account (Hotel Big Five) had an outstanding loan arrears of Kshs 36,417,706. This account is currently being serviced as per the agreed registered (2022) out-of-court agreement with a monthly repayment of Kshs 325,000 as per the table below.
   ii) The Corporation further reviewed the policies and procedures to ensure that lending is done as per the approved prudential guidelines to reduce such exposure in the future.

763. The current status of revolving fund is as follows;

Account	Approval Date	Loan Amount (Kes.)	Loan Arrears at 14/03/2024 (Kes.)	Total loan Balance (Kes.)	Status
Delight Dreamland Hotel Ltd.	1993	2,900,000	-	-	*Account redeemed & closed*
Kenya Agro Business Ltd.	1993	2,500,000	-	-	*Account redeemed & closed*
Mohazo Ex-Imp Ltd	2007	3,500,000	-	-	*Account redeemed & closed*
Pafido Fast Foods Ltd	2007	5,400,000	-	-	*Account redeemed & closed*
Proland Ltd.	2010	11,063,264	-	-	*Account redeemed & closed*
Hotel Big Five	**2004**	**8,400,000**	**36,417,706**	**36,417,706**	*Client servicing the loan per out-of-court agreement. They paid a lumpsum of Kes 6,500,000 and a monthly repayment of Kes 325,000*

4. Investments and Commercial Loans: FY 1996/1997 And 1997/1998 Accounts

764. The Committee heard that the Corporation had invested through Equity, Commercial and Revolving Fund Loans in organizations that had not been performing, non-profitable or were non-existent. The loans were not recovered and amounts outstanding may not be recoverable.

Management Response

765. The Managing Director informed the Committee that the loan amounts that had been advanced to the Corporation subsidiaries and their interests had been suspended. The Board had already approved the debt to be converted into equity in their respective units.

Committee Observation

766. The Committee observed that the Corporation is owed huge debts by its subsidiaries.

Committee Recommendations

767. The Committee recommends that the Corporation converts the debt owed by its subsidiaries into equity.

Management Implementation Status

768. Only one loan had been converted into equity as explained below.

Kenya Safari Lodges & Hotels (KSLH)

i) The Board of KSLH offered rights issues to all the existing shareholders and all loans were converted into equity in March 2014 amounting to Kshs 75,553,620. Share certificate number 15 for 3,777,681 ordinary shares in the name of TFC was issued by KSLH.

ii) The remaining four subsidiaries had been earmarked for privatisation by the Privatisation Authority and the main concern affecting the conversion was from the Privatisation Authority which stated that the conversion would adversely affect the due diligence report which would state the individual shareholder values. The loan balances due from the four (4) subsidiaries will be recovered from the proceeds of the on-going privatization process. These are Kabarnet Hotel Ltd, Mount Elgon Lodge Ltd, Golf Hotel Ltd and Sunset Hotel Ltd.

iii) Additionally, the conversion of the loans to equity would have surpassed the allowed threshold of shareholding that TFC would have held being the majority shareholder.

5. Stalled Projects: FY 1996/1997 And 1997/1998 Accounts

769. The Committee was informed that Kshs.38,549,827 was invested in a project that was later abandoned and that no feasibility study had been done before the project was started. Further, there were additional expenditures of Kshs.109,250 on feasibility when the project was on-going.

Management Response

770. The Managing Director agreed with the position of the Auditor General. He informed the Committee that since the project stalled, there was no possibility of actualizing it and that the Corporation intended to remove the asset from the books of accounts.

Committee Observation

771. The Committee observed that the Corporation invested in a project without undertaking a feasibility study; the project stalled.

Committee Recommendations

772. The Committee recommends that:

i) The Corporation ensures that it undertakes feasibility studies before commencing any project.

ii) The Board be held accountable for the poor investment decision including recovery of the lost funds.

iii) The EACC investigates the circumstances under which the project was procured, payments made and reasons as to why the project stalled and if the board is found culpable be prosecuted and be surcharged.

Management's Implementation Status

773. The Committee heard that:

i) The management had subsequently carried out feasibility studies before any financial commitments in line with the approved KDC Business Development Policy.

ii) As recommended, the Corporation wrote to EACC with a view to carry out investigations on this defunct project for possible recovery of the funds utilized in the project from the culpable persons.

6. Fixed Deposits/Privatization Proceeds: FYs 1996/1997 To 2005/2006

i) The Committee was informed that proceeds from privatization through sale of shares in 9 companies were invested in banks at a lower rate than the Treasury Bills rate of 24% - 26%. The proceeds were held in bank accounts not jointly operated with Treasury and withdrawals were not used for intended purposes contrary to the Treasury Circular No. 351/03 of 26th April 1993.

ii) Further, the Committee heard that part of the proceeds amounting Ksh.15,455,200 were paid to a foreign company in United Kingdom on behalf of the Parent Ministry.

Management's Response

i) The Managing Director informed the Committee that the privatization proceeds totalling Kshs.386,347,440 were held by the Corporation as Fixed deposits in a Commercial Bank managed by the Corporation alone contrary to the Treasury Circular. A sum of Kshs.134,089,192 was paid out without approval of the Board and the Treasury as required by Section 15 (1) and 12 of the State Corporations Act, Cap 446.

ii) However, the Corporation is currently operating its accounts jointly with the Treasury abiding by the guidelines. Actions were taken against officers who were involved in the acts of omission and commission.

Committee Observation

774. The Committee observed that the Inspectorate of State Corporations needed to thoroughly inspect State Corporations. Further, the Committee observed that the Corporation invested proceeds of privatization in bank accounts at rates lower than Treasury Bills and paid out monies without Board and Treasury approval contrary to section 12 of the State Corporations Act, Cap 446.

Committee Recommendations

775. The Committee recommends that;

i) The Corporation should not pay for expenses incurred by their parent Ministries.

ii) The Corporation should ensure that all investments are done in line with Treasury guidelines.

iii) The then Managing Director be held accountable for poor investment decisions and investing without Treasury approval contrary to Section 12 of the State Corporations Act, CAP 446.

Management Implementation Status

776. The Committee was informed that:

i) The Corporation had since then not paid for any other expenses incurred by or on behalf of the parent ministry.

ii) The former Managing Director was charged under Case file number HCC 27/2003 for Abuse of office contrary to Sec. 101(1) of the Penal Code Cap 63 Laws of Kenya

7. Debtors and Pre-Payment: FYs 1996/1997, 1997/1998, 1998/1999, 1999/2000, 2000/2001, 2004/2005, 2005/2006, 2006/2007, 2011/2012 Accounts

777. The Committee was informed that the Corporation had long outstanding debtors who were dormant for 3 – 8 years and whose recoverability was doubtful. The debtors included ex staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi.

Management Response

i) The Managing Director informed the Committee that the Corporation had outstanding debtors as indicated by the Auditor General. The Corporation was however pursuing the debtors through all possible means including hiring private investigators.

ii) The Corporation had recovered from the benefits of the CEO imprest taken and was holding his car's logbook. Further, the Corporation had made provisions for the doubtful debts in its books of accounts.

iii) As for the Investment Forum, the Corporation was in partnership agreement not providing services.

Committee Observation

778. The Committee observed that the Corporation had long outstanding debtors who include ex-staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investment Forum in Nairobi and whose recoverability was doubtful.

Committee Recommendations

779. The Committee recommends that the Managing Director ensures that all debts owed to the Corporation are recovered within six months of tabling of this report.

Management Implementation Status

780. The Committee was informed that:

i) Pursuant to the referred debtors in this audit, i.e Sky Perth Enterprises Ltd (Ksh.11,057,638) and the former Managing Director (Ksh.2,005,233.55) which had been outstanding, the corporation engaged a private investigator Ms. Nenle Services Agency to follow up and get details for possible recovery from one debtor Sky Perth Enterprises Limited.

ii) The investigator's report concluded that the debtor had ceased operations and it was an uncollectable debt, given that the auctioneers had already sold their equipment seized

from their premises. The provisions for this doubtful debt were provided for in the books of accounts in the financial year ended 30th June 2001.

iii) The then CEO was pursued for his part of the debt and his imprest balance was recovered from his terminal dues and further committed to civil jail, eventually serving his term. Thus, the debt could not be pursued any further.

8. Irregular Payments: FYs 1996/1997, 1997/1998, 1999/2000, 2000/2001, 2003/2004, 2005/2006 Accounts

781. The Committee was informed that irregular payments were made as follows:

a) Rent was paid for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.
b) Sitting allowances and bonuses were paid to public servants receiving a salary.
c) Payment of legal fees that were higher than was advised by the Company Secretary.
d) Sitting allowances and Christmas bonuses paid to an expired Board.
e) Salary award without approval of the parent Ministry.
f) Consultancy fee paid to human resource company without competitive selection, approval of the Board and the parent Ministry.
g) Directors' expenses exceeded budget without approval by Treasury.

Management Response

i) The Managing Director concurred with the Auditor General's position. She informed the Committee that allowances were paid to representative of the Permanent Secretary (PS) including bonuses.
ii) Further, on the issue of the expired Board, the PS recalled the Board and hence the meetings were irregular.
iii) Concerning the salary award, the Corporation was given an approval by the Head of Public Service. On the issue of HR Consultancy, the Corporation hired it on contractual basis without adhering to Treasury Circular and Procurement and Disposal Act.
iv) Regarding the Directors' emoluments, the budget was exceeded by having more board meetings than were scheduled as at that time the Managing Director had been terminated from employment.

Committee Observation

782. The Committee observed that:

i). KTDC management made irregular payments.

Committee Recommendations

783. The Committee recommends that: -

i) The Corporation urgently recovers from the then Managing Director, Directors expenses that exceeded the budget and that was incurred without Treasury approval contrary to Section 12 of the State Corporations Act, Cap 446.
ii) The Corporation urgently recovers monies paid as rent for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.
iii) The then Managing Director/CEO be held responsible for abuse of office contrary to Section 11 of the Public Officer Ethics Act, 2003 and Section 101 of the Penal Code by awarding himself hefty house allowance instead of owner occupier house allowance.
iv) The then Managing Director be held responsible and accountable for procuring consultancy services without Board and Ministerial approval and in contravention of Treasury Circular and Public Procurement and Disposal Act, 2005.

v) The Corporation recovers monies paid as allowances and Christmas bonuses to representatives of the Permanent Secretary.

Management Implementation Status

784. The Committee was informed that:

i) The then CEO was sued and committed to civil jail in a civil matter HCC/687/2005 and eventually convicted in 2009 where he served his term for his outstanding debts and he was further charged with Abuse of Office in a matter HCC/27/2003.

ii) Representatives of the Permanent Secretary to the Board are accorded similar treatment and recognition as the rest of the Board of Directors.

9. Bank Overdraft: FY 2000/2001 Accounts

785. The Committee heard that the Corporation had an overdraft of Kshs.15,562,032 in the bank against the approved ceiling of Kshs.10,000,000. The Corporation did not have an approval from the Parent Ministry for the increased overdraft ceiling.

Management Response

786. The Managing Director informed the Committee that the Board authorized the Corporation to operate the overdraft facility with Kenya Commercial Bank up to a maximum of Kshs.15 million. However, there was no approval from the Parent Ministry. The situation was corrected and the current limit is Kshs.10 million as per Kenya Tourist Development Corporation Act.

Committee Observation

The Committee observed that the Corporation exceeded the legal overdraft limit in contravention of the Kenya Tourist Development Corporation Act.

Committee Recommendations

787. The Committee recommends that the EACC investigates and recommends prosecution by the Director of Public Prosecutions of the then Managing Director and Board of Directors for;

i) Operating an overdraft facility without ministerial approval and in contravention of the Kenya Tourist Development Corporation Act.

ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Management Implementation Status

The Committee was informed that:

788. The then CEO was sued and committed to civil jail in a civil matter HCC/687/2005 and eventually convicted in 2009 where he served his term for his outstanding debts and he was further charged with Abuse of Office in a matter of HCC/27/2003.

10. Procurement of Marina Project land: FY 2011/2012 Accounts

789. The Committee was informed that in the Financial Year 2012, the Corporation purchased land valued at Kshs.35,000,000 and paid Kshs.3,500,000 without details of compliance with the Public Procurement and Disposal Act.

Management Response

790. The Managing Director informed the Committee that this land was for a specific purpose of putting up a Marina due to its uniqueness and was identified with the help of Kenya Ports Authority. The Management prepared a paper to the Board to initiate the acquisition of the land and approval was granted. However, the Project had stalled and no contracts have been signed to formally acquire the land due to the absence of a functional KTDC Board.

Committee Observation

791. The Committee observed that the Corporation single sourced the purchase for land and paid for it in contravention of Article 10 and 226(5) of the Constitution; Section 74 of the Public Procurement and Disposal Act, 2005; and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.

Committee Recommendations

792. The Committee recommends that;

i) The EACC investigates the conduct of the then Managing Director and the Board and the circumstances under which the purchase of land was single sourced and recommend prosecution by the Director of Public Prosecutions for;

a) Breach of Section 74 of the Public Procurement and Disposal Act, 2005 and Regulations 62 of the of the Public Procurement and Disposal Regulations, 2006.

b) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

ii) The then Managing Director and the Board be surcharged or money recovered from them to make good the loss incurred.

iii) The then Managing Director and the Board should not hold public office if found culpable.

Management Implementation Status

793. The Corporation received back the entire Kshs 3,500,000 deposit in two instalments paid in June 2019 (2018/2019FY) of Kshs 3,000,000 and the balance of Kshs 500,000 paid in July 2019 (2019/2020FY).

Committee on Implementation Observations and Recommendations

iv) **The Committee on Implementation reiterates the recommendations (i) that the EACC investigates the conduct of the then Managing Director and the Board for single sourcing purchase of the land; and (iii) of the previous Committee that the then Managing Director and the Board should not hold public office if found culpable.**

11. Advance of Kshs. 50 million to an Investment Company: FY 2011/2012 Accounts

794. The Committee was informed that the Corporation advanced Kshs.50Million to an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

Management Response

795. The Managing Director informed the Committee that the funds were lent to Lagoon Development Limited in Kilifi Creek. The Board formulated the Credit Policy and using their powers, could review it according to the KTDC mandate and management recommendations. The said loan is up to date in terms of repayments.

Committee Observation

796. The Committee observed that the Corporation advanced Kshs. 50 million in November 2011 to Lagoon Development Limited in Kilifi Creek, an investment company in which Kenyan shareholding was only 37% contrary to the requirements of at least 51% Kenyan shareholding.

Committee Recommendations

797. The Committee recommends that EACC investigates the circumstances surrounding the irregular and unlawful advance of KShs 50 million and recommend prosecution by the Director of Public Prosecution of the then Managing Director and the Board for;
   i) Acting beyond the mandate provided for under the Kenya Tourist Development Corporation Act.
   ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Management Implementation Status

   i) The Credit Policy 2010 formulated by the Board of TFC (then KTDC) had full powers under clause 1.3 to review it or lift a clause in it according to the Corporation's mandate and management recommendations.
   ii) Accordingly, the Board exercised that power and waived the requirement of clause 4.1.1. on 51% Kenyan Shareholding threshold in order to catalyse the investment of Kshs.3.78 billion project by Lagoon Development Ltd in Kilifi which only had 37% Kenyan shareholding. Management clearly pointed this out to the Board and the decision to waive this requirement for this project was by the Board with full disclosure. The Board also considered the size and impact that the project would have on economic development of Kenya as a country.
   iii) The loan account was fully redeemed/recovered on 1st February 2017 when the company paid Kshs. 63,948,785 as a final repayment bringing the total amount recovered by the Corporation to Kshs. 76,323,785

2. Property, Plant and Equipment: FYs 2005/2006 And 2006/2007 Accounts

798. The Committee was informed that the Corporation had reflected land in Mombasa and Kitale as investment and not under property, plant and equipment and the correctness of figures could not be verified.

Management Response

799. The Managing Director informed the Committee that these lands were reclassified.

The Committee Observation

800. The committee observed that the land in Mombasa and Kitale reflected as investments and not under Plant, Property and Equipment.

Committee Recommendations

801. The committee recommends that the Corporation ensures proper classification of items in its books of accounts.

Management Implementation Status

   i) As two assets were reclassified under property, plant and equipment both totalling to KShs 8,839,009 during the 2007/2008 financial year financial statements.
   ii) The Corporation no longer holds the land in Kitale as it was disposed in the 2011/2012FY as non-strategic land property.

iii) The Corporation had continued to ensure proper classification of all accounting items in its books of accounts as per the accounting standards.

Committee on Implementation Observations and Recommendations

The Committee on Implementation reiterates the observations and recommendations of the previous Committee.

3. Non-Current Assets Loans: 2005/2006, 2007/2008, 2008/2009, 2009/2010, 2010/2011 And 2011/2012 Accounts

802. The Committee was informed that the Corporation issued loans to Buffalo Springs, an entity whose going concern could not be verified.

Management Response

803. The Managing Director informed the Committee that the Corporation loaned Ksh.8,467,395 to Buffalo Springs Ltd, a subsidiary of KTDC. The premise in which the Company operated was leased out to another tenant by Isiolo Town Council crippling operations of the Company. The Company had not been servicing its loan as per the agreement. The matter was referred to the office of the Auditor General for a forensic audit; however, the request was turned down.

Committee Observation

804. The Committee observed that the premises from which Buffalo Springs operated from was leased to someone else thus crippling the operations of Buffalo Springs.

Committee Recommendations

805. The Committee recommends that EACC investigates the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating in, with a view to prosecuting those found to have engaged in impropriety.

Management Implementation Status

The Committee was informed that:

806. In line with the Committee's recommendations, the Corporation wrote to EACC to carry out investigations on the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

4. Taxation: FYs 1998/1999, 1999/2000, 2000/2001, 2008/2009, 2009/2010, 2010/2011, 2011/2012 Accounts

807. The Committee was informed that the Corporation had been granted 50% waiver of penalties and interests but had not paid the remaining 50%.

Management Response

808. The Managing Director informed the Committee that the Corporation had applied for total waiver for penalties and interests and had been granted. Further the Corporation had instituted measures to update its taxes and to ensure that no more penalties are accrued.

Committee Observation

809. The Committee observes that the Corporation had failed to meet its tax obligations thus leading to penalties and interests.

Committee Recommendations

810. The Committee recommends that the Corporation ensures that all taxes and levies are paid on time and in accordance with relevant laws and regulations to avoid penalties and interest.

Management Implementation Status

811. The Committee was informed that:

i) The Corporation, having paid all the principal taxes due, subsequently entered into negotiations for a 100% waiver of the penalties and interest with the Kenya Revenue Authority (KRA).

ii) The then Ministry of Finance through their letter dated 2nd of April 2013 communicated the Minister's decision and approval for the 100% waiver under section 94(4) of the Income Tax Act. The Corporation was therefore relieved from this Contingency Liability as at 30 June 2013.

iii) In line with the relevant laws, the Corporation had endeavoured to meet its tax obligations as expected.

Committee on Implementation Observations

812. **The Committee observed that;**

i). The Corporation had failed to meet its tax obligations during the period under review thus leading to penalties and interest;

ii). Poor business decision-making occurred which included concerns that the premises from which Buffalo Springs operated from was leased to someone else thus crippling the operations of Buffalo Springs; and

iii). Accounting mis-postings contributed to some of the audit queries for example, the land in Mombasa and Kitale reflected as investments and not under Plant, Property and Equipment.

Committee on Implementation Recommendations

The Committee recommends that;

i). **Within sixty (60) days upon tabling and adoption of this report the Corporation ensures that all taxes and levies are paid on time and in accordance with relevant laws and regulations to avoid penalties and interest;**

ii). **The EACC hastens investigations on the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety;**

iii). **That the Corporation ensures proper classification of items in its books of accounts in line with Public Finance Management best practices; and**

iv). **Within sixty (60) days upon tabling and adoption of this report the then Managing Director during the period under review be held accountable for poor investment decisions and investing without Treasury approval contrary to Section 12 of the State Corporations Act, CAP 446.**

22.4 Submission by The Inspectorate of State Corporations (ISC) Regarding the Implementation Status of The Report of The Auditor General on The Financial Statement of Kenya Tourist Development Corporation for The Year Ended 30th June, 1997 to 2012

813. Mr. James Mungai Warui the Ag. Inspector-General of State Corporations appeared before the Committee to adduce evidence Regarding the Implementation Status of the 19th PIC Report on the Report of the Auditor General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012. He was accompanied by Ms. Nanjala B. Christine and Ms. Grace Mwaniki.
814. The Committee was informed that the Inspectorate as per the recommendations of the 19th PIC Report was to:
    i) Undertake investigations and ensure that the Managing Director who was in service and disbursed the revolving fund loans without prudential guidelines is surcharged the unrecovered loans of Ksh. 89,296,064.
    ii) Surcharge members of the Board if found culpable after investigations by the EACC an amount of Kshs. 38,549,827 which was invested in a project without carrying out a feasibility study and was later abandoned.
    iii) Surcharges and recovers Kshs. 35,000,000 and a further 3,500,000 for procurement of Marina Project Land from the then Managing Director and the Board. The land had been single-sourced and paid for in contravention of the existing loan.
815. However, the Committee was informed that the Inspectorate could not implement the recommendations of the 19th PIC Report for the following reasons:
    i) The Office of the Inspector-General (Corporations) had over the years suffered from chronic underfunding of its operations. Consequently, the department is beset by inadequate human and financial resources as well as other facilities. This had adversely impacted Inspectorate of State Corporation's ability to effectively discharge its statutory mandate.
    ii) The power of the Inspector-General (Corporations) to surcharge as stipulated in Section 19 of the State Corporations Act had lain dormant from the year 2014 following the inquorate membership of the State Corporations Appeals Tribunal (SCAT).
    iii) SCAT is a statutory body established under Section 22 of the State Corporations Act to consider and determine appeals from individuals aggrieved by the decision of the Inspector General (Corporations) to surcharge.
    iv) The Office of the Inspector-General (Corporations) had for the most part since the year 2014 not been duly filled either substantively or in acting capacity thereby legally compromising its ability to operate.

Way forward

i) The Office of the Inspector-General (Corporations) had embarked on efforts to revamp its operations with the primary aim of effectively and efficiently discharging its constitutional mandate.

ii) The Executive had since appointed the Chairperson and members of the State Corporations Appeals Tribunal (SCAT). This will strengthen the capacity of the Inspector-General (Corporations) to take a more proactive role in combating corruption and misappropriation of public funds in state corporations given his statutory mandate is to surcharge.

Committee on Implementation observations

816. **The Committee made the following observations:-**

i). That majority of officials of the Inspectorate of State Corporations are acting in various positions they are currently holding;

ii). The Inspectorate status (acting) for officials is a hindrance on effective oversight since an acting Inspector-General cannot surcharge; and

iii). There exists a gross underfunding and understaffing within the Inspectorate which hampers service delivery and effective oversight since having 19 officers of the Inspectorate to inspect 300 state corporations results in ineffective service delivery.

Committee on Implementation Recommendations

817. **The Committee recommends that:**

i). The relevant appointing authority ensures that officials of the Inspectorate of State Corporations are appointed substantively for effective service delivery; and

ii). The non-allowable bonuses should be recovered from the receiving officials within sixty (60) days of adoption of this report by the House.

23 GENERAL COMMITTEE OBSERVATIONS

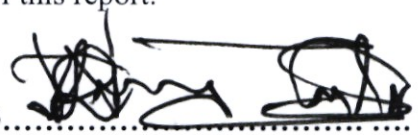
In consideration of the implementation status of House resolutions pursuant to its mandate under Standing Order 209 of the National Assembly Standing Orders, the Committee made the following general observations:

1. Majority of the Resolutions of the House require financial obligations for adequate implementation to be carried out by the executive. There is need for appropriation of funds to ensure House Resolutions are implemented as directed. There was inadequate budget allocated to the ministries, departments and agencies to implement most of the recommendations;
2. Government officials in the Executive do not implement House resolutions promptly thus causing matters to unnecessarily delay. A case in point is the payment of former public officers of state corporations that have folded despite recommendations by relevant House Committees directing that the concerned Ministry in conjunction with the National Treasury, avails funds within a specified fiscal year;
3. Some State Corporations have failed to expedite the acquisition of titles and ownership documentation to their parcels of land as recommended in the 21st and 23rd Public Investment Committee Report. This had resulted to delay in updating their respective asset registers and the involvement of government officials in irregular acquisition of the land as well as falling victim to land grabbers. A case in point is the Coast Water Works Development Agency, and EACC which was itself frustrated in its quest to obtain crucial documents needed for the land cases since in many instances, documents disappeared whenever EACC wrote to the Ministry of Lands;
4. Majority of the recommendations addressed to the Ethics and Anti-Corruption Commission have not been implemented, with some investigations dating back more than a decade. A case in point are the admissions by the EACC in Public Petition Committee Reports in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme where the EACC received reports of the allegations of fraud in 2015, but are yet to act on the suspects at the time of compiling this report;
5. Relevant Government Ministries and officials responsible of the appointment of heads of parastatals and officers playing supervisory roles such as the Inspectorate of Government Corporations should ensure office holders are confirmed to enable effective delivery of services and execution of roles.
6. There is need for Committee recommendations to be specific, measurable, achievable, realistic and time-bound (SMART) so as to facilitate smoother implementation of House resolutions.

24 GENERAL COMMITTEE RECOMMENDATIONS

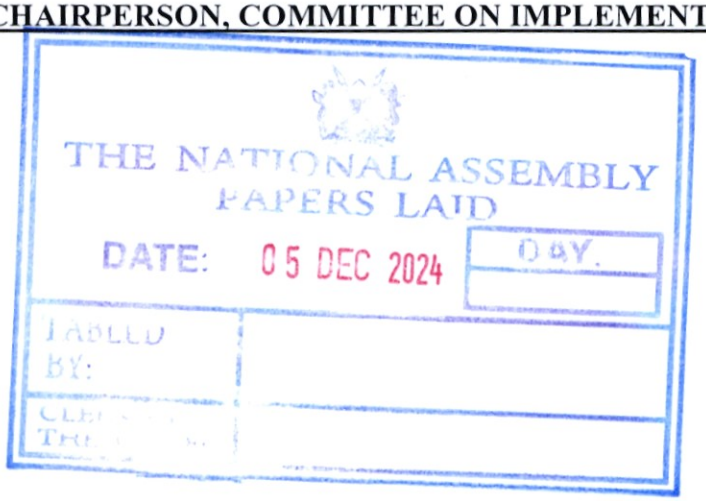
Following the general observations, the Committee makes the following general recommendations:

1. Government Agencies and Departments tasked with implementing House Resolutions should endeavour to incorporate resolutions in their work plans and deliver the same within the stipulated timeframe, failure to which sanctions should be imposed against the responsible officials;
2. The National Treasury should ensure appropriation of funds for the implementation of House resolutions is done within one financial year following the adoption of a House resolution for the public to derive the intended benefits. Further, The National Assembly should allocate sufficient funds to the implementing agencies for effective implementation of reports passed by the House and adequate oversight of entities under their ambit;
3. State Corporations should prioritize acquiring title deeds for all parcels of land to avert loss of these assets to grabbers; and
4. The Ethics and Anti-Corruption Commission (EACC) should take note of all recommendations directed to it and provide a status report within 60 days of the adoption of this report.

SIGNED..... **DATE**.....4/12/2024.....

HON. RAPHAEL BITTA SAUTI WANJALA, MP

CHAIRPERSON, COMMITTEE ON IMPLEMENTATION



Annex 2

Adoption List

THE NATIONAL ASSEMBLY

COMMITTEE ON IMPLEMENTATION

Adoption Schedule

THIRD REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

We, the undersigned Members of the Committee on Implementation, have pursuant to Standing Order 199 adopted today, Thursday, 28th November, 2024, and do hereby affix our signatures to this **THIRD REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE** to affirm our approval and confirm its accuracy, validity, and authenticity: -

NO.	NAME	SIGNATURE
1.	The Hon. Raphael Bitta Sauti Wanjala, MP – **Chairperson**	
2.	The Hon. Rose Museo Mumo, MP – **Vice Chairperson**	
3.	The Hon. Mohamed, Ali, MP	
4.	The Hon. Mark Samuel Muriithi Mwenje, MP	
5.	The Hon. Elijah Memusi Kachory, MP	
6.	The Hon. Johnson Manya Naicca, MP	
7.	The Hon. Hilary Arap Kosgei, MP	
8.	The Hon. George Koimburi Ndung'u, MP	
9.	The Hon. Nicholas Ng'ikor Nixon Ngikilong, MP	
10.	The Hon. Charles Gumini Gimose, MP	
11.	The Hon. Prof Guyo Waqo Jaldesa, MP	
12.	The Hon. Siyoi Lillian, MP	
13.	The Hon. Abdul Ebrahim Haro, MP	
14.	The Hon. Cynthia Jepkosgei Muge, MP	

15.	The Hon. Julius Taitumu M'Anaiba, MP	
16.	The Hon. John Okwisia Makali, MP	
17.	The Hon. Timothy Kipchumba Toroitich, MP	
18.	The Hon. Hamisi Kakuta Maimai, MP	
19.	The Hon. Stanley Muiruri Muthama, MP	
20.	The Hon. Zamzam Mohamed Chimba, MP	
21	The Hon. Rael Chepkemoi Kasiwai, MP	

Annex 1

Minutes of the Committee

MINUTES OF THE 42ND SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 28TH NOVEMBER, 2024 AT BUNGE TOWER, 2ND FLOOR ROOM 9, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Hilary Arap Kosgei, M.P
5. The Hon. George Koimburi Ndung'u, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Julius Taitumu M'Anaiba, M.P
10. The Hon. Timothy Kipchumba Toroitich, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Siyoi Lillian Chebet, M.P
6. The Hon. Cynthia Jepkosgei Muge, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. Stanley Muiruri Muthama, M.P
10. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
2.	Mr. Mark Namaswa	-	Clerk Assistant II
3.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
4.	Ms. Mercy Ondego	-	Research Officer III
5.	Mr. James Macharia	-	Media Officer
6.	Ms. Noelle Amutabi	-	Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/241: **PRELIMINARIES**

The Chairperson called the meeting to order at thirty minutes past ten o'clock followed by a word of prayer by Hon. Hilary Arap Kosgei, M.P. The agenda of the meeting was adopted as hereunder.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising

7. Substantive Agenda: **Adoption of the Third Report on Submissions from Stakeholders Regarding the Implementation Status of Reports on Petitions and Resolutions Passed by the House**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/242: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/243: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/244: ADOPTION OF THE THIRD REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Third Report on Submissions from Stakeholders Regarding the Implementation Status of Reports on Petitions and Resolutions Passed by the House was adopted by the Committee with the following resolutions

GENERAL COMMITTEE OBSERVATIONS

In consideration of the implementation status of House resolutions pursuant to its mandate under Standing Order 209 of the National Assembly Standing Orders, the Committee made the following general observations:

1. Majority of the Resolutions of the House require financial obligations for adequate implementation to be carried out by the executive. There is need for appropriation of funds to ensure House Resolutions are implemented as directed. There was inadequate budget allocated to the ministries, departments and agencies to implement most of the recommendations;
2. Government officials in the Executive do not implement House resolutions promptly thus causing matters to unnecessarily delay. A case in point is the payment of former public officers of state corporations that have folded despite recommendations by relevant House Committees directing that the concerned Ministry in conjunction with the National Treasury, avails funds within a specified fiscal year;
3. Some State Corporations have failed to expedite the acquisition of titles and ownership documentation to their parcels of land as recommended in the 21st and 23rd Public Investment Committee Report. This had resulted to delay in updating their respective asset registers and the involvement of government officials in irregular acquisition of the land as well as falling victim to land grabbers. A case in point is the Coast Water Works Development Agency, and EACC which was itself frustrated in its quest to obtain crucial documents needed for the land cases since in many instances, documents disappeared whenever EACC wrote to the Ministry of Lands;
4. Majority of the recommendations addressed to the Ethics and Anti-Corruption Commission have not been implemented, with some investigations dating back more

than a decade. A case in point are the admissions by the EACC in Public Petition Committee Reports in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme where the EACC received reports of the allegations of fraud in 2015, but are yet to act on the suspects at the time of compiling this report;

5. Relevant Government Ministries and officials responsible of the appointment of heads of parastatals and officers playing supervisory roles such as the Inspectorate of Government Corporations should ensure office holders are confirmed to enable effective delivery of services and execution of roles.
6. There is need for Committee recommendations to be specific, measurable, achievable, realistic and time-bound (SMART) so as to facilitate smoother implementation of House resolutions.

GENERAL COMMITTEE RECOMMENDATIONS

Following the general observations, the Committee makes the following general recommendations:

1. Government Agencies and Departments tasked with implementing House Resolutions should endeavour to incorporate resolutions in their work plans and deliver the same within the stipulated timeframe, failure to which sanctions should be imposed against the responsible officials;
2. The National Treasury should ensure appropriation of funds for the implementation of House resolutions is done within one financial year following the adoption of a House resolution for the public to derive the intended benefits. Further, The National Assembly should allocate sufficient funds to the implementing agencies for effective implementation of reports passed by the House and adequate oversight of entities under their ambit;
3. State Corporations should prioritize acquiring title deeds for all parcels of land to avert loss of these assets to grabbers; and
4. The Ethics and Anti-Corruption Commission (EACC) should take note of all recommendations directed to it and provide a status report within 60 days of the adoption of this report.

MIN. NO.NA/DAA & GPC/COI/2024/245: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/246: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:26 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....28/11/2024.....

MINUTES OF THE 37TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 24th OCTOBER, 2024 AT BUNGE TOWER, 5th FLOOR ROOM 26, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

1. The Hon. Mark Samuel Muriithi Mwenje, M.P
2. The Hon. Elijah Memusi Kanchory, M.P - **Chairing**
3. The Hon. Prof Guyo Waqo Jaldesa, M.P
4. The Hon. Siyoi Lillian Chebet, M.P
5. The Hon. Timothy Kipchumba Toroitich, M.P
6. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. George Koimburi Ndung'u, M.P
7. The Hon. Charles Gumini Gimose, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Julius Taitumu M'Anaiba, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Hamisi Kakuta Maimai, M.P
12. The Hon. Cynthia Jepkosgei Muge, M.P
13. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
14. The Hon. Stanley Muiruri Muthama, M.P
15. The Hon. Rael Chepkemoi Kasiwai, M.P

MINISTRY OF EDUCATION

1.	Dr. Belio R. Kipsang, CBS	-	PS – State Dept. for Basic Education
2.	Mr. Harun Yussuf	-	CEO, NACONEK
3.	Ms. Florence Amoit	-	Sec. Administration. State Dept. Basic Edu.
4.	Ms. Dorothy Kamwilu	-	Policy Advisor, PS's Office
5.	Mr. Gichuki Ndegwa	-	Dep. Head Policy, Partnerships Affairs
6.	Mr. Masini Ichwara	-	Dir. Planning – Basic Education
7.	Mr. Nathan Mutua	-	Monitoring and Evaluation, NACONEK
8.	Mr. Zachariah Ismail	-	NACONEK
9.	Ms. Alivitsa Arisa	-	Deputy Head Junior Secondary School Ed. MOE
10.	Mr. Stephen Barongo	-	Director – Primary Education
11.	Mr. Harun Yussuf	-	CEO-National Council for Nomadic Education
12.	Ms. Millicent Ochola	-	National School Meals Coordinator

IN-ATTENDANCE

Hon. Geoffrey Ruku, MP	-	Mover of the Motion

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
2.	Mr. Mark Namaswa	-	Clerk Assistant II
3.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
4.	Ms. Mercy Ondego	-	Research Officer III

5. Mr. James Macharia - Media Officer
6. Ms. Noelle Amutabi - Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/211: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten o'clock followed by a word of prayer by Hon. (Prof). Guyo Jaldesa, M.P. The agenda of the meeting was adopted as hereunder.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising
7. Substantive Agenda: **Meeting with the Principal Secretary, State Department for Basic Education, Ministry of Education to deliberate on the implementation status of:**
   a) **a Motion that was sponsored by the Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being, and;**
   b) **a Motion sponsored by the Member for Mbeere North Constituency, the Hon. Geoffrey Ruku, MP that the Ministry of Education develops a comprehensive policy on Junior Secondary Schools (JSS) and an implementation framework for the Competency Based curriculum at JSS level.**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/212: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/213: MATTERS ARISING

There were no matters arising.

MIN. NO.NA/DAA & GPC/COI/2024/214: SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR BASIC EDUCATION, MINISTRY OF EDUCATION ON THE RESOLUTIONS OF A MOTION SPONSORED BY THE MEMBER FOR MBEERE NORTH CONSTITUENCY,

The Committee was informed that;

i) The Ministry of Education developed the National Curriculum Policy, in 2018 to guide the implementation of the Competency- Based Curriculum (CBC). The CBC seeks to ensure that all learners acquire competencies to promote national values, inspire individual innovation, nurture life-long learning and realize their full potential.
ii) The policy guides on enhancement of access to education, provision of relevant pathways for transition of all learners and contributes to strengthened governance of the education sector at various levels.

iii) In addition, the Ministry's approach in implementation of CBC is guided by other key policy documents notably the, Basic Education Curriculum Framework, 2017 which provides a comprehensive conceptualization of reforms in basic education; pre-primary education, primary education, Junior School Education, secondary education, and inclusive education.
iv) Further, to the above policy framework, the Ministry developed the Competency Based Assessment (CBA), 2019 to guide assessment of JSE in determining the capability of a learner to apply a set of related Knowledge, Skills, Values and Attitudes required to successfully perform tasks.
v) Further, the Committee was informed that the Ministry is cognizant of the dynamic and evolving education sector of our society and has kept abreast of such changes through engagements with its many stakeholders, the latest being the Presidential Working Party on Education (2022), whose recommendations are now a priority. Among the priority ones are:
vi) Rationalization of the number of learning areas and curriculum designs in terms of scope, integration of subjects within a learning area, gaps, content overload and overlaps in Basic Education, and
vii) Integration of key tenets to support successful implementation of CBC at all levels of education and training.

Committee observations

i) That the funding model for JSS is critical in ensuring that every child has an opportunity to attend school and obtain quality education.
ii) That CBC is an age-based system where a learner is expected to accomplish certain tasks in tandem with a certain age.
iii) That the Ministry was in the process of brining to Parliament a Sessional Paper as part of the Presidential Working Party on Education (2022).
iv) That Kshs 15,043 is spent as capitation per student in basic education.
v) That instruction material for Grade 9 is in place with an intention of having a 1:1 per pupil ratio by December 2024.
vi) That the Ministry intended to raise the number of JSS teachers to 80,000.
vii) That 1,600 schools without laboratories will be equipped with the facilities by January 2025.
viii) That as currently being executed, CBC is an expensive education model and likely to further disadvantage already disadvantaged pupils.
ix) That the amount of money allocated for the construction of classrooms cannot be uniform across the country since for instance, Kshs. 1 million will not be enough for urban areas like Nairobi where space is a challenge and storeyed buildings are essential.

Committee resolutions

i) That the Ministry should ensure that JSS is not implemented on trial-and-error basis
ii) That the Ministry avails a list of all schools done per constituency that the MOE is building.
iii) That the Ministry provides proper responses on the cost of running the school feeding programme in schools.
iv) The Committee also resolved that the Ministry provides comprehensive response to the Motion that was sponsored by the Member for Kakamega County, the Hon. Elsie Muhanda, MP, "that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being"

MIN. NO.NA/DAA & GPC/COI/2024/215: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/216: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:39 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P

Date..19/11/24 (CHAIRPERSON)

MINUTES OF THE 33RD SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SUNDAY, 29TH SEPTEMBER, 2024 AT STONI ATHI RESORT, MACHAKOS COUNTY AT 2:00 PM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Siyoi Lillian Chebet, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	HoD/Principal Clerk Assistant
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
5.	Mr. James Macharia	-	Media Officer
6.	Ms. Noelle Amutabi	-	Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/187: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past two o'clock followed by a word of prayer by The Hon. Timothy Kipchumba Toroitich, M.P. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Charles Gumini Gimose, M.P and seconded by The Hon. Zamzam Mohamed Chimba, MP.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising

7. Substantive Agenda: **Report Writing for the Third Report by the Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House.**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/188: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/189: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/190: REPORT WRITING FOR THE THIRD REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee undertook a review of the following reports as part of the Third Omnibus report:

i) Status of Implementation Status of the 13th Report of the Special Funds Accounts Committee (SFAC) On Status of The Equalization Fund
ii) Report on the implementation status of the Public Investment Committee's (PIC) 21st and 23rd Reports on consideration of the Auditor-General's Report on the Financial Statements of State Corporations: Coast Water Works Development Agency (CWWDA).
iii) Report of The Auditor General on The Financial Statement of Kenya Tourist Development Corporation for The Year Ended 30th June, 1997 to 2012.

Committee Resolutions
The Committee resolved that the above reports be included in the Third Omnibus Report with highlighted amendments.

MIN. NO.NA/DAA & GPC/COI/2024/191: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/192: ADJOURNMENT

There being no other business, the meeting was adjourned at 5:26 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date....17/1/24.....

MINUTES OF THE 32ND SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SUNDAY, 29TH SEPTEMBER, 2024 AT STONI ATHI RESORT, MACHAKOS COUNTY AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Siyoi Lillian Chebet, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	HoD/Principal Clerk Assistant
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
5.	Mr. James Macharia	-	Media Officer
6.	Ms. Noelle Amutabi	-	Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/181: PRELIMINARIES

The Chairperson called the meeting to order at ten o'clock followed by a word of prayer by The Hon. George Koimburi Ndung'u, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Julius Taitumu M'Anaiba, M.P and seconded by The Hon. Hilary Arap Kosgei, MP.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising

7. Substantive Agenda: **Report Writing for the Third Report by the Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/182: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/183: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/184: REPORT WRITING FOR THE THIRD REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee undertook a review of the following reports as part of the Third Omnibus report:

i) Status of implementation on the resolutions of the House on Motion, sponsored by the Member for Maragwa Constituency, The Hon. Mary Wamaua, MP, Urging the Government to Establish Database Centres in All Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children.
ii) Status of implementation on the resolutions of the House on motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being

Committee Resolutions

The Committee resolved that the above reports be included in the Third Omnibus Report with highlighted amendments.

MIN. NO.NA/DAA & GPC/COI/2024/185: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/186: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:26 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....17/12/2024.....

MINUTES OF THE 31ST SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 28TH SEPTEMBER, 2024 AT STONI ATHI RESORT, MACHAKOS COUNTY AT 2:00 PM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Siyoi Lillian Chebet, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	HoD/Principal Clerk Assistant
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
5.	Mr. James Macharia	-	Media Officer
6.	Ms. Noelle Amutabi	-	Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/175: PRELIMINARIES

The Chairperson called the meeting to order at half past two o'clock followed by a word of prayer by The Hon. John Okwisia Makali, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Hilary Arap Kosgei, M.P and seconded by The Hon. Zamzam Mohamed Chimba, M.P.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising

7. Substantive Agenda: **Report Writing for the Third Report by the Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House.**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/176: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/177: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/178: REPORT WRITING FOR THE THIRD REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee undertook a review of the following reports as part of the Third Omnibus report:

i) The status of Implementation regarding a Motion on the establishment of the National Swahili Council in Kenya.
ii) The status of Implementation on the Resolutions of the House on A Motion Sponsored by Member for Dagoretti North Constituency, The Hon. Beatrice Elachi, MP, on a Policy to address challenges currently faced by the Export Processing Zones (EPZ) with specific focus on implementing EPZ Programmes to enhance productivity.

Committee Resolutions

1. The Committee resolved that the report on the status of implementation regarding a Motion on the establishment of the National Swahili Council in Kenya be included in the Third Omnibus Report with highlighted amendments.
2. That a field visit be conducted to asses challenges currently faced by the Export Processing Zones (EPZ) With Specific Focus on Implementing EPZ Programmes to Enhance Productivity. Additionally, the field visit to focus on Mombasa in the backdrop of allegations of mistreatment of local EPZ workers in the region.
3. That the report on EPZ (2) be dropped from the main report pending conclusion of the findings on the site visit cited in no. 2 above.

MIN. NO.NA/DAA & GPC/COI/2024/179: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/180: ADJOURNMENT

There being no other business, the meeting was adjourned at 5:26 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....17/10/24.....

MINUTES OF THE 30TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 28TH SEPTEMBER, 2024 AT STONI ATHI RESORT, MACHAKOS COUNTY AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Siyoi Lillian Chebet, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE - NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	HoD/Principal Clerk Assistant
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
5.	Mr. James Macharia	-	Media Officer
6.	Ms. Noelle Amutabi	-	Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/169: PRELIMINARIES

The Chairperson called the meeting to order at half past ten o'clock followed by a word of prayer by The Hon. Julius Taitumu M'Anaiba, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Timothy Kipchumba Toroitich, M.P and seconded by The Hon. Elijah Memusi Kanchory, MP.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising
7. Substantive Agenda: **Report Writing for the Third Report by the Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House**

8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/170: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/171: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/172: REPORT WRITING FOR THE THIRD REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee undertook a review of the following reports as part of the Third Omnibus report:

i) Report of the Public Petitions Committee on A Petition by Pastor Ochieng' Odindo regarding Ethics and Anti-Corruption Commission (EACC) Investigations of West Kano Irrigation Scheme
ii) The Public Investments Committee Special report on the Inquiry into Allegations of Fraud and Financial Mismanagement at the Youth Enterprise Development Fund
iii) The Reports of the Auditor General on the Financial Statements of Agricultural Finance Corporation (AFC) for the Financial Years 2003/2004 To 2011/2012
iv) The Report of the Departmental Committee on Lands on its consideration of a Public Petition for the resettlement of Enoosupukia evictees
v) The Report of the Public Petitions Committee on Public Petition No. 6 Of 2022 By the Hon. (Dr.) James Nyikal, regarding compensation for Nyanza-Western Kenya Caucus of Internally Displaced Persons

Committee Resolutions

1. The Committee resolved that that the above reports be included in the Third Omnibus Report with highlighted amendments.
2. That the Report of the Public Petitions Committee on Public Petition No. 6 Of 2022 By the Hon. (Dr.) James Nyikal, regarding compensation for Nyanza-Western Kenya Caucus of Internally Displaced Persons be dropped from the Third Omnibus Report until sufficient responses are obtained from the relevant state agencies.

MIN. NO.NA/DAA & GPC/COI/2024/173: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/174: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:26 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date....17/10/24.....

MINUTES OF THE 29TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 27TH SEPTEMBER, 2024 AT STONI ATHI RESORT, MACHAKOS COUNTY AT 2:00 PM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P
2. The Hon. Mohamed Ali, M.P – **Vice Chairperson**
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Siyoi Lillian Chebet, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Lucy Kimathi - HoD/Principal Clerk Assistant
2. Mr. Abdiaziz Shobay - Clerk Assistant I
3. Mr. Mark Namaswa - Clerk Assistant III
4. Ms. Catherine Mukunyi - Sergeant-at-Arms
5. Mr. James Macharia - Media Officer
6. Ms. Noelle Amutabi - Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/163: PRELIMINARIES

The Chairperson called the meeting to order at half past two o'clock followed by a word of prayer by The Hon. George Koimburi Ndung'u, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. John Okwisia Makali, M.P and seconded by The Hon. Zamzam Mohamed Chimba, MP.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising

7. Substantive Agenda: **Report Writing for the Third Report by the Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/164: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/165: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/166: REPORT WRITING FOR THE THIRD REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee undertook a review of the following reports as part of the Third Omnibus report:

i) Report of the Departmental Committee on Lands on A Public Petition Regarding the Restoration of land belonging to Mrs. Teresia Wambui Kesi in Kilifi North Constituency
ii) Report of the Departmental Committee on lands on A Public Petition regarding securing land ownership rights of Mwananguvuze Residents in Likoni Constituency
iii) Report of the Departmental Committee on Lands on A Public Petition regarding the irregular annexation and fencing of private land by Greatcom Limited in Matuga Constituency in Kwale County
iv) Report on Implementation Status of a Statement by Hon. Owen Baya, MP On Luigi Broglio-Space Centre in Malindi, Kilifi County
v) Report on Implementation Status of a Motion by Hon. Gathoni Wamuchomba, HSC regarding Implementation Status of House Resolutions on Standardization and Production of School Uniforms
vi) Report of the Departmental Committee on Finance and National Planning on its consideration of the Public Petition on payment of terminal dues to Former Employees of Pan Paper Mills Company Limited.

Committee Resolutions

The Committee resolved that the above reports be included in the third Omnibus Report with highlighted amendments.

MIN. NO.NA/DAA & GPC/COI/2024/167: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/168: ADJOURNMENT

There being no other business, the meeting was adjourned at 4:00 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....17/10/24.....

MINUTES OF THE 28TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 27TH SEPTEMBER, 2024 AT STONI ATHI RESORT, MACHAKOS COUNTY AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Siyoi Lillian Chebet, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Lucy Kimathi - HoD/Principal Clerk Assistant
2. Mr. Abdiaziz Shobay - Clerk Assistant I
3. Mr. Mark Namaswa - Clerk Assistant III
4. Ms. Catherine Mukunyi - Sergeant-at-Arms
5. Mr. James Macharia - Media Officer
6. Ms. Noelle Amutabi - Legal Counsel

MIN. NO.NA/DAA & GPC/COI/2024/157: PRELIMINARIES

The Chairperson called the meeting to order at half past ten o'clock followed by a word of prayer by The Hon. Elijah Memusi Kanchory, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. George Koimburi Ndung'u, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, MP.

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes

6. Matters Arising
7. Substantive Agenda: **Report Writing for the Third Report by the Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House.**
8. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/158: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/159: MATTERS ARISING

There were no matter arising.

MIN. NO.NA/DAA & GPC/COI/2024/160: REPORT WRITING FOR THE THIRD REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee undertook a review of the following reports as part of the Third Omnibus report:

i) Report of the Departmental Committee on Energy on a public petition regarding the degradation of the environment along the Sondu-Miriu Dam due to the failure by Kengen to fully comply with the Environmental Impact Assessment Of 1995;
ii) The Twenty-Second report of the Public Investments Committee on its consideration of the Auditor General Reports on the Financial Statements of the National Social Security Fund (NSSF) FY 2013/14 To 2015/16.
iii) The Twenty-Second Report of the Public Investments Committee on its consideration of the Auditor General Reports on the Financial Statements of Kenya Medical Supplies Agency (KEMSA) (FYs 2012/2013-2016/2017).
iv) The Twenty-Second Report of the Public Investments Committee on its consideration of the Auditor General Reports on the Financial Statements of National Cereals and Produce Board (NCPB).

Committee Resolutions

The Committee resolved those above reports be included in the Third Omnibus Report with highlighted amendments.

MIN. NO.NA/DAA & GPC/COI/2024/161: ANY OTHER BUSINESS

There was no other business.

MIN. NO.NA/DAA & GPC/COI/2024/162: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:06 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P

Date 17/12/24 (CHAIRPERSON)

MINUTES OF THE 22ND SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 30TH JULY, 2024 AT BUNGE TOWER 2ND FLOOR, ROOM 13, PARLIAMENT BUILDINGS, IN NAIROBI COUNTY AT 10:00 AM

PRESENT

1. The Hon. Elijah Memusi Kanchory, M.P - **Chairing**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Prof Guyo Waqo Jaldesa, M.P
4. The Hon. Siyoi Lillian Chebet, M.P
5. The Hon. Cynthia Jepkosgei Muge, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Timothy Kipchumba Toroitich, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. George Koimburi Ndung'u, M.P
6. The Hon. Abdul Ebrahim Haro, M.P
7. The Hon. Charles Gumini Gimose, M.P
8. The Hon. John Okwisia Makali, M.P
9. The Hon. Hilary Arap Kosgei, M.P
10. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
2.	Mr. Mark Namaswa	-	Clerk Assistant III
3.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
4.	Mr. Alex Amwata	-	Hansard Officer
5.	Ms. Noelle Amutabi	-	Legal Counsel
6.	Ms. Shalom Migare	-	Researcher
7.	Mr. Danton Kimutai	-	Audio Officer
8.	Ms. Tanya Faith	-	Intern

MIN. NO.NA/DAA & GPC/COI/2024/122: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. followed by a word of prayer by Hon. Julius Taitumu M'Anaiba, M.P. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Cynthia Jepkosgei Muge, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P

AGENDA

1. Prayers
2. Introductions

3. Adoption of the Agenda
4. Communication from the Chair
5. Confirmation of Minutes
6. Matters Arising
7. **Consideration and adoption of the Committee Work Plan.**

MIN. NO.NA/DAA & GPC/COI/2024/123: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/124: MATTERS ARISING

Review of the Committee on Implementation 2023/2024 FY activities:

i) **Meeting venues:** Members raised concern that the Committee encountered difficulty securing venues for meetings during the period under review. The secretariat was tasked to write to the Clerk and the Speaker requesting for a dedicated venue for the Committee.
ii) **Motion on School Feeding programme:** Members informed the meeting that the matter be pursued further owing to its importance as well as developing issues on the same subject matter.
iii) **Swahili Council Bill:** Members resolved to follow up with the Attorney Generals' office on the Bill and its enactment.

MIN. NO.NA/DAA & GPC/COI/2024/125: CONSIDERATION AND ADOPTION OF THE COMMITTEE WORK PLAN

The Committee on Implementation Work Plan for the Financial Year 2024/2025 was considered and adopted by the Committee with the following amendments:

i) Move the consideration of the consideration of the School Feeding Motion from 3rd December, 2024 in the Work Plan to prioritize it for consideration in the next two weeks;
ii) Prioritize the Motion on Digital Innovation Hubs and move it from November to August or September 2024;
iii) Move the consideration of the Motion on Kenya Power IPPS from 7th November and prioritize in to for consideration in the next two weeks;

MIN. NO.NA/DAA & GPC/COI/2024/126: ANY OTHER BUSINESS

Report Writing: The Committee resolved to undertake report writing retreat for the Third Omnibus Report from 8th-12th August 2024 in Mombasa County.

MIN. NO.NA/DAA & GPC/COI/2024/127: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:24 a.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date....18/9/2024.....

MINUTES OF THE 20TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 11TH JUNE, 2024 AT BUNGE TOWER 5TH FLOOR, ROOM 23, PARLIAMENT BUILDINGS, IN NAIROBI COUNTY AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. George Koimburi Ndung'u, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Abdul Ebrahim Haro, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Siyoi Lillian Chebet, M.P
10. The Hon. Timothy Kipchumba Toroitich, M.P
11. The Hon. John Okwisia Makali, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P
13. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Hilary Arap Kosgei, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon. Johnson Manya Naicca, M.P
7. The Hon. Stanley Muiruri Muthama, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

1. Hon. Elsie Muhanda, MP - Mover of the Motion

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Lucy Kimathi - Principal Clerk Assistant/HOD
2. Mr. Mark Namaswa - Clerk Assistant III
3. Ms. Catherine Mukunyi - Sergeant-at-Arms
4. Mr. Alex Amwata - Hansard Officer
5. Ms. Noelle Amutabi - Legal Counsel
6. Ms. Shalom Migare - Researcher
7. Mr. Danton Kimutai - Audio Officer
8. Ms. Tanya Faith - Intern

MINISTRY OF EDUCATION

1. Dr. Belio R. Kipsang, CBS - PS – State Dept. for Basic Education
2. Ms. Florence Amoit - Sec. Administration. State Dept. Basic Edu.
3. Ms. Dorothy Kamwilu - Policy Advisor, PS's Office
4. Mr. Masini Ichwara - Dir. Planning – Basic Education
5. Mr. Stephen Barongo - Director – Primary Education
6. Mr. Harun Yussuf - CEO-National Council for Nomadic Education
7. Ms. Millicent Ochola - National School Meals Coordinator

MIN. NO.NA/DAA & GPC/COI/2024/112: PRELIMINARIES

The Chairperson called the meeting to order at 10:30 a.m. followed by a word of prayer by Hon. Timothy Toroitich, M.P. The agenda of the meeting was adopted as hereunder. The Committee was informed that the Cabinet Secretary, Ministry of Education Hon. Dr. Ezekiel Machogu, EGH was attending a cabinet meeting and therefore delegated Dr. Belio R. Kipsang, CBS - Principal Secretary – State Dept. for Basic Education to represent him.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: Meeting with the CS, Ministry of Education, to consider a motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being.
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/113: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/114: SUBMISSIONS BY THE CABINET SECRETARY, STATE DEPARTMENT FOR BASIC EDUCATION - MINISTRY OF EDUCATION

Dr. Belio R. Kipsang, CBS - Principal Secretary – State Dept. for Basic Education appeared before the Committee to apprise it on the status of implementation on the resolutions of the House on motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being.
He was accompanied by Ms. Florence Amoit – Secretary, Administration, State Department of Basic Education, Ms. Dorothy Kamwilu - Policy Advisor, PS's Office, Mr. Masini Ichwara – Director, Planning – Basic Education, Mr. Stephen Barongo, Director – Primary Education, Mr. Harun Yussuf - CEO-National Council for Nomadic Education, and Ms. Millicent Ochola - National School Meals Coordinator

The Committee was informed that:

1. The School Meals Programme in Kenya started in 1979, after the country was hit by a severe drought that affected 80% of the population and resulted in school dropouts. The Programme was undertaken by the Government of Kenya in partnership with the World Food Programme (WFP), starting with 240,000 school children.
2. By the 1990s, the number of children in the School Meals Programme had steadily expanded, with the Government committing to meeting 50% of the cost of land transport, storage and handling of the food commodities. Following the introduction of free and compulsory primary education in 2003, the number of learners joining primary school expanded exponentially. In 2018, the programme was fully taken over by the Government of Kenya (from the WFP).

3. The programme has expanded gradually after the transition, to cover a total of 2.6 million learners in 8,185 schools across the country, as of 2024. This covers 26 ASAL counties and informal urban settlements. In 11 of those counties, that is, Mandera, Tana River, Garissa, Wajir, Marsabit, Isiolo, Samburu, Baringo, West Pokot, Lamu and Turkana, NACONEK provides in-kind support by providing food to the schools. In the other 15 counties, NACONEK provides cash transfers to selected public schools. These counties are Baringo, Elgeyo Marakwet, Embu, Nyeri, Kajiado, Narok, Kilifi, Kwale, Machakos, Kitui, Makueni, Tharaka Nithi, Laikipia, Nairobi, Taita Taveta. The programme also covers all special needs education schools and refugee camp-based schools in Kenya.
4. Over time, the school meals programme has demonstrated a significant impact on school attendance, retention, transition and completion rates in the Arid and Semi-Arid Lands, Pockets of Poverty Areas and Urban Informal Settlements of Kenya. Ensuring that children are well fed, healthy and able to learn is essential to the effectiveness of an education system.
5. Recognizing the critical role of school feeding as both a safety net and protective measure for ensuring vulnerable children can have seamless access to basic education, the Government increased the national budget for this programme from Ksh. 1.96 Billion in the FY 2022/2023 to Ksh. 5.4 Billion in the FY 2023/2024. However, in the FY 2024/2025, the budget has been reduced to Ksh. 3.0 Billion.
6. As a member of the Global School Meals Coalition, Kenya has committed to achieve universal school feeding by 2030, by increasing the current coverage from 2.6 million to 10 million learners. The Ministry implements the School Meals Programme through the National Council for Nomadic Education in Kenya (NACONEK), which is established under the Basic Education Act, 2013.
7. That the Ministry already has a draft Policy document in place. The draft is titled the "Kenya School Meals Policy." The draft has been developed through a collaborative approach involving the Ministry of Education, the United Nations World Food Programme, NACONEK, the Rockefeller Foundation and the Ministries of Health; Agriculture, Livestock and Fisheries; Water, Sanitation and Irrigation. A copy of the draft Policy is provided herewith.
8. The overall goal of the Policy is to provide a framework for implementation and management of the school meals programme in Kenya. The Policy provides for the establishment of the programme based on clear goals, strategic objectives and principles.
9. The Policy provides for key thematic areas. These include access, equity and inclusion, through which the Government commits to provide diversified and healthy school meals to all learners, including those with special educational needs. The second thematic area is food safety and quality, under which the Government commits to ensure enhanced food safety and quality in the school meals programme. The third thematic area is nutrition and health. Under this, the Government commits to provide safe, diverse and nutritious meals as part of a comprehensive package of school health and nutrition services.
10. The fourth thematic area was on sourcing of food commodities. Under this, the policy commitment is to promote provision of accessible and affordable locally available food commodities. The other thematic area is on partnerships, collaborations and linkages. The Government commits to promote a coordinated approach through partnerships, collaborations and linkages.
11. That the draft Policy document also provides for its implementation. It has provisions on resource mobilisation, to ensure the sustainability of the programme, and for monitoring, evaluation and research. The draft document also outlines the institutional arrangement for the implementation of the Policy. The Policy will be implemented through existing Ministry of Education structures at the national and county levels.

12. In line with the requirements of the Constitution, the draft Policy will be subjected to stakeholder validation and public participation, prior to its publication and adoption. The stakeholder validation and public participation are scheduled for July, 2024.
13. Upon the stakeholder validation, the views and comments obtained through the process will be incorporated into the draft Policy. The revised draft Policy document will then be presented to the Cabinet for approval, after which it will be formally published and adopted. That the Ministry targets to have the Policy in place by September, 2024.

Committee Observations

1. The Committee observed that the school feeding programme is not new, having been incepted in Kenya in 1979
2. That the government has traditionally focused school feeding efforts in areas classified as ASAL and urban informal settlements
3. That the areas traditionally classified as ASAL have expanded due to climate change issues and geographical environmental changes.
4. That the government has scaled down the budget for the school feeding programme in the last one year as follows:
    ii. 2022/2023 =Ksh. 1.96 billion
    iii. 2023/2024 = Ksh. 5.4 billion
    iv. 2024/2025 = Ksh. 3.0 billion
5. That even as priority is given to schools in ASAL areas, some school still miss out on the food distribution exercise.
6. That the Ministry of Education and National Council for Nomadic Education in Kenya (NACONEK) have not been keen on the quality, quantity, cost and nutritional value of the food supplied through the school feeding programme.
7. That the criteria used by the Ministry of Education and National Council for Nomadic Education in Kenya (NACONEK) in determining whether cash transfers or food supplies are ideal on case to case basis for schools remains unclear and susceptible to abuse by the authorities handling it.
8. That as per the current model of food distribution to basic education schools across the country, targets of reaching the intended pupils are not being achieved due to inefficiencies in the distribution chain.
9. That in Kenya, only 2.6 million children in basic education schooling in Kenya out of an estimated total of 10 million children benefit from the school feeding programme.
10. That the Ministry of Education targets to have the Kenya School Meals Policy in place by September, 2024.

Committee Resolutions

1. That the government should be aware that the poverty index cuts across all regions in Kenya hence the need to implement a wholesome school feeding programme for children across Kenya, not just with a bias on ASAL areas.
2. That the government should revise its definition and zoning of ASAL and hardship areas to include new locations whose food security situation has been negatively impacted by climate change.
3. That as per the Ministry of Education definition of "targeted" intervention, the utilization of the feeding programme is selective hence leaving out a sizeable number of vulnerable leaners.
4. That the Ministry of Education- State Department of Basic Education is in the process of formulating a Kenya School Meals Policy in partnership with other government entities and Non-Governmental Organizations to provide a clear framework for articulation of key thematic areas of meals provision in schools: access, equity and inclusion.

5. That a consideration be made for the school feeding programme to be incorporated through existing channels in the NG-CDF pipeline to cure gaps in the existing NACONEK framework.
6. That the State Department of Basic Education within two weeks to:
   i. provide figures on how much its costs to feed all basic education pupils per year (the figures will be presented to Treasury when Committee invites them);
   ii. provide information on how long it takes to feed all the 10 million basic education school-going children in Kenya; and how much it costs to feed the current number of 2.6 million learners in 8,185 schools across the country, as of (2024)
   iii. provide a breakdown of data on the amount of food that a single child needs to feed (per food commodity, per kilo, per number of days in a school calendar year)
   iv. Provide a breakdown of the logistical cost of sending food across the current schools under coverage; and the cost that will take if the coverage is expanded to 10 million children in basic education schooling.

MIN. NO.NA/DAA & GPC/COI/2024/115: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/116: ADJOURNMENT

There being no other business, the meeting was adjourned at 12:52 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....30/07/2024.....

MINUTES OF THE 19TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 6TH JUNE, 2024 AT BUNGE TOWER 5TH FLOOR, ROOM 23, PARLIAMENT BUILDINGS, IN NAIROBI COUNTY AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mark Samuel Muriithi Mwenje, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. Hamisi Kakuta Maimai, M.P
8. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Mohamed Ali, M.P
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
5. The Hon. Johnson Manya Naicca, M.P
6. The Hon. Prof Guyo Waqo Jaldesa, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. John Okwisia Makali, M.P
10. The Hon. George Koimburi Ndung'u, M.P
11. The Hon. Siyoi Lillian Chebet, M.P
12. The Hon. Stanley Muiruri Muthama, M.P
13. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
5.	Ms. Noelle Amutabi	-	Legal Counsel
6.	Ms. Shalom Migare	-	Researcher
7.	Mr. Danton Kimutai	-	Audio Officer

MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE

1.	Hon. Aisha Jumwa, EGH	-	Cabinet Secretary, Gender, Culture, Arts
2.	Dr. Kiprop Lagat	-	Ag. Secretary, Department of Culture
3.	Mr. George Njoroge	-	Ass. Director, Department of Culture
4.	Ms. Elizabeth Kyallo	-	Ass. Director, Department of Culture
5.	Ms. Brenda Risambu	-	Personal Assistant to Cabinet Secretary
6.	Ms. Serah Nyaki	-	Ass. Director Comms. CS's office
7.	Mr. Hamisi Juma	-	Dep. Director Comms. CS's office

MIN. NO.NA/DAA & GPC/COI/2024/107: PRELIMINARIES

The Chairperson called the meeting to order at 10:30 a.m. followed by a word of prayer by Hon. Mark Mwenje, M.P. The agenda of the meeting was adopted as hereunder.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Meeting with the CS, Ministry of Gender, Culture, the Arts & Heritage regarding a motion sponsored by Member for Kamukunji Constituency, the Hon. Yusuf Hassan, MP, urging the Government to establish the National Swahili Council in Kenya and launch specific strategies, methods, and policies needed to promote and develop Kiswahili in the Country.**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/108: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/109: SUBMISSIONS BY THE CABINET SECRETARY, MINISTRY OF GENDER, CULTURE, THE ARTS AND HERITAGE ESTABLISH THE NATIONAL SWAHILI COUNCIL IN KENYA

Hon. Aisha Jumwa Katana, EGH the Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage appeared before the Committee to apprise it on the Implementation status regarding a motion sponsored by Member for Kamukunji Constituency, the Hon. Yusuf Hassan, MP, urging the Government to establish the National Swahili Council in Kenya and launch specific strategies, methods, and policies needed to promote and develop Kiswahili in the Country. She was accompanied by Dr. Kiprop Lagat (Ag. Secretary, Culture), Mr. George Njoroge (Ass. Director, Department of Culture), Ms. Elizabeth Kyallo (Ass. Director, Department of Culture), Ms. Brenda Risambu (PA to the CS), Ms. Serah Nyaki (Assistant Director Public Communication cs office) and Mr. Hamisi Juma (Deputy Director Public Communication CS's office).

The Committee was informed that:

Kiswahili is designated in the Constitution of Kenya as a national language as well as one of the two official languages in Kenya.

That as a means of emphasizing the importance of Kiswahili as a language in Kenya, the East African Community and Africa as a whole (Article 7, the East African Community and the African Union agreement) the National Assembly passed a motion on 2nd November, 2022 urging the National Government through the Ministry of Sports, Culture and Heritage to institute strategies and put policies in place to promote and develop Kiswahili as a language in conjunction with other private entities involved in the development of Kiswahili language.

Efforts to set up the National Kiswahili Council of Kenya began in 2018. At the time, the Secretary to the relevant ministry in charge of Culture nominated a technical committee from

various ministries and universities to kickstart formation of this Council. This committee embarked on collecting views from members of the public in four (4) counties in Kenya as provided by the Constitution of Kenya. This led to the compilation of the *Draft National Kiswahili Council Bill 2023*.

On March 21st 2023, the Cabinet through CAB. MEMO NO. 22(88) passed a resolution for the formation of the National Kiswahili Council of Kenya. On 23rd November 2023, this Bill was submitted to the Attorney General for further fine tuning.
On 18th January, 2024 the Office of the Attorney General presented the *National Kiswahili Council Bill 2024* after further improvements. This Bill had been improved as per the guidelines provided which had stipulated that the Council be comprised of nine (9) members. The Attorney General also proposed that the amended Bill be translated to Kiswahili.

As per the resolutions, the Department of Culture, Arts and Heritage has identified a Kiswahili expert for translation of this Bill, which was forwarded to the Attorney General through a letter (Ref. No.SDCH.7/21/(C) Vol.I/43 dated 3rd June, 2024.

Additionally, the Department of Culture, Arts and Heritage has endeavoured to prioritize Kiswahili and has put in place measures and strategies to this end. Among the strategies is putting in place the Languages of Kenya Policy that identifies Kiswahili as a language capable of uniting Kenyans, and a language capable of promoting commerce, technology and education as well as enhance cultural integration in Kenya. Several workshops have been held across Kenya with an aim promoting Kiswahili.

The Department is also collaborating with like-minded entities such as the National Caucus for Kiswahili (Chama Cha Kiswahili Cha Taifa -CHAKITA). For instance, on March 7th and 8th, 2024, the Department took part in the 24th CHAKITA Conference held at the Masinde Muliro University of Science and Technology.

Kiswahili has been recognized the world over, for instance, the United Nations Educational Scientific and Cultural Organization (UNESCO) set aside the 7th of July every year as a day to celebrate Kiswahili. Specific celebrations have been held in twice in Tanzania (2022) and Uganda (2023) and Kenya is slated to mark the day in 2024. The Department of Culture, Arts and Heritage will host this event in conjunction with the Commission of Kiswahili in Africa (Kamisheni ya Kiswahili ya Afrika Mashariki) alongside other stakeholders.

The Committee is invited to attend the Kiswahili Day Celebrations in Mombasa, Kenya from 5-7 July, 2024. The climax will be the Swahili night that will showcase cultural aspects such as food and music.

Committee Observations

1. That the Ministry opted to have the Kiswahili Council formed by way of a Bill and not through a gazette notice
2. That a Bill to be passed in Parliament for the constitution of the Kiswahili Council in Kenya would take more time that by way of gazette notice.
3. That Kenyan schools only teach Swahili as a subject but do not use it as a language os instruction in school as it happens with English in Kenya, and Kiswahili in Tanzania
4. That Tanzania constituted its own Swahili councils (Baraza la Kitaifa la Kiswahili – BAKITA in 1967 and Baraza la Kiswahili la Zanzibar in 2004) yet Kenya is yet to have its own council.

5. That Thursday was set aside as a day in which business in Parliament would be transacted in Kiswahili. However, the resolution has not been upheld as per the date of this meeting.
6. That an independent council dedicated to the development and advancement of Kiswahili would be more productive as opposed to having Kiswahili issues addressed from a department within the Ministry.
7. That as per the Cabinet Secretary of the Ministry, the challenge facing the promotion of mother tongue in Kenya is the unintended negative impact on nationhood.

Committee Resolutions

1. That the Ministry in conjunction with the Office of the Attorney General fast tracks the enactment of the *Draft National Kiswahili Council Bill 2023* for purposes of setting up the National Kiswahili Council of Kenya within the shortest time possible. Ministry to contact the Attorney General reminding them of the same.
2. That in two weeks' time, the Committee invites the Attorney General to apprise it on the progress of enactment of the *Draft National Kiswahili Council Bill 2023* for purposes of setting up the National Kiswahili Council of Kenya.

MIN. NO.NA/DAA & GPC/COI/2024/110: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/111: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:20 a.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....30/07/2024.....

MINUTES OF THE 18TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 4TH JUNE, 2024 AT BUNGE TOWER 5TH FLOOR, ROOM 23, PARLIAMENT BUILDINGS, IN NAIROBI COUNTY AT 10:00 AM

PRESENT

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Prof Guyo Waqo Jaldesa, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. Siyoi Lillian Chebet, M.P
8. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Hilary Arap Kosgei, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. John Okwisia Makali, M.P
10. The Hon. George Koimburi Ndung'u, M.P
11. The Hon. Hamisi Kakuta Maimai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P
13. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
2.	Mr. Mark Namaswa	-	Clerk Assistant III
3.	Mr. Collins Namulen	-	Fiscal Analyst
4.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
5.	Ms. Noelle Amutabi	-	Legal Counsel
6.	Ms. Shalom Migare	-	Researcher
7.	Mr. Peter Mutegi	-	Audio Officer

STATE DEPARTMENT FOR IMMIGRATION AND CITIZEN SERVICES

1.	Mr. Paul Mwangemi	-	Secretary – Civil Registration Services
2.	Mr. Leonard Nang'ole	-	Secretary - Integrated Population Registration Database System (IPRS)
3.	Mr. Amer Balala	-	Liaison, State Department for Immigration

MIN. NO.NA/DAA & GPC/COI/2024/102: PRELIMINARIES

The Chairperson (The Hon. Rose Museo Mumo, M.P) called the meeting to order at 10:30 a.m. followed by a word of prayer. The agenda of the meeting was adopted as hereunder after

being proposed by The Hon. Prof Guyo Waqo Jaldesa, M.P and seconded by The Hon. Johnson Manya Naicca, M.P

The secretariat reported that they were in receipt of a letter vide **Ref: No. SDICS/PARA/14** from Amb. Prof. Julius Bitok, PhD, CBS - the Principal Secretary, State Department for Immigration and Citizen Services, that the Cabinet Secretary – Ministry of Interior and National Administration, was at the time of the meeting held up in a security meeting and had nominated Mr. Paul Mwangemi – Secretary, Civil Registration Services to represent him.

Members deliberated whether the meeting could proceed without the presence of the Principal Secretary, State Department for Immigration and Citizen Services - Ministry of Interior and National Administration. The Committee resolved that since the matter at hand was straight forward, the meeting could proceed.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Principal Secretary, State Department for Immigration and Citizen Services - Ministry of Interior and National Administration to apprise the Committee on the status of implementation of recommendations of a Motion, sponsored by the Member for Maragwa Constituency, the Hon. Mary Wamaua, MP, urging the Government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children.**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/103: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/104: SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR IMMIGRATION AND CITIZEN SERVICES - MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

Mr. Paul Mwangemi, Secretary, Civil Registration Services, representing the Cabinet Secretary - Ministry of Interior and National Administration, appeared before The Committee to adduce evidence on the implementation status of the recommendations of a Motion, sponsored by the Member for Maragwa Constituency, the Hon. Mary Wamaua, MP, urging the Government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children. He was accompanied by Mr. Leonard Nang'ole - Integrated Population Registration Database System (IPRS).

The Secretary, Civil Registration Services relayed apologies on behalf of the Cabinet Secretary, Ministry of Interior and National Administration who was unable to attend the meeting.

The Committee was informed that:

The status of implementation of the aforementioned motion on the establishment of database centres in all Civil Registration Centres in the country is as below:

i) The Civil Registration Services are currently operational in One Hundred and Fifty-nine (159) Sub-counties against a possible four hundred and six (406) sub-counties countrywide. This is an increase of thirty-four (34) sub-county offices since 2021.
ii) The department has put up a 3-year plan to ensure that all two hundred and ninety (290) constituencies have operational offices. This means that the department will strive to operationalize a total of one hundred and thirty-one (131) offices in the remaining constituencies which do not have a civil registration office. This will bring services closer to the members of the public.
iii) In all the operational sub-counties, the Department has established databases although, some are manual in nature. The Department has therefore embarked on the process of digitizing and automating its processes to ensure efficient storage, application and processing of certificates.
iv) The Civil Registration Department has implemented a web-based system to allow members of the public to be issued with a Unique Personal Identifier (UPI) (Maisha Number) at birth. The system will subsequently allow members of the public to apply for certificates online, make payment through eCitizen and download their certificates. The UPI will also allow for integration of the Civil Registration database with other government databases to provide for efficient service delivery. The implementation of this system has, however, been challenged in court and the Department is looking forward to its implementation once it is cleared.

Committee Observations

1. That since the year 2021, the coverage of civil registration services centres countrywide had increased from 125 to 159. This was an increase of 34 centre offices.
2. That the main challenge facing the acquisition of crucial identification documents was the absence of civil registration centres in all areas of the country particularly in the far flung and remote areas.
3. That the primary document used for the generation of the civil registration database was a birth certificate.
4. That the Department is operating on a three-year plan of ensuring all two hundred and ninety (290) constituencies have operational offices.
5. That in all the operational sub-counties the Department has established databases, some manual in nature, others digital.
6. That geographical areas and population are among the parameters used to set up civil registration centres.
7. That the Department lacked clear timelines for the setting up of civil registration databases across the country.
8. That setting up of the (UPI) was challenged in court on grounds of not meeting the public participation threshold. The case was mentioned but the Department informed the Committee that it held more than 800 meetings on the matter.
9. That at the time of the meeting, the Department had 50 million records of data such as birth documentation of Kenyans, out of which 36 million have been digitized. Another 10 million existed in manual format with a target of digitizing the remaining records in the next one (1) year.

10. That illiteracy levels, remoteness of certain regions and internet penetration levels (the digital divide) will negatively impact on the establishment of database centres owing to the proportion of births at home rather than in health facilities.
11. That the Department was considering using an offline module in the digitization of civil registration services and also facilitating assistant chiefs with data bundles to ensure timely submission of information to civil registration centres on births, deaths and identity card processing.
12. That civil registration services still have a gap in accessing the services particularly in the Eastland's areas of Nairobi such as Kasarani, Ruaraka, Embakasi East, Embakasi West, and Embakasi Central which are high population density areas.

Committee Resolutions

1. That the Department for Immigration and Citizen Services should have strict and definite timelines in place to enable timely implementation of the passed resolutions and follow up on the status of implementation.
2. That civil registration services expand accessing to services particularly in the Eastland's areas of Nairobi such as Kasarani, Ruaraka, Embakasi East, Embakasi West, and Embakasi Central which are high population density areas.
3. That the Department for Immigration and Citizen Services be cognizant to dynamics of setting up civil registration centres such as geographical location and access by citizens to the centres, the socio-economic and literacy level of the residents, and the access to internet services as a way to avoid disadvantaging sections of Kenyans from accessing the services and onboarding into the database meant to store all information as outlined by the resolutions of the Motion.

MIN. NO.NA/DAA & GPC/COI/2024/105: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/106: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:25 a.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date...30/07/2024.....

MINUTES OF THE 17TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 18TH MAY, 2024 IN DODORI CONFERENCE ROOM, THE PRIDE INN PARADISE HOTEL, SHANZU MOMBASA COUNTY AT 9:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Abdul Ebrahim Haro, M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. Julius Taitumu M'Anaiba, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Siyoi Lillian Chebet, M.P
9. The Hon. Stanley Muiruri Muthama, M.P
10. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon. Prof Guyo Waqo Jaldesa, M.P
8. The Hon. George Koimburi Ndung'u, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Mr. Collins Namulen	-	Fiscal Analyst
5.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms

STATE DEPARTMENT FOR YOUTH AFFAIRS AND CREATIVE ECONOMY

Mr. Ismail Madey	-	PS State Department for Youth Affairs

YOUTH ENTERPRISE DEVELOPMENT FUND

Mr. Josiah Moriasi	-	CEO Youth Fund

ASSETS RECOVERY AGENCY (ARA)

1.	Mr. Kennedy Ogwengo	-	Deputy Director, ARA
2.	Ms. Faith Mercy Irari	-	Senior State Counsel, ARA
3.	Mr. Nicholas Mutua	-	Staffer, ARA
4.	Mr. Timothy Nderitu	-	Under Secretary, ARA
5.	Ms. Esther Muchiri	-	Senior State Counsel, ARA

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

1.	Mr. Twalib Mbarak	-	CEO/ Secretary, EACC
2.	Mr. Paschal Mweu	-	Director, Investigations
3.	Mr. Stephen Karuga	-	Assistant Director, Legal
4.	Mr. Mark Ndiema	-	Lower Coast Regional Head, EACC
5.	Ms. Christine Ombaka	-	Investigations Officer

DIRECTORATE OF CRIMINAL INVESTIGATION (DCI)

1.	Mr. Mohamed I. Amin	-	Director of Criminal Investigations
2.	Mr. Paul Wachira	-	Dep. Director, Investigations

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Mr. Joseph Riungu - Ag. Deputy Director, Dept. of Economic Organized and International Crimes

OFFICE OF THE AUDITOR GENERAL (OAG)

Mr. Anthony Waiganjo - Director, Parliamentary Liaison

INSPECTORATE OF STATE CORPORATIONS (ISC)

1.	Mr. James Mungai Warui	-	Ag. Inspector-General
2.	Ms. Nanjala B. Christine	-	Deputy Director, ISC
3.	Ms. Grace Mwaniki	-	Deputy Director, ISC

MIN. NO.NA/DAA & GPC/COI/2024/093: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. followed by a word of prayer from Hon. Julius Taitumu, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Abdul Ebrahim Haro, M.P and seconded by The Hon. Cynthia Jepkosgei Muge, M.P

Members deliberated whether the meeting could proceed without the presence of officials from The National Treasury. The Committee resolved that since The National Treasury was slated to handle two issues as per the Report, the meeting could proceed.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Principal Secretary, The National Treasury, the Governor, Central Bank of Kenya, Principal Secretary, State Department of Youth Affairs, Creative Economy and Sports and the Chief Executive Officer, Youth Enterprise Development Fund to consider implementation status of the recommendations contained in the report of the Public Investments Committee Special Report on the Inquiry into Allegations of Fraud and Financial Mismanagement at the Youth Enterprise Development Fund**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/094: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/095: **SUBMISSIONS BY THE PRINCIPAL SECRETARY, YOUTH AFFAIRS, CREATIVE ECONOMY AND SPORTS AND THE CHIEF EXECUTIVE OFFICER, YOUTH ENTERPRISE DEVELOPMENT FUND REGARDING THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND**

Mr. Ismail Madey, CBS - PS State Department for Youth Affairs and the Creative Economy, appeared before The Committee to adduce evidence on the implementation status of the recommendations contained in the report of the Public Investments Committee Special Report on the Inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund. He was accompanied by Mr. Simon Moriasi – CEO Youth Fund.

The Principal Secretary, State Department for Youth Affairs and the Creative Economy relayed apologies on behalf of Hon. Ababu Namwamba, the Cabinet Secretary, Youth Affairs and the Creative Economy who was unable to attend the meeting.

The Committee was informed that:

Recommendation No. 1
THAT, The National Treasury to constitute a multi-government agency team composed of the responsible State Departments and the Inspectorate of State Corporations to review the corporate governance issues at YEDF, performance of the various projects undertaken by YEDF since its inception and to undertake a value for money audit of the fund since inception to date.

Key Respondent: The Cabinet Secretary for the National Treasury

Ministry Response:
The Committee was informed that arising from this recommendation several agencies contacted the Youth Enterprise Development Fund (YEDF) to carry out investigations. In particular the following agencies carried out investigations.

i) Ethics and Anti-Corruption Commission
ii) Directorate of Criminal Investigations
iii) Inspectorate of State Corporations
iv) Office of the Auditor General
v) Public Procurement Regulatory Authority

Further, YEDF provided all documents that were requested by these agencies.

Recommendation No. 2
THAT, there is need to amend Sections 23,24 and 44 of the Proceeds of Crime and the Anti-Money Laundering Act 2009 to give the Financial Reporting Centre more powers

to act on suspicious bank transactions and accounts. The Committee shall propose an amendment to this section to ensure that the FRC can mitigate on funds especially originating from government institutions.

Ministry Response:
The Committee was informed that the FRC plays an important role in identification of the proceeds of crime and combating money laundering, terrorism financing and proliferation. The Ministry appreciates this recommendation to give FRC more powers to act on suspicious bank transactions and accounts and looks forward to the enactment of the envisaged amendments to strengthen internal controls and deter similar incidences in future

Recommendation No. 3
THAT, the Cabinet Secretary, Ministry of Public Service, Youth and Gender Affairs should expedite the appointment of a substantive Chief Executive Officer of the Youth Enterprise Development Fund. The YEDF has operated without a substantive CEO since 2013.

Key Respondent: The Cabinet Secretary, Youth Affairs, Creative Economy and Sports
Ministry Response:
The Committee was informed that under the Ministry's guidance, the Board of the Youth Enterprise Development Fund advertised the position of the CEO in July 2016. The Board subsequently recruited and appointed the substantive CEO with effect from 1st November 2016.

Recommendation No. 4
THAT, there is need to amend Sections 23 and 24 of the POCAML Act 2009 to enable the tracking of proceeds of crime especially to the real estate sector in Kenya. There are indications that the real estate sector in Kenya is used for money laundering especially proceeds of corruption.

Key Respondent: The Attorney-General
Ministry Response:
The Committee was informed that POCAMLA Act 2009 grants powers to investigative bodies to trace, preserve and recover illegally acquired assets through financial investigations. The Ministry appreciates that POCAML Act 2009 needs to be amended to give investigative agencies more power to trace, preserve and recover illegally acquired assets.

Recommendation No. 5
THAT, the Auditor-General to undertake a forensic audit of all the funds that have been appropriated by the National Assembly to YEDF from inception to date.

Key Respondent: The Auditor General
Ministry Response:
The Committee was told that the Auditor General contacted the Youth Enterprise Development Fund (YEDF) to carry out investigations. The Ministry is therefore aware that Auditor General carried out a special audit on YEDF. The YEDF provided all available documents requested by the Auditor General.

Recommendation No. 6

THAT, the Financial Reporting Centre (FRC)and the Asset Recovery Agency (ARA), the two crucial institutions established under the POCAML Act 2009 to deal with matters of proceeds of crime and money-laundering are under-funded by the Government and have never been fully operationalized. The National Treasury and the Attorney General should ensure that the FRC and ARA are adequately funded and fully operationalized to enable the two institutions adequately fulfil their legal mandate.

Key Respondents: The National Treasury and Attorney General
Ministry Response:
The Committee was informed that FRC plays an important role in identification of the proceeds of crime and combating money laundering, terrorism financing and proliferation while ARA is instrumental in combating money laundering, terrorist financing, and proliferation financing through identification, tracing, freezing, seizure, and confiscation of proceeds of crime. The Ministry therefore appreciates this recommendation that will fully operationalize and strengthen these institutions.

Recommendation No. 7
THAT, Chase Bank (K) Ltd did not fully conduct due diligence in accordance with prudential guideline 5.6.6 of the Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism-CBK/PG/08 in acting on instructions of Ms. Catherine A. Namuye, the suspended CEO, YEDF to transfer funds from YEDF account to Quorandum Ltd. The Central Bank of Kenya should investigate Chase Bank (K) Ltd for possible violations of the Banking Act Cap 488, POCAML Act 2009 and the Prudential Guidelines.
Key Respondent: The Central Bank of Kenya
Ministry Response:
The Committee was informed that the youth of Kenya lost money through the transaction that was the subject of these investigations by the PIC. The Ministry therefore looks forward to the outcome of this investigation as it would be useful in pursuing the lost funds. On its part YEDF has instituted civil proceedings against Chase Bank with a view to recovering the money.

Recommendation No. 8
THAT, the National Treasury enhances budgetary allocation to the Inspectorate of State Corporations to facilitate effective inspection of state corporations.

Key Respondent: The National Treasury
Ministry Response:
The Committee was informed that the Inspector of State Corporations plays a significant role in advising the Government on matters affecting the effective running of state corporations. The Ministry therefore welcomes an enhanced budget for the office.

Recommendation No. 9
THAT, the circumstances surrounding the death of the Fund's driver, Mr. Simon Mwangi who at the time of his death on 18th October, 2015 was on duty during unofficial hours in Diani Beach Mombasa, are suspect. The death allegedly occurred at a private party attended by former YEDF Board director Mr. Clement Ayungo on invitation by his friend, Mr. Babu Owino. The Director, Directorate of Criminal Investigation should extend his investigation to include possible involvement of Mr.

Clement Ayungo and Mr. Babu Owino in the death of Mr. Simon Mwangi and establish if his death is linked to the financial mismanagement at the YEDF.

Key Respondents: The Director, Directorate of Criminal Investigation and Secretary, EACC

Ministry Response:

The Committee was informed that the deceased was a hardworking officer and had a very young family at the point of his death. The Ministry is aware that the DCI carried investigations on this matter. YEDF provided all requested documents and equipment. The outcome of the investigations would be very useful for the Ministry's closure as the deceased was part of our family.

Recommendation No. 10

THAT, the Circular dated 18th July, 2007 issued by the former Head of Civil Service and Secretary to the Cabinet, Ambassador Francis Muthaura, barring the Inspectorate of State Corporations from sitting in Board meetings of State Corporations unless invited by the Board was in contravention of Section 18(2) (c) of the State Corporations Act which gives the Inspectorate the mandate to attend Board meetings as deemed necessary.

Key Respondent: The Chief of Staff and Head of Public Service

Ministry Response:

The Committee was informed that the Inspector of State Corporations plays a significant role in advising the Government on matters affecting the effective running of state corporations, and advising Boards on best practices. The Inspectorate of State Corporations has appointed an officer who sits in the meetings of the Youth Enterprise Development Fund Board, and is very helpful during Board deliberations.

Recommendation No. 11

THAT, the Chief of Staff and the Head of Public Service should as a matter of priority ensure that the recommendations of the Presidential Taskforce on Parastatal Reforms on the merger of the YEDF, Women Fund, Uwezo Fund, Micro and Small Enterprises Authority (MSEA) and the Kenya Industrial Estates (KIE) to create Biashara Kenya are implemented. This merger is expected: to pool the scattered financial resources estimated at approximately Kshs. 30 billion per financial year; harness the potential of youth, women and men; build synergies among the various government agencies; and leverage on economies of scale. Further there is duplication of roles of some state organs, hence the need to implement the Mwongozo so as to remove duplication of duties and create clarity on the same.

Key Respondent: The Chief of Staff and Head of Public Service

Ministry Response:

The Committee was informed that the process to merge some of the agencies was initiated by the National Treasury but later halted. However, the Ministry is in receipt of invitation to participate in fresh discussions on the merger of the Youth Enterprise Development Fund, Uwezo Fund and the Women Enterprise Fund.

Recommendation No. 12

THAT, the Chief of Staff and Head of Public Service should ensure that the appointment of persons to serve as Board Chairpersons and Board Members of State Corporations is done in-accordance with the Mwongozo-Code-of-Governance-for-State-

Corporations-which requires that appointment of persons to serve as Board Chairpersons and Board Members have the following minimum qualifications:

i) Holds a minimum of a degree in the relevant field from a university recognized in Kenya;
ii) Proven business management or other relevant professional experience;
iii) Served in a position of senior management for at least six years;
iv) Has not served in the same entity as employee in the preceding five years;
v) Meets the requirements of Chapter Six of the Constitution; and
vi) Meets the requirements of the fit and proper test.

Key Respondent: The Chief of Staff and Head of Public Service
Ministry Response:
The Committee was informed that the Board of directors is responsible for protecting shareholders' interests, establishing management policies, overseeing the governance of the corporation or organization, and making critical business decisions. Appointment of Board members should therefore be done as per the laid-out procedure. Appointment of members to the Board of the Youth Enterprise Development Fund adheres to this recommendation and the legal instruments establishing the YEDF

Recommendation No. 13
THAT, further, Alternate Directors of respective Ministries seconded to parastatal Boards should be individuals well versed in the affairs and operations of the respective Boards and should have unfettered access to Board meetings and ensure that they submit regular reports to their respective Principal Secretaries on the operations of the Boards in which they sit in.
Key Respondent: Line Ministries

Ministry Response:

The Committee was informed that the Ministry is in receipt of communication OP/CAB.9/ 1A dated October 18, 2019 which gives guidelines on alternate directors representing government agencies in State Corporations. Alternate Directors representing the National Treasury and the Ministry of Youth Affairs, Creative Economy and Sports who sit in the Board of YEDF are individuals well versed in the affairs and operations of the Board and have unfettered access to Board meetings.

Recommendation No. 14
THAT, the Director, Directorate of Criminal Investigations should: - (i) Engage the services of a forensic examiner to authenticate all YEDF documents used in the fraudulent transfer of funds from YEDF account at Chase Bank (K) Ltd, including Board Minutes and correspondences. (ii) Engage the services of a graphology expert to analyses signatures on all correspondences that were purportedly signed by the then Ag. CEO Ms. Catherine Namuye and other Fund officials that may have resulted in the loss of funds at YEDF. The Director, Directorate of Criminal Investigations to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.
Key Respondent: Director, DCI

Ministry Response:
The Committee was made aware that the Ministry confirms that the Directorate of Criminal Investigations contacted YEDF with a request for documents which the Fund provided. The DCI shared the status report of the investigations with YEDF.

Recommendation No. 15

Specific Recommendations on various Persons of Interest: Committee recommended investigation and prosecution of:

i) Catherine A. Namuye, Suspended Ag. CEO, YEDF
ii) Mr. Bruce Dominic Odhiambo, Former YEDF Board Chairman
iii) Mr. Mukuria Ngamau, Director and Shareholder, Quorandum Ltd
iv) Other Persons of Interest (to be investigated)
v) Mr. Ezekiel Owuor – be investigated and surrender outstanding balance of payment owed to Mr. Mukuria Ngamau to the Asset Recovery Agency
vi) Industries D'Amico Ltd
vii) Mr. Yogesh Kumar Bhadwarj
viii) Mr. Dilshad S. Mohammed
ix) Ms. Doreen Waithera Ng'ang'a
x) Directors of Rock Plant Ltd

Key Respondents: The Director, DCI and Secretary, EACC

Ministry Response:

The Committee was informed that the following were investigated, charged and prosecuted for conspiracy to defraud
the YEDF:

i) Ms. Catherine Namuye (deceased)
ii) Mr. Bruce Odhiambo (deceased)
iii) Mr. Mukuria Ngamau
iv) Ms. Doreen W. Nganga
v) Quorandum Limited

Judgement of Anti-corruption Case No. 13 of 2016, Republic VS Catherine Akello Namuye and 4 others is attached. However, it was noted the first two accused passed on as the case proceeded and the proceedings against them were marked as abated.

Further the Committee recommended, that the Inspector-General of State Corporations and the Chief Executive Officer of YEDF should surcharge Mr. Bruce Odhiambo a sum ofKshs.1, 034,014.65 for the misuse of vehicle, Toyota Land Cruiser VXL, Registration No. KBZ 753D. The Inspectorate of State Corporations to liaise with the Asset Recovery Agency to ensure a recovery of this amount and appurtenant costs with immediate effect.

Key Respondents: The Inspector-General of State Corporations and the Chief Executive Officer, YEDF

Ministry Response:

The Committee was told that the Inspector-General of State Corporations, through the representative in the YEDF Board, guided the Fund that the institution had put in motion the process of surcharging Mr. Bruce Odhiambo who passed on before the process was complete.

Committee Observations

i) The Committee noted that the current YEDF CEO, Josiah Moriasi was first appointed in 2016 on a 3-year contract.
ii) The CEO served from 1st November 2016-November 2019 and a further 6 months to April 2020. However, he was dismissed but challenged the dismissal in court.
iii) The court ruled in his favour but he was not reinstated until three years later (in January 2023)

Committee Resolutions
That the CEO Youth Enterprise Fund provides documentation to ascertain the status and terms of his current occupancy of office. This should be supplied within a week from the time of the meeting.

MIN. NO.NA/DAA & GPC/COI/2024/096: **SUBMISSIONS BY THE CHIEF EXECUTIVE OFFICER, ETHICS AND ANTI-CORRUPTION COMMISSION TREGARDING THE REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND**

Allegation that the CEO of Youth Enterprise Development Fund (YEDF) one Catherine Namuye in collusion with a senior Board member and other senior managers are said to be deeply involved in the scheme to defraud the fund of Kshs. 180.9 million in FY 2013/2014

The Committee was informed that the Youth Enterprise Development Fund (YEDF) had a need for the provision of consultancy on the ICT Strategy and Enterprise Resource Planning in the Financial Year (FY) 2012/2013 and a budget was approved. This procurement for provision of consultancy on the ICT Strategy and Enterprise Resource Planning services was to run for a period of five (5) years 2012 to 2017.

The Committee was made aware that Microflex Business Solution Africa Ltd (Microflex) emerged as the successful bidder. The Fund formally entered into a written contract with Microflex to provide the services for the period 2012 to 2017.

Findings of the Criminal Investigation
The Committee was informed that:

i) The then CEO of the YEDF, Catherine Namuye single-handedly engaged Mukuria Ngamau and Quorandum Ltd for similar services that Microflex was already undertaking without following any procurement process.
ii) On 11th February 2015 and 27th April, 2015, Catherine Namuye irregularly and unlawfully authorized payment from the YEDF amounting to Kshs. 115,710,000 and Kshs 65,184,946 respectively to Quorandum Ltd for services not rendered.
iii) Upon an inquiry by the Bank on the alleged payment, the Chair of the YEDF Board, Bruce Odhiambo and Catherine Namuye indicated that the YEDF Board had authorized Ms. Namuye to effect any payment from the YEDF account, a fact that was false.
iv) Catherine Namuye presented forged contracts between the YEDF and Quorandum Limited for provision of consultancy on the ICT Strategy and Enterprise Resource Planning services in support of the payment to Quorandum Limited.
v) Quorandum Limited unlawfully received a total of Kshs. 180,364,789 from the YEDF for services not rendered.
vi) Bruce Odhiambo, Catherine Namuye and the Directors of Quorandum Limited conspired to defraud the YEDF of Kshs 180,364,789.

Status of the Investigation:

The Committee was informed that:

Upon conclusion of investigations, the Commission recommended charges against the following:

a) Catherine Namuye Akelo (CEO YEDF)
b) Bruce Odhiambo (Chairman YEDF)
c) Mukuria Ngamau and Doreen Ng'ang'a (Directors of Quorandum Limited)
d) Quorandum Limited

The ODPP concurred with the Commission and suspects were charged in Milimani Anti-Corruption Court No. 13 of 2016. Catherine Namuye Akelo and Bruce Odhiambo passed away in the course of the criminal proceedings, while Doreen Nganga was acquitted under Section 210 of the Criminal Procedure Code.

The Case was concluded and Mukuria Ngamau, Quorandum Limited were convicted and sentenced on 30th September, 2021 with the following counts:

i) **Count 1:** Mukuria Ngamau and Quorandum Limited; Conspiracy to commit an economic crime contrary to section 47A (3) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. Sentenced to 7 years' imprisonment with no option of a fine.
ii) **Count 2:** Mukuria Ngamau and Quorandum Limited; Unlawful acquisition of Public Property Contrary to Section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act. Sentenced to pay a mandatory fine of Kshs 442,840,000 in default 7 years' imprisonment.
iii) **Count 3:** Mukuria Ngamau, Doreen Ng'ang'a and Quorandum Limited; Unlawful acquisition of Public Property Contrary to Section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act. Sentenced to pay a mandatory fine of Kshs 258,629,156 in default 7 years' imprisonment.
iv) **Count 10:** Mukuria Ngamau; Making of false document contrary section 347 (a) as read with section 349 of the Penal Code. Sentenced to 3 years' imprisonment with no option of a fine.
v) **Count 11:** Mukuria Ngamau; Making of false document contrary section 347 (a) as read with section 349 of the Penal Code. Sentenced to 3 years' imprisonment with no option of a fine.
vi) **Count 2 and Count 3** are to run concurrently while Count 1, 10 and 11 are to run consecutively. Cumulatively, the accused persons were fined Kshs 701,469,156 or in default serve 7 years' imprisonment. Further, the accused persons were to serve a mandatory 13 years' imprisonment.
vii) In addition, the Court invoked section 51 and 54 of ACECA and ordered Mukuria Ngamau to pay the Youth Enterprise Development Fund Kshs. 180,364,789 in compensation.
viii) The accused filed an appeal; however, the High Court upheld the convictions and Mr. Mukuria Ngamau is currently serving the prison sentence.
ix) The prisoner is yet to pay compensation of Kshs 180,364,789 ordered by the court. Since this is a conviction-based recovery, the Commission is in the process of putting mechanisms for recovery of the said funds.

Committee Observations

i) The Committee noted that the first and second accused persons; Catherine Namuye Akelo (CEO YEDF) and Bruce Odhiambo (Chairman YEDF) are deceased hence could not be charged.
ii) The Committee noted that there were no charges preferred against procurement officers at YEDF since, as per submissions by the EACC, there was no procurement done. It was a matter of direct transfer of funds from YEDF to third parties.

MIN. NO.NA/DAA & GPC/COI/2024/097: **SUBMISSIONS BY THE DIRECTOR OF CRIMINAL INVESTIGATIONS (DCI) REGARDING THE REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND**

A) Recommendations to Government Entities and Agencies

THAT, the circumstances surrounding the death of the Fund's driver, Mr. Simon Mwangi who at the time of his death on 18th October, 2015 was on duty during unofficial hours in Diani Beach Mombasa, are suspect. The death allegedly occurred at a private party attended by former YEDF Board director Mr. Clement Ayungo on invitation by his friend, Mr. Babu Owino. The Director, Directorate of Criminal Investigations should extend his investigation to include possible involvement of Mr. Clement Ayungo and Mr. Babu Owino in the death of Mr. Simon Mwangi and his death is linked to the financial mismanagement at the YEDF.

The Director, DCI and Secretary, EACC to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

1. Circumstances surrounding the death of the YEDF'S driver, Mr. Simon Mwangi

The Committee was informed that:

i) The brief circumstances around this case are that one Simon Mwangi Gathigia, a kikuyu male aged 33 years and a driver of the Youth Enterprise Development Fund Mombasa station is alleged to have drowned in a swimming pool at Kivulini Cottages in Diani town within Kwale County in the wee hours of 19/10/2015, Diani police station opened an inquest file vide Inquest No. 10/2015.
ii) Following a report to Parliament Public Accounts Committee on investigations into the cause of death of the above deceased by the CCIO Kwale Mr. Edwin Kamau dated 5th April 14, 2016, a team of Homicide Investigators from DCI Headquarters was mandated to proceed to Diani Police Station to take over the Police original file and after perusal take over and commence investigations.
iii) A team of Homicide Investigators from DCI Headquarters proceeded to Diani police station and took over the original file vide Inquest 10/2015 and commenced investigations.
iv) Investigation commenced by revisiting and reconstruction of the scene at Kivulini Cottages in the company of a Crime Scene Support Services Officer CPL Emmanuel Konde and the initial investigating officer PC Ngigi Ngugi. The scene was photographed, measured and a sketch plan drawn, the team was able to interview the caretaker JOSPHAT BUSOLO, Gardener/ swimming pool attendant namely Rama Salim Mwasauri and a House Keeper Jane Amlavu Tsiruma. The team established

from the caretaker that the owner of the cottage is one Italian known as Bartesaghi Carla who domiciles in Italy. The alleged cottage was rented by one Jenifer Mbogo a business woman from Nairobi as from August 2015 to October 2015.

v) On the 18th/10/2015 at around 8.00 AM one Stephen Mbogo a businessman from Nairobi and a brother to Jenifer Mbogo checked in the cottage together with other eight (8) guests; four couples and a man. On the same night of 18/19/10/2015. STEPHEN MBOGO hosted other guests, who were about 20, among them Clement Ayungo a Director with YOUTH ENTERPTISE DEVELOPMENT FUND, Babu Owino the student leader SONU and the Deceased Simon Mwangi without the knowledge of the caretaker. The cottage has only five single bedroom which was able to host only eight (8) guests accompanying Stephen Mbogo.

vi) During the same night, the barrier to the entrance of the said cottage was being manned by a guard from Ontrack Security Firm namely Hassan Ali who was interviewed and confirmed that three vehicles Reg Nos. KCC 376R, KCA 655S together with a Parastatal vehicle Reg. No. KBQ OO9D driven by the deceased entered the cottage at around 1200 midnight at the same time. Unfortunately, the two vehicles were recorded at the barrier except the deceased's vehicle. It is alleged that the guests had fun, drinking the whole night at the veranda of the said cottage and swimming in a swimming pool which is about 30m from the said cottage disregarding the fact that there was no swimming pool attendant.

vii) On the 19/10/2015 at around 5.00 a.m. the Caretaker was called by STEPHEN MBOGO who informed him that there was a problem and that he should go at the cottage to check what was wrong. He proceeded to the cottage and found Stephen Mbogo and Clement Ayungo at the Veranda and Stephen Mbogo informed him that somebody had drowned in the swimming pool but had been removed. The caretaker proceeded to the swimming pool where he found the deceased being resuscitated at the deepest side of the swimming pool whereby First Aid was being rendered by a lady who claimed to be a medical student in the University. He also observed that they were all drizzling with water.

viii) The caretaker advised them to rush him to hospital. Stephen Mbogo called for an ambulance but before it arrived, Clement Ayungo, Stephen Mbogo, Babu Owino and the rest took the deceased in one of their private vehicles and in a convoy of 4 vehicles rushed out of the cottage towards Diani Beach Hospital. On the way they met the hospital ambulance and exchanged the deceased into the ambulance and at around 5.30 am the deceased reached Diani Beach Hospital and was pronounced dead on arrival by DR Adams Mandira.

ix)On the same day the OCS Diani Police Station CI Daniel M. Musyoka received a call from the Hospital reporting the incident. The OCS visited Diani Beach Hospital where he met Stephen Mbogo, Clement Ayungo and Babu Owino. He was shown the body of the deceased lying on a hospital gurney. He didn't note any physical injuries on examining the body. At around 9.00 a.m the OCS in the company of the three persons above visited the scene at Kivulini Cottage and interviewed them on what had transpired. To his surprise he found the veranda where they held a party the whole night cleared and the other guests already left. He took some measurement of the swimming pool and Clement Oyungo handed over to him the car keys of the deceased vehicle which was parked 100m away from the swimming pool, he found the deceased's clothes, two mobile phones among other items on the front cabin of the car. He could not confirm whether the phones were switched on or off. He took possession of the phones and the car keys. Later at around 12.10pm he arranged for

the vehicle to be driven to Diani Police Station where the clothes and other items of the deceased were removed and recorded on an inventory by PC Ngigi.

x) On the same day at around 1200 noon the body was taken to AGA KHAN Hospital Mortuary awaiting post-mortem.

xi)On 20/10/2015 the post-mortem was performed by Dr. Ng'ali Mbuko a Government Pathologist who confirmed the cause of death to be consistent with asphyxia due to drowning. He also noted a fresh bruise measuring 4 by 2.5 centimetres internally at the back of the scalp. On 9/4/2016 the investigation team visited Diani Beach Hospital where they obtained documentation and interviewed Dr. Adams Mandira who confirmed that the deceased reached their hospital already dead at 6.00am also the Ambulance Aid Nurse namely Lilian Alusa who was on call duty confirmed that immediately she received the casualty in the ambulance she examined the deceased with an SPO2 machine and that he was already dead as the SPO2 and pulse were reading zero.

xii) On 10/4/2016 the investigating team visited and interviewed the Coast Regional Coordinator Youth Enterprise Development Fund (YEDF) Mr. Edwin Mwangala Njuga who confirmed that on 16/10/2015 he was informed through mobile phone by the YEDF CEO Mrs. Catherine Namuye that there will be a directors meeting at Mombasa on 17th /10/2015 but the agenda of the meeting was not revealed to him.

xiii) On 17/10/2015 at around 1.00 p.m he attended the meeting driven by the deceased that was held outside a veranda of the cottage where Mr. Bruce Odhiambo was residing at Tamarind Hotel. It was also attended by other Directors of YEDF namely Nicholas Mwaniki, Sabra Omar, Clement Ayungo, Jalenga and Jane which ended at around 5.00 pm. The coordinator confirmed that he was driven back to town together with one Daniel a Staff at YEDF Nairobi by the deceased who went to his residence at Miritini.

xiv) We also interviewed the family members, wife of the deceased ANN WANJIKU MWANGI, informed us that she received four text messages in her phone mobile number 0732 286622 from deceased number 0720 770644 on the night of 18/19/10/2016. The last message was done by the deceased at 0204hours. An indication that he was still alive at that time. This was supported by call data records obtained from Safaricom.

xv) Though there is an alleged telephone conversation between the wife and deceased person at around 2:00am but the same is not reflected in the deceased call data record and the other phones were switched off.

xvi) The other group that the investigating team interviewed was the team led by STEVE MBOGO, revellers taking part in the party who included SONU Chairman Babu Owino, other guests who accompanied STEVE MBOGO at the cottages. This group was at the scene of the incident. All stated that the number of guests present at the party on the material night was around twenty in number.

xvii)Nobody is able to give an account of what transpired between 3:00am and 5:00am on 19/10/2015 at the swimming pool, where by extension the party went past midnight. It is alleged that the deceased was part of the swimmers who impressed very much other revellers. Majority of the people in the party attendance were drunk at that time but they do not recall witnessing a commotion or confrontation between the deceased with anyone at the party and more so at the swimming pool. STEVE MBOGO, BABU OWINO and GACHERU ABIGAEL are said to have remained outside the cottages but no witness is pointing an accusing finger against them or are they assisting in giving out what transpired at the swimming pool at the time.

xviii) After analysing the evidence at hand, the investigating team found it hard To press charges against anyone in connection of the deceased person's death.

2. FINDINGS

The homicide investigating team found: -

i) THAT - The cottage was booked two months earlier prior to the date of the incident.
ii) THAT- The alleged meeting at Tamarind Hotel on 17 /10/2015 by the YEDF Directors was not official and they met on their own interest
iii) THAT - Prior to the death of the deceased was with the directors of YEDF.
iv) THAT- The hosting of guest at the Kivulini cottage by Stephen Mbogo is questionable and leaves a lot to be desired for it was not known by the caretaker.
v) THAT- The deceased was in the company of Director Clement Ayungo up to the time of his death.
vi) THAT- The Pathologist who performed post-mortem, did not rule out the possibility of foul play and only meant that the deceased when lastly alive was immense in water due to water in the lungs and the condition was consistent with drowning supported by cyanosis (presence of deoxygenated blood in the fingers) that the deceased for some time when alive never breathed oxygenated air. He also didn't exclude an act of someone due to the injury that was at the back of the scalp that could have caused an unconscious state the injury that was inflicted before death and self-inflicted.
vii) THAT- Vehicles traced at Tamarind Hotel on the vehicle movement register were also traced to be the same vehicles that brought the extra guest at Kivulini cottage at 1200 midnight on 18/19/10/2015 the day and time the deceased was seen alive and communicated with her wife extensively up to 0300hrs and among them was the deceased vehicle.

B) Specific Recommendations on Various persons of interest

THAT, The Director, Directorate of Criminal Investigations should: -

a) Engage the services of a forensic examiner to authenticate all YEDF documents and in the fraudulent transfer of funds from YEDF account to Chase Bank (K) Ltd, including Board Minutes and correspondences.
b) Engage the servicers of a graphology expert to analyse signatures on all correspondences that were purportedly signed by the then Ag. CEO Ms. Catherine Namuye and other Fund officials, that may have resulted in the loss of funds at YEDF.
c) Director, DCI to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

1. Ms. Catherine A. Namuye, Former YEDF Acting CEO

i) That, Ms. Catherine A. Namuye as the former accounting officer of the YEDF Should be investigated, charged and prosecuted for violating Section 27(2) of the PPDA 2005. She failed to ensure that procurement procedures were followed in the alleged provision of consultancy services for ICT strategy development and ERP System by Quorandum Ltd.
ii) The Secretary, EACC and Director, DCI to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

iii) That, Ms. Catherine A. Nyamuye should be investigated, charged and prosecuted for violating the use of restricted tendering as provided for in the Public Procurement and Disposal Act, 2005 particularly section 73(2) provides instances where a procuring entity may use restricted tendering. Further, Ms. Catherine A. Nyamuye used restricted tendering contrary to maximum threshold provided for in the Public Procurement and Disposal Regulations, 2006 that required procurements for goods and services above The Director, DCI and Secretary, EACC to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

iv) THAT, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violating Section 72(1) of the PFM Act 2012 which requires an accounting officer of a national government entity to be responsible for management of the entity's assets and liabilities Ms. Catherine A. Namuye allowed Mr. Bruce Odhiambo unfettered use of YEDF facilities including office and a brand-new motor vehicle despite him being a non-executive Chairperson who is not entitled to such facilities.

v) THAT, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violating the provisions of section 68(1) (a), (b) of the PFM Act that stipulates that the responsibility of an accounting officer is to ensure that public resources are utilized in a legal authorized and effective way to ensure the public realises value taxes. The EACC should investigate and if found culpable, recommend her for prosecution to the DPP for violation of the Act.

vi) THAT, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violating the provisions of Section 15 of the public officers Ethics Act, 2003 that requires a public officer to take all reasonable steps to ensure that properly that is entrusted to her care is adequately protected, and not misused or misappropriated.

vii) THAT, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for various acts of omission and commission with the intention to defraud the Fund. The purported consultancy services contact agreement for ICT Strategic plan and ERP system development signed by Ms. Catherine A. Namuye on behalf of YEDF and Mr. Mukuria Ngamau for Quorandum Ltd was a well-crafted and joint executed scheme by Ms. Catherine A. Namuye and Mr. Mukuria Ngamau with the sole intention of defrauding the YEDF of approximately Kshs.180 million.

viii) THAT, Ms. Catherine A. Namuye be investigated by EACC for her role in the cancellation of YEDF 8th anniversary event which was to be celebrated in the year 2015 at the Kenyatta International Conference centre (KICC) and later venue changed to the University of Nairobi grounds but was eventually verbally cancelled by a phone call purportedly by Ms. Anne Waiguru the former Cabinet Secretary for Devolution and Planning to Mr. Bruce Odhiambo, the former YEDF Board chairman. The YEDF fraudulently paid approximately Kshs. 44,741,603 purportedly to various contacted suppliers for the cancelled event.

ix) THAT, Ms. Catherine A. Namuye should be investigated, charged and prosecuted for forgery in line with the Penal Code of 1930 Cap 63 Laws of Kenya. The purported extracts of the Fund's Board Minutes signed by Mr. Bruce Odhiambo and Ms. Catherine A. Namuye sent to Chase Bank (K) Ltd to confirm the change of signatories were a forgery and a collusion between the two officers with an intent to defraud the Fund pursuant to Section 348 of the Penal Code of 1930 Cap 63 Laws of Kenya.

2. Mr. Bruce Dominic Odhiambo, Former YEDF Board Chairman

i) THAT, Mr. Bruce Odhiambo, former YEDF Board Chairman should be investigated, charged and prosecuted for conspiracy to defraud the YEDF. Mr. Bruce Odhiambo working with Mr. Mukuria Ngamau and Ms. Catherine A. Namuye crafted and executed a fraudulent scheme in the name of a consultancy service with the sole intention of defrauding the public of approximately Kshs. 180 million.

ii) The Directorate of Criminal Investigations (DCI) should immediately investigate Mr. Bruce Odhiambo and make recommendations for prosecutions to the Director of Public Prosecutions. The Director, DCI to report back to National Assembly not later than two (2) months after adoption of this Report on the status of implementation of this recommendation.

iii) THAT, Mr. Bruce Odhiambo, former Chairman YEDF should be investigated, charged and prosecuted for money Laundering under Section 3 and. 4 of the POCAML Act, 2009 Cap 598. He received a total of Kshs. 3.3 million from Mr. Mukuria Ngamau through Quorandum Ltd as per Quorandum Ltd.'s Standard Chartered Bank (Kenya) Ltd account statements hereto annexed. The Committee from its investigations, believes that the said Mr. Bruce Dominic Odhiambo is the former Chairman of the YEDF.

iv) THAT, Mr. Bruce Odhiambo, former Chairman YEDF should be investigated, Charged and prosecuted for various acts of omission and commission to defraud the public. He should be investigated by EACC for his role in the cancellation of the YEDF 8th anniversary event which was to be held in 2015 at the KICC and later changed to the University of Nairobi grounds but was eventually verbally cancelled by a phone call purportedly by Mrs. Anne Waiguru to Mr. Bruce Odhiambo. The YEDF fraudulently paid approximately Kshs. 44,741,603 purportedly to various contacted suppliers for the cancelled event. The Director, DCI and Secretary, EACC to report back to the National assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

v) THAT, Mr. Bruce Odhiambo should be investigated, charged and prosecuted for Forgery in line with the Penal Code of 1930 Cap 63 Laws of Kenya- The purported extracts of the Fund's Board Minutes signed by Mr. Bruce Odhiambo and Ms. Catherine A. Namuye sent to Chase Bank (K) Ltd to confirm the change of signatories were a forgery and a collusion between the two officers with an intent to defraud the Fund pursuant to Section 348 of the Penal Code of 1930 Cap 63 laws of Kenya.

3. Mr. Mukuria Ngamau Director and Shareholder, Quorandum Ltd

i) THAT, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for conspiracy to defraud the public. Mr. Mukuria Ngamau working together with Mr. Bruce Odhiambo and Ms. Catherine A. Namuye crafted and executed a fraudulent scheme in the name of a consultancy service with the sole intention of defrauding the public of approximately Kshs. 180 million The Directorate of Criminal investigations (DCI) should immediately investigate Mr. Mukuria Ngamau for this criminal act and conspiracy to defraud the public and make recommendations for prosecutions to the Director of Public Prosecution. The Director, DCI and Secretary, EACC to report back to the National assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

ii) THAT, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for acquisition, possession or use of the proceeds of crime. Mr. Ngamau used the proceeds from the fraudulent transactions between YEDF and Quorandum Ltd to purchase a house in Lavington, Nairobi. The Director, Assets. Recovery Agency

should move with utmost speed and obtain an injunction against transfer of duplex apartment number C16 at Duchess Park Apartments located along Hatheru Road, Lavington, Nairobi. The said property was purchased by Quorandum Ltd from Duchess Park Ltd using the proceeds from the YEDF fraud of Kshs. 180,364,789 Contrary to provisions of section 4 of the POCAML Act 2009.

iii) THAT, Mr. Mukuria Ngamau should be investigated charged and prosecuted for violation of Section 27(4) of the PPDA 2005 that requires all contractors, suppliers and consultants to comply with all the provisions of the Act. The actions of Mr. Mukuria Ngamau and his company Quorandum Ltd violated the provisions of the Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations 2006 which were in force then. The Director-General, Public Procurement Regulatory Authority to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.

iv) THAT, Mr. Mukuria Ngamau should be investigated charged and prosecuted for giving false evidence under oath to a Committee of the National Assembly contrary to Section 21 of the National Assembly (Powers and Privileges) Act. Mr. Mukuria Ngamau while appearing before the Committee on 8th March, 2016 gave false information on the particulars of a Mr. Collin Reeves who was purportedly the lead consultant in the alleged contract between YEDF and Quorandum Ltd. He stated that the said Mr. Reeves resided in Michigan USA and that as at the time he appeared before the Committee, they were in contact He later changed this position in his written submission dated 11th March, 2016 informing the Committee that Mr. Reeves died on 1st April, 2015 and that he's still trying to trace the deceased's next of kin to transfer Kshs. 115 million owed to him. The Director of public prosecution should therefore charge Mr. Mukuria Ngamau with the offence of giving false evidence before the Committee contrary to Section 21 of the National Assembly (Powers and Privileges) Act.

v) THAT, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for acquisition, possession and the use of proceeds of crime. An analysis of the various statements of bank accounts held by Quorandum Limited at Chase Bank (K) Ltd and Standard Chartered Ban (K) Ltd shows that the Ksh. i80, 364,789 which was fraudulently transferred from YEDF account at Chase Bank (K) Limited to Quorandum Limited was used for various suspicious transactions. In particular, a total of approximately Ksh. 91,654,018 was transferred to Quorandum Limited account at Standard Chartered Bank (K) Limited and thereafter used for suspicious payments to various third parties including a Mr. Brian Dominic Odhiambo. The Director of Criminal Investigations should undertake an investigation of all transactions of the Quorandum Ltd account No. 012497392600 held at Standard Chartered Bank Kenya Limited for the period 15th January 2015 to 31st March, 2016. The investigations should extend to all personal bank accounts of Mr. Mukuria Ngamau, Ms. Doreen Waithera Ng'ang'a including their close relatives and friends.

vi) THAT, Mr. Mukuria Ngamau should be investigated, charged and prosecuted for several suspicious cash withdrawals and cheques encashment almost on a daily basis from Quorandum Ltd bank accounts at Chase Bank (K) Ltd and Standard Chartered Bank (Q Ltd as demonstrated by the summary of the bank statements annexed hereto.

vii) The Director, DCI and Secretary, EACC to report back to the National assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

4. Other Persons of Interest

An audit tail 0f the bank statements of Quorandum Ltd account held at Chase B4nk S) Ltd and Standard Chartered Bank (K) Ltd revealed that Mr. Mukuria Ngamau through Quorandum Ltd made various Payments to other third parties purportedly for various goods and services offered.

The Committee therefore makes the following recommendations on the following other persons of interest.

i) THAT, The Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate Mr. Ezekiel Owuor who received from Mr. Mukuria Ngamau through Quorandum Ltd a sum of Kshs. 8,799,450 purportedly for material supplies. Mr. Ezekiel Owuor in his written submission to the Committee acknowledged receipt of the money but indicated in writing that the amount was a loan advanced to him by Mr. Ngamau.

ii) THAT, Mr. Ezekiel Owuor should surrender the outstanding balance of payment owed to Mr. Mukuria Ngamau to the Asset Recovery Agency, even as the various investigative agencies conduct investigations into the matter.

iii) THAT, The Director of criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate the Directors and the local representatives of Industries D'Amico Ltd which received a sum of Kshs. 10,254,500 from Quorandum Ltd.

iv) THAT, The Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate Mr. Yogesh Kumar Badwarj who received from Quorandum Ltd a sum of Ksh. 880,000. If found culpable. He should be recommended for prosecution for benefiting from the proceed of crime.

v) THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Dilshad S. Mohammed who received from Quorandum Ltd a sum of Kshs. 2,246,000 on 10th April, 2015. If found culpable, he should be recommended for prosecution for benefitting from the proceeds of crime.

vi) THAT, the Director of Criminal Investigations and the Ethics and Anti-corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate Ms. Doreen Waithera Ngang'a, spouse to Mr. Mukuria Ngamau and Co-Director, Quorandum Ltd who received a sum of Kshs. 4.5 million from Mr. Mukuria Ngamau through Quorandum Ltd purportedly as a repayment of a loan extended. to Mr. Mukuria Ngamau.

vii) THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption emission should in accordance with Section 4 of POCAML Act 2009 investigate the Directors of Rock Plant Ltd for receipt of a sum of Ksh.4.5 million by Mukuria Ngamau through Quorandum Ltd.

viii) THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should in accordance with Section 4 of POCAML Act 2009 investigate the Directors of Simis Engineering and Construction Company Ltd for receipt of a sum of Kshs. 1,000,000 from Mukuria Ngamau through Quorandum Ltd.

ix) THAT, the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission should investigate Mr. Hillary Kiprono Yegon and any other Directors of K- Susu Limited, Gigtych Limited and any other supplier for any sum of money received from the YEDF 8th anniversary event and any other event undertaken for YEDF since inception to date.

x) The Director, DCI and Secretary, EACC to report back to the National assembly not later than two (2) months after the adoption of this report on the status of implementation of this recommendation.

C) Specific Recommendations on Various Persons of Interest

i) The Acting Inspector General of State Corporations vide letter referenced ISC/INS/POL/151/VOL II/ (26) dated 14th April, 2016 requested for investigations into circumstances which led to the fraudulent internal transfer of Ksh. 180,894,946/= from account No. 0017054604027 in the name of Youth Enterprise Development Fund to account No. 0052075584001 in the name of Quorandum Limited held at Chase bank.

ii) The circumstances of the case are that; the Youth Enterprise Development Fund (YEDF) board had earlier resolved that whenever there was money which was not required immediately, it would be invested in a call deposit account in one of the top twenty (20) banks accredited by Central bank of Kenya and that offer the highest interest rates.

iii) The authority of the above being section 12(2) of State Corporations Act Cap 446 Laws of Kenya which states that "The board may place on call deposit with such bank or banks as it may determine any moneys not immediately required for the purposes of the Board'. Based on this authority the management of YEDF invested in Chase bank and other banks on several occasions. The signatories to the accounts being: -

a) Catherine Namuye-The acting CEO,
b) Judy C. Kimeto - Lending and Investment manager,
c) Benedict Atavachi - Finance manager,
d) Robert Mrima - Senior Accountant and
e) Benson Mutwii - Accountant.

iv) YEDF vide a letter Ref. YEDF/4/ACC/0055/15 dated 4th February, 2015 signed by the CEO Catherine Namuye and Finance manager Benedict Atavachi instructed Chase bank to roll over KShs. 400 million to a new call deposit from a previous deposit which was about to mature.

v) On 27th April, 2015 the acting CEOYEDF transferred Ksh. 64,654,789/= to the account of Quorandum limited vide her letter Ref. YEDF/CEO/1504/2015 dated 27th April, 2015, leaving a new balance of Kshs. 219,815,054/=

vi) On 6thJune, 2015 the account received Ksh. 3,857,302.50 on the deposit as profit upon maturity. The deposit was placed on the account totalling Ksh. 223,093,851.85.

vii) On 17thJune, 2015 there was a cash deposit of Ksh. 2,687,594/= making the balance to be Ksh. 225,781,445.85. The following day cash Ksh. 5,966,301.35 was paid out leaving a balance of Ksh. 219,815,144.50

viii) On 13thJuly,2015 Ksh. 120,000,000/= was transferred to KCB account of YEDF leaving a balance of Ksh. 99,814,544.50.

ix) On 12thAugust, 2015 Ksh. 99,814,044.50 was placed under call deposit leaving Nil balance and on 14thAugust, 2015 the account received two internal account transfers of Ksh. 3,322,388.85.

x) On 16thSeptember, 2015 the account was credited with Ksh. 1,365,948.35 as profit from the deposit. The deposit was credited to the account making a closing balance of Ksh. 104,297,489.45.

xi) The Quorandum limited account was opened in September, 2014 and by 23rd February,

xii) 2015 when it received Ksh. 115,710,000/= from YEDF it had a balance of Ksh. 571.25. There were several withdrawals and transfers from the account.

xiii) On 4thMay, 2015 the account received Ksh. 64,654,789/= from YEDF and as at 10th November, 2015 the account had a balance of Ksh. 1,184,326.75. This amount was preserved through a Court order upon our application.

xiv) The following transfers through RTGS were made from the account of Quorandum limited in Chase bank to Account No. 0102497392600 in the name of Quorandum limited in Standard Chartered bank.

a) On 26th February, 2015..... Kshs. 4,800,000/=
b) On 5thMarch, 2015 .....Kshs. 4,600,000/=
c) On 12thMarch, 2015 ..... Kshs. 4,700,000/=
d) On 24th March, 2015..... Kshs. 4,500,000/=
e) On 10th April, 2015 .....Kshs. 3,500,000/=
f) On 5th May, 2015..... Kshs. 7,480,000/=
g) On 12th May, 2015 .....Kshs. 6,800,000/=
h) On 19th May, 2015 ..... Kshs. 8,000,000/=
i) On 6thAugust, 2015 .....Kshs. 3,000,000/=
j) On 14th October, 2015 .....Kshs. 2,000,000/=

TOTAL.....28,420,000/=

xv) On 12thMarch, 2015 Ksh. 3,000,000/= was transferred through RTGS from the account of Quorandum limited in Chase bank to Account No. 1250262956474 in Equity bank in the name of GIGSAVVY PLUS LIMITED.

xvi) The following transfers through RTGS were made from the account of Quorandum limited in Chase bank to Account No. 0030081198210 in the name of DUCHESS PACK DEVELOPMENT COMPANY LIMITED in I & M Bank.

a) On 30thMarch, 2015 Kshs. 8,000,000/=
b) On 2nd April, 2015 Ksh. 8,100,000/=
c) On 10thApril, 2015. Ksh. 10,000,000/=
d) On 16th April, 2015 Ksh. 11,200,000/=
e) On 24thApril, 2015. Ksh. 11,200,000/=

TOTAL.....48,500,000/=

xvii) On 2ndApril, 2015 Ksh. 2,246,000/= to account No. 0500439009 in the name of DILSHAD S. MOHAMED in Diamond Trust Bank. This was received from Quorandum Limited being payment for one year's rent. Quorandum Limited is her tenant occupying her Muthangari Villa house No.5.

xviii) On 10thApril, 2015 Ksh. 1,500,000/= to account No. 1154048411 in the name of GIGTYCH AFRICA LTD in Kenya Commercial Bank.

xix) On 5th May, 2015 Ksh. 880,000/= to account No. 1154048411 in the name of YOGESH KUMAR BHARDWAJ in Standard Chartered Bank This was alleged to be payment of a loan obtained in the year 2014 by Mukuria Ngamau however no agreement to that effect had been executed.

xx) On 13th May, 2015, $57,000 British Pounds to account No.GB 31LOYD 30000204014907 in the name of BRITCOM INTERNATIONAL LIMITED in DEUTSCHE BANK AG. LONDON for purchase of Excavator and Breaker vide invoice No. 15409.

xxi) On 21st May, 2015 Ksh. 8,000,000/= and on 25thMay, 2015 Ksh. 10,000,000/- to account No. 070025007332504 in the name of NGIGI MBUGUA AND ADVOCATES in Ecobank. The payment was alleged to have been lawyer fees after

the advocate represented Mr. Vincent Kipkurui of Great Lakes Forwarders Limited to recover Ksh.18,096,653.91 from Quorandum Limited for construction work done.

FINDINGS

1. THAT Youth Enterprise Development fund was allowed in law to invest money in Call deposit accounts in any bank
2. THAT the accounts were operated by signatories approved by the YEDF board and for each transaction two had to sign one being mandatory signatory.
3. THAT for any change or variation of signatories, at least 7 members of the board had to approve being the minimum quorum for a meeting to proceed.
4. THAT YEDF vide a letter Ref. YEDF/4/ACC/0055/15 dated 4th February, 2015 signed by the Catherine Namuye, and Finance manager instructed Chase bank to place Ksh. 400 million on call deposit
5. THAT the acting CEO Catherine Namuye, vide her letter Ref. YEDFB/CEO/1316/2015 dated 11thFebruary, 2015 attempted to transfer Ksh. 115,710,000/= to account No. 0052075584001 in the name of QUORANDUM LIMITED but Chase bank declined because she had signed the instruction alone.
6. THAT the acting CEO Catherine Namuye, and the chairman to the YEDF board Mr. BRUCE ODHIAMBO changed the signing mandate and empowered acting CEO YEDF to sign alone vide their letter Ref. YEDF/CEO/1339/2015 dated 17thFebruary, 2015 addressed to the manager Chase Bank.
7. THAT the change of mandate was illegal as it was done by two individuals and not the full board members who should be at least 7 to form a quorum during a board meeting.
8. THAT this action was intended to conceal the fraudulent actions from the other signatories and the YEDF board.
9. THAT On 23rdFebruary, 2015 Chase bankrolled over Ksh. 402,095,890.40 from a previous YEDF's call deposit which had matured to a new call deposit vide account No. 0017054604027.
10. THAT on 23rd February, 2015, Chase bank transferred Ksh. 115,710,000/= to account No. 0052075584001 in the name of QUORANDUM LIMITED on the strength of acting CEO's letter Ref. YEDFB/CEO/1316/2015 dated 11thFebruary, 2015 and the new mandate.
11. THAT on 27thApril, 2015 the acting CEO Catherine Namuye, transferred Ksh. 64,654,789/= to the account of Quorandum Limited vide her letter Ref. YEDF/CEO/1504/2015 dated 27th April,2015 leaving a new balance of Ksh. 219,815,054/=
12. THAT the total amount paid to Quorandum Limited is Ksh. 180,364,789/= and not Ksh. 180,894,946/= which is the total figure on the two letters a difference of Ksh. 530,157/=
13. THAT all these payments were fraudulent as there was no contract between YEDF and Quorandum Ltd.
14. THAT there was a conspiracy to defraud YEDF by the acting CEO Catherine Namuye, the Chairman Bruce Dominic Odhiambo and Mukuria Ngamau of Quorandum Ltd.
15. THAT CEO Catherine Namuye made documents without authority by writing the two fund transfer letters without the authority of the board
16. THAT the chairman Bruce Dominic Odhiambo and the then acting CEO Catherine Namuye made a document without authority by writing the letter to change signatory mandate without the authority of the board.
17. THAT Catherine Namuye, Bruce Odhiambo and Mukuria Ngamau jointly stole Ksh. 180,364,789/= the property of Youth Enterprise Development Fund.

18. THAT Ethics and Anti-Corruption Commission are also investigating this matter and had gotten possession of all the original documents which they subjected to forensic examination and issued a report.

Recommendations to ODPP

In view of the evidence contained in the file, the DCI recommended that the case be merged with one opened by Ethics and Anti - Corruption Commission and the suspects to be charged for the following offences among others recommended by EACC: -

COUNT ONE: Conspiracy to defraud contrary to section 317 of the penal code

1. Catherine Akello Namuye
2. Bruce Dominic Odhiambo
3. Mukuria Ngamau

On unknown dates and place within the Republic of Kenya, jointly with others not before Court conspired with intent to defraud by falsely pretending that QUORANDUM LIMITED had done consultancy services on Information and Communication Technology for Youth Enterprise Development Fund.

COUNT TWO: Making a document without authority contrary to section 357(a) of the penal code

1. **Catherine Akello Namuye**

On or about the 11th day of February, 2015 in Nairobi within the Nairobi County, with intent to defraud, without lawful authority or excuse made a letter Ref. YEDFB/CEO/1316/2015 for the transfer of Ksh. 115,710,000/= from the call deposit account of Youth Enterprise Development Fund to account No.0052075584001 of Quorandum limited in Chase bank purporting it to have been authorized by the Youth Enterprise Development Fund Board.

COUNT THREE: making a document without authority contrary to section 357(a) of the penal code.

2. **Catherine Akello Namuye and Bruce Dominic Odhiambo,**

On or about the 17th day of February, 2015 in Nairobi within the Nairobi County, with intent to deceive, without lawful authority or excuse made a letter Ref. YEDF/CEO/1339/2015 for the change of the signatories' mandate to the call deposit account of Youth Enterprise Development Fund in Chase bank purporting it to have been authorized by the Youth Enterprise Development Fund Board.

COUNT THREE: Making A document without authority contrary to Section 357(A) of the Penal Code.

3. **Catherine Akello Namuye**

On or about the 27thday of April, 2015 in Nairobi within the Nairobi County, with intent to defraud, without lawful authority or excuse made a letter Ref. YEDFB/CEO/1504/2015 for the transfer of Ksh. 65,184,946/= from the call deposit account of Youth Enterprise Development Fund to account No. 0052075584001 of Quorandum limited in Chase bank purporting it to have been authorized by the Youth Enterprise Development Fund Board.

COUNT FOUR: Stealing Contrary to Section 268(A) as read with Section 275 of the Penal Code.

1. 1.Catherine Akello Namuye
2. 2.Bruce Dominic Odhiambo
3. 3.Mukuria Ngamau
4. 4.Quorandum Limited

The suspects were arraigned before Court on 25thAugust, 2016 vide EACC Case No. 148/20/2016 Court file No. 2518/2016.

Those charged were; -

1. Catherine Akello Namuye
2. Bruce Dominic Odhiambo
3. Mukuria Ngamau
4. Doreen Waithera Ng'ang'a and
5. Quorandum Limited

The charges preferred are: -

i) Conspiracy to commit an Economic crime contrary to section 47A(3) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003
ii) Unlawful acquisition of Public Property contrary to section 45(1)(a) as read with section 48(1) of Anti-Corruption and Economic crimes Act No. 3 of 2003.
iii) Abuse of office Contrary to section 46 as read with section 48(1) of Anti-Corruption and Economic Crimes Act No. 3 of 2003
iv) Fraudulent Making payment Contrary to Section 45(2)(a)(iii) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003.
v) Making of False Document Contrary to Section 347(a) as read together with Section 349 of the Penal Code
vi) Dealing with Suspect Property contrary to section 47(1) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act.3 of 2003.

Committee Observations

1. The Committee noted that Ms. Doreen Waithera Ng'ang'a was a spouse to Mr. Mukuria Ngamau
2. Ms. Doreen Waithera Ng'ang'a was acquitted of the charges preferred against her
3. That Mr. Bruce Odhiambo passed on after suffering complications of the heart
4. That Ms. Catherine Namuye died of a heart attack.
5. The Committee noted that circumstances around the death of Mr, Simon Mwangi were not properly analysed owing to possible tampering/eradication of evidence.

Committee Resolutions

1. The Committee deemed the matter concerning charges and prosecution of the persons of interest closed.
2. Committee resolved that the circumstances around the death of YEDF driver Simon Mwangi should be pursued to a logical conclusion for purposes of justice and closure to the affected family.

MIN. NO.NA/DAA & GPC/COI/2024/098: **SUBMISSIONS BY THE OFFICE OF THE DIRECTOR OF PUBLIC**

PROSECUTIONS REGARDING THE REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND

Mr. Joseph Riungu Ag. Deputy Director in the Department of Economic Organized and International Crimes appeared before the Committee to adduce evidence on the implementation status of the recommendations contained in The Report of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund. The Committee was informed that:

Under the specific recommendations on various persons of interest, the committee recommended the investigation, charging, and prosecution of the following for various offences.

1. Catherine Akello Namuye
2. Bruce Odhiambo,
3. Mukuria Ngamau
4. Doreen W. Ng'ang'a,
5. Quorandum Limited
6. Hillary Kiprono Yegon

The DPP independently reviewed the inquiry file and made the decision to charge the above-mentioned persons and legal person were charged with various offences as follows:

i) **Count I:** Conspiracy to commit an economic crime contrary to section 47(a) (3) as read with section 48(1) of ACECA.
ii) **Count II:** Unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of ACECA.
iii) **Count III:** providing false information to the Committee.
iv) Following the demise of the first and second accused persons the DPP withdrew Counts V, VI, VII, VIII, IX, XII, XIII, and XIV. Eventually, R vs Catherine Akello Namuye (CEO) (Deceased), Bruce Odhiambo (Deceased), Mukuria Ngamau & Quorandum Limited was prosecuted by SPPC Evah Kanyuira- Head, Voi County in which a conviction was secured.

Committee Observations

i) The Committee noted that Ms. Doreen Waithera Ng'ang'a was a spouse to Mr. Mukuria Ngamau
ii) Ms. Doreen Waithera Ng'ang'a was acquitted of the charges preferred against her
iii) That Mr. Bruce Odhiambo passed on after suffering complications of the heart
iv) That Ms. Catherine Namuye died of a heart attack.

Committee Resolutions

The Committee deemed the matter concerning charges and prosecution of the persons of interest closed.

MIN. NO.NA/DAA & GPC/COI/2024/099: SUBMISSIONS BY THE ASSET RECOVERY AGENCY REGARDING THE REPORT ON

THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND

Mr. Kennedy Ogwengo (Deputy Director, ARA) appeared before the Committee to adduce evidence regarding the implementation status of the recommendations contained in the report of the Public Investments Committee Special Report on the inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development Fund. He was accompanied by Ms. Faith Mercy Irari (Senior State Counsel, ARA), Mr. Nicholas Mutua (Staffer, ARA) Mr. Timothy Nderitu (Under Secretary, ARA) Ms. Esther Muchiri (Senior State Counsel, ARA).

The Committee was informed of the following:

1. Recommendations to Government Entities and Agencies

The Public Investments Committee recommended that the Assets Recovery Agency (ARA), established under POCAMLA to deal with matters of proceeds of crime and money laundering is under-funded by the Government and has never been fully operationalized. The National Treasury and the Attorney General should ensure that the Agency is adequately funded and fully operationalized to enable the institution adequately fulfil its legal mandate.

Status of Implementation of The Recommendation

i) The operationalization of the Assets Recovery Agency is still ongoing. The Agency requires more funds to be fully operational.
ii) The Public Investments Committee recommended the need to amend sections 23 and 24 of the Proceeds of Crime and Anti-Money Laundering Act to enable the tracking of proceeds of crime especially to the real estate sector in Kenya.

Status of Implementation of The Recommendation

i) The real estate agencies are categorized as part of the designated non-financial businesses or professions and are reporting institution under POCAMLA.
ii) Reporting institutions are obligated under POCAMLA to report suspicious or unusual transaction to Financial Reporting Centre.

2. Specific recommendations on various persons of interest namely;

1. Mr. Mukuria Ngamau, Director and shareholder of Quorandum LTD

The Committee recommended that the Director Assets Recovery Agency to obtain an injunction against transfer of duplex apartment number C16 at Duchess Park apartments located along Hatheru road, Lavington Nairobi. The Said property having been purchased by Quorandum Ltd from Duchess Park Ltd using of Ksh 180,364,789 from YEDF.

Status of Implementation of the Recommendation

i) The investigations conducted established that Kshs. 180,364,789 was unlawfully transferred from the Youth Enterprise Development Fund (YEDF) Bank account to (Quorandum Ltd) bank account.

ii) The unlawful transfer of Ksh. 180,364,789 was facilitated by Ms. Catherine A. Namuye (now deceased), former acting Chief Executive Officer of YEDF, who unlawfully contracted Quorandum Ltd to provide consultancies services without the complying with procurement laws.
iii) Quorandum Ltd used part of the Ksh. 180,364,789M to purchase the duplex apartment No. C16 at a cost of Ksh 48,500,000 from Duchess Park development Company Ltd.
iv) Following the findings of the investigations the, Agency instituted recovery proceedings in NRB Misc. App No 4 of 2017 Assets Recovery Agency –Vs- Quorandum Ltd & Ezekiel Owuor for recovery of the duplex apartment No. C16.
v) The matter was determined and on 21st September 2018, the High Court rendered its judgement and declared the Apartment Number C16 as proceeds of crime and the same to be forfeited to the State.
vi) The Agency has also instituted recovery proceedings in NRB Misc. App No. E021 OF 2023 Assets Recovery Agency –vs- Quorandum Ltd seeking forfeiture of Ksh 1,075,083 traced in Quorandum Ltd bank's account. The said amount is part of the funds fraudulently transferred from YEDF. The matter is pending determination in Court.
vii) Mr. Mukuria Ngamau was charged with several counts in Criminal Case No. ACC 13 of 2016 namely;
    a) Unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of the Anti-corruption and Economic Crimes Act
    b) Conspiracy to commit an economic crime contrary to section 47A (3) as read with section 48(1) of the Anti-corruption and Economic Crimes Act.
    c) Making of false document contrary to section 347(a) as read together with section 349 of the Penal Code.
    d) The court found Mr. Mukuria culpable for the above offences and he was convicted.

2. **Ms. Catherine A. Namuye suspended AG CEO, YEDF**

The Committee recommended that Ms. Catherine A. Namuye should be investigated, charged and prosecuted for violations of provisions of public Procurement and Disposal Act, Public Finance and Management Act

Status of Implementation of the Recommendation

Ms. Catherine A. Namuye was charged with several counts namely;

i) Conspiracy to commit an economic crime contrary to section 47A as read with section 48(1) of the Anti-corruption and Economic Crimes Act;
ii) Abuse of office contrary to section 46 as read with section 48(1) of Anti-corruption and Economic Crimes Act;
iii) Fraudulent making payment contrary to section 45(2)(a)(iii) as read with section 48(1) of the Anti-corruption and Economic Crimes Act;
iv) Making of false document contrary to section 347(a) as read together with section 349 of the Penal Code
v) Dealing with suspect property contrary to section 47(1) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act;
vi) During the investigations, no assets in the name Ms. Catherine A. Namuye's were traced.

3. **Mr. Bruce Dominic Odhiambo, former YEDF Board Chairperson**

The Committee recommended that Mr. Bruce Dominic Odhiambo to be investigated, charged and prosecuted for conspiracy to defraud YEDF. The Inspectorate of State Corporation was required to liaise with the Assets Recovery Agency to ensure recovery of Ksh. 1,034,014.65

Status of Implementation of The Recommendation

Mr. Bruce Dominic Odhiambo (now deceased) was charged with several counts namely:

i) Making of false document contrary to section 347(a) as read together with section 349 of the Penal Code;
ii) Abuse of Office contrary to section 46 as read with section 48(1) of Anti-corruption and Economic Crimes Act;
iii) Dealing with suspect property contrary to section 47(1) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act;
iv) During the investigations, no funds were traced in Mr. Bruce Dominic Odhiambo's accounts.

4. Other Persons of Interest

The Committee recommended that Mr. Ezekiel Owuor to surrender the outstanding balance owed to Mr. Mukuria Ngamau to the Assets Recovery Agency.

Status of Implementation of The Recommendation

i) The investigations established that Mr. Mukuria Ngamau transferred Ksh. 8,800,000 to Mr. Ezekiel Owuor purportedly as a loan. Mr Ezekiel Owuor confirmed receiving the Ksh. 8,800,000 which he claimed was a loan to be paid back to Mr. Mukuria Ngamau.
ii) The Agency instituted recovery proceedings in NRB Misc. App No 4 Of 2017 Assets Recovery Agency –Vs- Quorandum Ltd & Ezekiel Owuor for recovery of the Ksh. 8,800,000 from Mr. Ezekiel Owuor.
iii) The matter was determined and the Court ordered that the Ksh 8,800,000 should be forfeited to the State. The Agency has recovered Ksh 1.1million out of the Ksh 8.8 and is pursuing recovery of the outstanding balance.

Committee Observations

i) That the funds recovered from the Asset Recovery Agency has recovered Ksh 1.1million out of the Ksh 8.8 million from NRB Misc. App No 4 Of 2017 Assets Recovery Agency –Vs- Quorandum Ltd & Ezekiel Owuor and is pursuing recovery of the outstanding balance.
ii) During the investigations, no funds were traced in Mr. Bruce Dominic Odhiambo's accounts. He is deceased.
iii) That no assets in the name Ms. Catherine A. Namuye's were traced. She is now deceased.

Committee Resolutions

The Committee deemed the matter concerning charges and prosecution of the persons of interest closed.

MIN. NO.NA/DAA & GPC/COI/2024/100: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/101: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:45 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....30/5/2024.....

MINUTES OF THE 16TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 18TH MAY, 2024 IN DODORI CONFERENCE ROOM, THE PRIDE INN PARADISE HOTEL, SHANZU MOMBASA COUNTY AT 10:00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Abdul Ebrahim Haro, M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. Julius Taitumu M'Anaiba, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Siyoi Lillian Chebet, M.P
9. The Hon. Stanley Muiruri Muthama, M.P
10. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon Prof Guyo Waqo Jaldesa, M.P
8. The Hon. George Koimburi Ndung'u, M.P
9. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Mr. Collins Namulen	-	Fiscal Analyst
5.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms

TELKOM KENYA

1.	Mr. Mugo Kibati	-	CEO
2.	Ms. Stella Wawira	-	Head of Legal

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

1.	Mr. Twalib Mbarak	-	CEO/ Secretary, EACC
2.	Mr. Paschal Mweu	-	Director, Investigations
3.	Mr. Stephen Karuga	-	Assistant Director, Legal
4.	Mr. Mark Ndiema	-	Lower Coast Regional Head
5.	Ms. Christine Ombaka	-	Investigations Officer

DIRECTORATE OF CRIMINAL INVESTIGATION (DCI)

1.	Mr. Mohamed I. Amin	-	Director of Criminal Investigations

2. Mr. Paul Wachira - Dep. Director, Investigations

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Mr. Joseph Riungu - Ag. Deputy Director, Dept. of Economic Organized and International Crimes

OFFICE OF THE AUDITOR GENERAL (OAG)

1. Mr. Anthony Waiganjo - Director, Parliamentary Liaison

INSPECTORATE OF STATE CORPORATIONS (ISC)

1. Mr. James Mungai Warui – Ag. Inspector-General
2. Ms. Nanjala B. Christine - Deputy Director, ISC
3. Ms. Grace Mwaniki - Deputy Director, ISC

MIN. NO.NA/DAA & GPC/COI/2024/088: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. followed by a word of prayer from Hon. Joshua Taitumu, MP. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Elijah Memusi Kanchory, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Principal Secretary, The National Treasury, the Governor, Central Bank of Kenya, Principal Secretary, State Department of Broadcasting and Telecommunications, the Director-General Communications Authority of Kenya, and the Chief Executive Officer, Telkom Kenya to consider implementation status of the recommendations contained in the report of the Public Investments Committee Special Report on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, 29 April, 2014**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/089: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/090: SUBMISSION BY THE CHIEF EXECUTIVE OFFICER, TELKOM KENYA REGARDING THE IMPLEMENTATION STATUS OF THE RECOMMENDATIONS CONTAINED IN THE REPORT OF THE PUBLIC INVESTMENTS COMMITTEE SPECIAL REPORT ON THE RECAPITALIZATION AND BALANCE SHEET RESTRUCTURING OF TELKOM KENYA LIMITED

Mr. Mugo Kibati – CEO, Telkom Kenya, appeared before the Committee to adduce evidence on the implementation status of the recommendations contained in the report of the Public Investments Committee Special Report on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited. He was accompanied by Ms. Stella Wawira, Head of Legal, Telkom Kenya.

However, the meeting could not take off as planned due to the following reasons:

i) The secretariat reported that they were in receipt of a letter vide **Ref: TNT/CONF 268/016 'B' (025)** dated 15th May, 2024 that the Principal Secretary, Dr. Chris Kiptoo was scheduled to participate in the 16th meeting of the sectoral council on Finance and Economic Affairs (SCFEA) in Arusha, Tanzania and therefore not in a position to attend the meeting with the committee as scheduled.

ii) The Committee registered the absence of officials from The National Treasury, The Communications Authority of Keenya and the Central Bank of Kenya who, according to the recommendations of the report, were to provide a comprehensive response on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited.

iii) It was brought to the attention of the Committee that new developments in the investigations around Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited had come up. Additionally, submission of this new information before the Committee by relevant agencies such as the Directorate of Criminal Investigations (DCI), Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Public Prosecutions (ODPP) would inadvertently disclose the trajectory of investigations and undermine these processes.

Committee Resolutions

The Committee resolved to:

1. Postpone the meeting and re-invite the agencies at a later date with the proper attendance of the agencies properly constituted.
2. A new date for the meeting to be held 24 days from 18th May, 2024 in Nairobi to allow all the key respondents to adequately plan to attend.
3. Failure by the key respondents (Telkom Kenya, The National Treasury, The Communications Authority of Kenya and the Central Bank of Kenya) to honour the new invite will attract the invocation of sanctions and fines as provided for by the Standing Order 191 (A) concerning witnesses who fail to appear before the Committee or appear but fail to offer satisfactory responses to the Committee.

MIN. NO.NA/DAA & GPC/COI/2024/091: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/092: ADJOURNMENT

Committee There being no other business, the meeting was adjourned at 11:00 a.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date...30/5/2024.....

MINUTES OF THE 15TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 17TH MAY, 2024 AT THE GRAIN BULK CONVEYOR SITE – KILINDINI HABOUR, KENYA PORTS AUTHORITY PREMISES, MOMBASA COUNTY AT 12:30 PM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Abdul Ebrahim Haro, M.P
4. The Hon. Cynthia Jepkosgei Muge, M.P
5. The Hon. Julius Taitumu M'Anaiba, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Siyoi Lillian Chebet, M.P
9. The Hon. Stanley Muiruri Muthama, M.P
10. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
9. The Hon. George Koimburi Ndung'u, M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Mr. Collins Namulen	-	Fiscal Analyst
5.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms

STATE DEPARTMENT OF TRANSPORT, MINISTRY OF TRANSPORT

1.	Mr. Mohamed Daghar	-	Principal Secretary, State Dept. of Transport
2.	Ms. Beatrice Nyamoita	-	Director Shipping and Maritime Affairs, State Dept. of Transport

KENYA PORTS AUTHORITY (KPA)

1.	Capt. William Ruto	-	Managing Director, KPA
2.	Mr. Turasha Kinyanjui	-	Corporation Secretary, KPA
3.	Mr. Geoffrey Kanate	-	General Manager, Finance, KPA
4.	Ms. Eveline Shigoli	-	General Manager, Supply Chain, KPA
5.	Mr. Charles Kotut	-	Personal Assistant to MD, KPA
6.	Mr. Mohamed Golicha	-	Head, Corporate Development, KPA

7. Mr. Avii Mwambire - KPA Staffer
8. Mr. Jones Buchere - Corporate Communications Manager, KPA

MIN. NO.NA/DAA & GPC/COI/2024/083: PRELIMINARIES

The Chairperson called the meeting to order at 12:30 p.m. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Stanley Muiruri Muthama, M.P and seconded by The Hon. Rael Chepkemoi Kasiwai, M.P

AGENDA

1. Introduction
2. Substantive agenda: **Site Visit to Kenya Ports Authority Grain Bulk Handlers Facilities to assess the implementation status of the recommendations contained** in the **report of the Departmental Committee on Finance and National Planning on the Optimization of Revenue in Grain Handling Services at the Port of Mombasa**
3. `Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/084: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/085: SITE VISIT OF THE GRAIN BULK HANDLING FACILITIES AT THE KENYA PORTS AUTHORITY, PORT OF MOMBASA

Capt. William Ruto, the Managing Director, KPA accompanied by Mr. Mohamed Daghar, the Principal Secretary, State Department of Transport took the Committee on Implementation on a tour of the Grain Bulk Handling Facilities at the Port of Mombasa.

The Committee was apprised on the following:

i) The significance of the grain handling facilities to the Port and the economy of Kenya
ii) The scale of infrastructure deployed to successfully handle bulk grain consignments
iii) The logistics of handling grain at the Port
iv) The business angle of grain handling such as investments versus returns
v) Public Private Partnerships in the operations at the port
vi) Tariffs and their application at the Port of Mombasa

Committee Observations

1. The grain bulk handling facilities including cranes, storage silos and conveyor belts constituted significant private investment attributed to the Grain Bulk Handling Limited.
2. The Committee was informed that the Grain Bulk Handling Limited (GBHL) has a storage capacity of 22,700 tonnes in Mombasa and 134,000 tonnes in Nairobi, with this capacity and calculated with 20 days free storage their annual throughput capacity for Mombasa alone is approximately 4.027 million tonnes.
3. That in a month, Grain Bulk Handling Limited processes 2,450,435 tonnes of grain that comes through an average of 79 vessels monthly.

4. The Committee was further informed that the current Port land at Kilindini is limited and therefore might not be practically possible to bring on board new partners to invest within the Kilindini area.

Committee Recommendations

1. That even though the port was the largest at the East African Coast, it was imperative for KPA to continue benchmarking the facilities and infrastructure with those of other ports in bigger economies in order to stay competitive.
2. That modernization of the port and grain handling capacity should be a continuous process to increase terminal capacity and efficiency.
3. That even though KPA stated that the current space at Kilindini was constrained, adding more efficient cargo handling systems such as quay cranes and conveyor systems would result in better utilization of available space.

MIN. NO.NA/DAA & GPC/COI/2024/086: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/087: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:45 p.m.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE 13TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 27TH APRIL, 2024 IN BAOBAB CONFERENCE ROOM, THE SERENA BEACH HOTEL, MOMBASA COUNTY AT 2:00 PM

PRESENT

1. The Hon. Elijah Memusi Kanchory, M.P - **Chairing**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Abdul Ebrahim Haro, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Julius Taitumu M'Anaiba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. Siyoi Lillian Chebet, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. George Koimburi Ndung'u, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Angela Cheror	-	Public Communications Officer
5.	Mr. James Macharia	-	Media Relations Officer
6.	Mr. Collins Namulen	-	Fiscal Analyst
7.	Ms. Shalom Migare	-	Research Officer
8.	Mr. Alex Amwata	-	Hansard Officer
9.	Ms. Beatrice Auma	-	Executive Secretary
10.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms

AGRICULTURAL FINANCE CORPORATION (AFC)

1.	Mr. George Kubai	-	Managing Director, AFC
2.	Mr. David Etale	-	Liaison Officer for Parliament
3.	Mr. Tom Akeno Okeyo	-	Chief Finance and Investment Officer
4.	Mr. Onsongo Cornelius	-	Head of Finance, AFC
5.	Mr. Augustine C. Wasike	-	Finance Officer

OFFICE OF THE AUDITOR GENERAL (OAG)

1. FCPA Nancy Gathungu, CBS- Auditor General
2. Mr. Anthony Waiganjo - Director
3. Mr. Paul Kagwanja - Deputy Director

INSPECTORATE OF STATE CORPORATIONS (ISC)

1. Mr. James Mungai Warui – Ag. Inspector-General
2. Ms. Nanjala B. Christine -Deputy Director, ISC
3. Ms. Grace Mwaniki -ISC

MIN. NO.NA/DAA & GPC/COI/2024/072: PRELIMINARIES

The Chairperson called the meeting to order at 2:00 p.m. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Mark Samuel Muriithi Mwenje, M.P and seconded by The Hon. Siyoi Lillian Chebet, M.P.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretary, Ministry of Agriculture and Livestock Development and the Managing Director, Agricultural Finance Corporation (AFC) and Inspector General of State Corporations to consider implementation status of the Public Investment Committee's (PIC) 19th Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/073: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/074: SUBMISSION BY THE MANAGING DIRECTOR AGRICULTURAL FINANCE CORPORATION (AFC) REGARDING THE IMPLEMENTATION STATUS OF THE RESOLUTIONS OF THE PUBLIC INVESTMENT COMMITTEE (PIC) 19TH REPORT ON CONSIDERATION OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS

Mr. George Kubai – Managing Director, AFC appeared before the Committee to adduce evidence on the Implementation Status of The Resolutions of the Public Investment Committee's (Pic) 19th Report on Consideration of the Auditor-General's Report on the Financial Statements of State Corporations. He was accompanied by Mr. David Etale - Liaison Officer for Parliament, Mr. Tom Akeno Okeyo - Chief Finance and Investment Officer, Mr. Onsongo Cornelius - Head of Finance and Mr. Augustine Christopher Wasike - Finance.

The Committee was informed that:

1. **On Reports of the Auditor General on the Financial Statements of Agricultural Finance Corporation (AFC) for the financial years 2003/2004 to 2011/2012**

The Managing Director, AFC, Mr. Lucas Meso accompanied by General Manager Finance, Mr. Ismail Guyo; Chief Accountant Mr. Akeno Tom; Accountant Mr. Michael Kibathi; Personal Assistant to the Managing Director Mr. Bonano Bulla and Assistant Director of Agriculture Mr. Eliud Kamau representing the Ministry of Agriculture, Livestock and Fisheries appeared before the Committee to adduce evidence on accounts of the Corporation for **2003/2004 to 2011/2012 Financial Years**.

2. **Consultancy Services: FY 2003/2004 Accounts**

The Committee heard that in October 2003, the former Managing Director (Mr. George Omari Nyamweya) without Board's approval hired an ex-employee of the Corporation as a consultant to carry out a recruitment exercise at a cost of Kshs 1,546,000.00 to the Board. It is not clear how the consultant was identified and the fee determined without competitive tendering. Though the Corporation indicated that they had asked the Office of the President to assist in the recovery of the money, no evidence of the request was seen.

Management Response

The Managing Director, Agricultural Finance Corporation (AFC) informed the Committee that the Corporation has requested the Office of the President vide letter **ref. AFC/MD/9.1.1 dated 13th June 2005** to assist in the recovery of Kshs 1,546,000.00 from the former Managing Director.

Committee Observation

The Committee observed that the recovery of the money paid to the consultant had taken too long.

Committee Recommendation

The Committee recommends that the Managing Director pursues the recoverability of the debt and report status of recovery to Parliament within six months after adoption of this Report.

The Committee was informed on Response on Current Status that:

In line with the Committee's recommendations, the Corporation has undertaken several measures to recover funds from the former Managing Director. These measures include:

i) Requesting assistance from the Office of the President via our letter referenced: AFC/MD/9.1.1 dated June 13, 2005.
ii) In April 2016, the former Managing Director Mr. Lucas Meso and the Board Chair Mr. Frankline Bett jointly met with Mr. George Omari Nyamweya and discussed the matter with him. However, Mr. Nyamweya denied the allegations as per his letter dated April 7, 2016, attached herewith and labelled PIC 48.1 (a).
iii) Further, the Corporation has reported him to the Credit Reference Bureau for action. Since this matter remains active with the inspectorate, we have once again requested for an update, recognizing its prolonged duration. Copy of the referenced letter are attached for ease reference, labelled as PIC 48.1 (b)

3. **Overpayment of the Former Chief Executive: FY 2003/2004 Accounts**

The Committee heard that the former Managing Director (Mr. George Omari Nyamweya) received a salary of Kshs 1,166,120 per month instead of the approved gross of Kshs.

347,720.00 resulting to an overpayment of Kshs 3,273,600.00 in 2003/2004 under review and no recovery so far has been made.

Management Response
The Managing Director, AFC informed the Committee that the Corporation sought the assistance of the Inspectorate of State Corporations to surcharge the irregular payments to the former Managing Director Mr. George Omari Nyamweya.

Committee Observation
The Committee observed that: -

i) The Corporation and Inspectorate of State Corporations had taken too long to recover the money.
ii) There was no evidence of any effort by the management to recover the money.

Committee Recommendation
The Committee recommends that the Corporation and the Inspectorate of State Corporations pursues the recoverability of the debt and report status of recovery to Parliament in six months after adoption of this Report.

Response on Current Status
Further to our previous correspondence herein resting with our letters dated 20th May 2004, 13th June 2005, 16th January 2008, 22nd September 2010 and the letter from the inspectorate dated 14th July 2005, we have once again through our letter **ref: AFC/MD/9.1.1** reminded the inspectorate of the need to bring the matter to closure and sought any progress made on the matter noting that it had been outstanding for long.

4. **Loan To Farmers: FYs 2004/2005 To 2005/2006 & 2009/2010 To 2011/2012 Accounts:**
   i) The Committee was informed that recovery of large and small-scale loans has not significantly improved. The non-recovery of the loans has resulted in a very high bad and doubtful debts provision of Kshs 4,536,086,000.00.
   ii) The Managing Director, AFC informed the Committee that old loans that were advanced to farmers prior to January 2003 were waived by the Government. In order to recover the outstanding arrears, the Corporation established a Debt recovery unit to specifically follow up the non performing portfolio.

Committee Observation
The Committee observed that in spite the establishment of the Debt Recovery Unit little progress had been realized in the recovery of debts leading to a high bad and doubtful debts provision.

Committee Recommendations
The Committee recommends that: -

i) The Corporation puts in place measures to recover the debts and report status of recovery to Parliament in six months after adoption of this Report.
ii) Debt recovery should be a target in the Performance Contract of the Managing Director for the Corporation so as to reduce the high debt portfolio and improve the performance of the Corporation.

Response on Current Status

i) Earlier reports shared with the Committee indicated that the recovery of both large and small-scale loans issued before January 2003 had not shown improvement, resulting in the substantial loan provisions of Kshs 4,536,086,000 for bad and doubtful debts. Consequently, to address this issue, AFC established a dedicated debt recovery unit responsible for handling non-performing loan portfolios.
ii) Clear recovery targets were outlined in performance contracts as recommended aimed at reducing the high debt levels and enhancing portfolio performance. Copy of performance contract for the unit is attached labelled PIC 48.3 (a).
iii) Additional measures have been implemented to recover the outstanding balances, including the engagement of a reputable debt collector to bolster recovery efforts.
iv) As a result of these initiatives, AFC has seen a significant reduction in outstanding debts and associated loan provisions.

As of March 31, 2024, delinquency levels had dropped to 17%. The trend analysis from the audited accounts over the past five years is outlined below: -

Trends on Loan Provisioning					
Item/FY	2011/12 (B/f)	2019/20	2020/21	2021/22	2022/23
	Kshs '000'	Kshs '000'	Kshs '000'	Kshs '000'	Kshs '000'
Portfolio Size	6,657,542	9,347,368	9,783,128	9,892,054	10,323,339
Loan Provisions	4,536,086	455,409	475,964	447,530	334,584

v) The performance contract signed between the Government of Kenya through the parent ministry and the Board of Directors has targets for the Managing Director on loan recovery from non-performing loans. See copy attached labelled PIC 48.3 (d).

5. Receivables And Repayments: FY 2004/2005 Accounts

The Committee was informed that included in the receivables and prepayments balance of Kshs 101,224,000.00 is an amount of Kshs 51,150,596.00 in respect of auctioneers' fees and advertisement charges which has remained outstanding for a long time. Also, included is rent accrual of Kshs 40,018,000.00 in respect of Development House out of which Kshs 21,882,000.00 relate to the year 1999 and earlier. It's not clear why management has not taken adequate measures to recover.

Management Response

i) The Managing Director, AFC informed the Committee that the Corporation made a provision in respect to the outstanding auctioneer's fees and advertising charges given that the recoverability was doubtful.
ii) The rent arrears for Development House amounting to Kshs 40 million consisted of arrears which related to the period prior to the 1998 bomb blast when most of the tenants vacated the building without clearing their debts.
iii) The Committee was further informed that the rent collector M/s Lustman & Company Ltd owned by Esther Mathenge and Natalie Njanja Mathenge defaulted in remitting rent to the Corporation to the tune of Kshs.6 million as at the time of termination of contract. The Corporation sued the agent for recovery of the unremitted rent. The Corporation has since engaged the firm of Nyaencha & Company

Advocates to take over the matter to its logical conclusion. A new property manager has since been employed.

Committee Observation

The Committee observed that the unremitted rent by Ms. Esther Mathenge and Ms. Natalie Nyanja Mathenge is still outstanding and that the matter is currently in Court.

Committee Recommendations

The Committee recommends that: -

i) The Corporation should recover fully the unremitted rent from Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge including identifying their properties/estate for attachment in the clearance of the debt.
ii) Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge and their associated companies be barred from transacting any business with any State Corporation as a result of their conduct in the management of AFC Development House Property.
iii) The Chief Executive Officer of the Board should give the status report of the Court case to the Committee within three months of adoption of this Report.

Response on Current Status

i) As previously reported, the receivables balance included rent arrears totalling Kshs 6,586,753 for Development House Building, pertaining to the period prior to the 1998 bomb blast, during which period many tenants vacated the premises while owing outstanding debts.
ii) In line with the committee's recommendations, AFC instituted a legal suit against the agent to recover the unremitted rent, with the assistance of Nyaencha and Company Advocates. Subsequently, the defendant filed an application seeking arbitration, which was duly considered and our application ultimately dismissed.
iii) Dissatisfied with this decision, AFC instructed the aforementioned law firm to review the case and filed another application for reinstatement of the suit. Unfortunately, this application was equally dismissed on 29th May, 2015.

6. Land And Buildings: FYs 2008/2009 To 2011/2012 Accounts

i) The Committee was informed that the land and buildings include 20 developed plots all of which the respective title deeds were not availed for audit review. It was further noted that 5 other undeveloped and unvalued plots had been re-allocated to third parties.
ii) In the absence of ownership documents for the land as indicated above, it has not been possible to confirm the accuracy of the land and buildings balances of Kshs 356,129,000.00
iii) The Managing Director, AFC informed the Committee that the Corporation has with the support of the Board intensified its efforts in pursuing the ownership documents, and currently the title deeds have been obtained for land in Bungoma, Garsen, Iten, Meru and Bomet. The Corporation has written letters to respective counties and the National Land Commission to follow up on the land irregularly re-allocated to third parties.

Committee Observation

The Committee observed that the Corporation did not have ownership documents for some of its properties (land) and that some of the pieces of land had been irregularly allocated to private developers.

Committee Recommendations
The Committee recommends that: -

i) The Corporation liaises with the National Land Commission for the expeditious issuance of title documents and the revocation of titles irregularly allocated to third parties.
ii) The Ethics and Anti-Corruption Commission investigates the circumstances surrounding the irregular allocation of Public Land belonging to the Corporation to third parties.

Response on Current Status

i) Substantial progress has been made in pursuit for the AFC titles. The Corporation has since secured the title deeds for Iten town, parcel no 176, Bungoma, Kisumu and Molo.
ii) The corporation has also extended the lease for Bomet Parcel LR No 8939/32 which had expired in January 1990. The lease was extended for a term of 66 years.
iii) Further, the corporation are in communication with the National Land Commission and the Ministry of Lands with a view of getting title deeds for Kimilili and Busia plots.
iv) As previously explained, the Nanyuki and Kerugoya plots were repossessed by the respective County Governments due to failure by the Corporation to develop them within the stipulated time. The Kerugoya Plot has since been developed by the Judiciary.
v) Similarly, the Chogoria plot has been developed by Meru South Co-operative Union, with a building named Mwalimu Sacco Plaza.
vi) To facilitate investigation by the EACC, the Corporation through various correspondence followed up on the matter as recommended by the committee. In addition, the Corporation lodged a caution against the said parcel of land to forestall unauthorized access.

7. Budgetary Control: FYs 2008/2009 To 2010/2011 Accounts

i) The Committee was informed that during the year under review, the Corporation incurred an expenditure of Kshs.32,127,000.00 over and above the budgetary provisions for the year in nine expenditure items.
ii) Although the Management has explained that the over expenditure was subsequently considered and approved by the Ministry of Agriculture, Livestock and Fisheries and the Treasury together with the 2009/2010 FY estimates, no evidence supporting this was produced for audit verification.

Management Response
The Managing Director admitted that the payment was un-procedurally done and that Treasury and Parent Ministry approval should have been sought.

Committee Observation
The Committee observed that the Corporation incurred an over-expenditure of Kshs.32,127,000.00 without Parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.

Committee Recommendations
The Committee recommends that: -

i) The EACC investigates the circumstances surrounding the over- expenditure of Kshs.32,127,000.00 by the Corporation without Parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.
ii) The Director of Public Prosecutions institutes criminal proceedings against the then Managing Director, Mr. Omurende Iyadi and the General Manager Finance, Mr. Lawrence Bokoro who authorized the over 4 expenditure for:
    a. Over-expenditure of Kshs. 32,127,000.00 without Parent Ministry and Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446;
    b) Abuse of office contrary to Section 101 of the Penal Code and Section 12 of the Public Officer Ethics Act, 2003

Response on Current Status
Indeed, the Corporation incurred expenditure over and above the budgetary provisions in the year under review and was in breach of the law. We however commit to adhere to the approved budget estimates henceforth in order to comply with the law.

8. Cash And Branch Collection Accounts: FYs 2009/2010 To 2011/2012accounts
i) The Committee heard that branch collection account balance includes long outstanding un-reconciled items relating to remittances and receipts which have been outstanding since 2003. Thika, Narok and Kisumu collection accounts contained an un-reconciled figure of Kshs 234,000.00, Kshs 1,860,000.00 and Kshs 672,000.00 respectively, recorded as fraud committed by employees. A banker's order of Kshs 410,600.00 during the year (2008/2009) was also fraudulently channelled to an ineligible account in Kisumu.
ii) The Managing Director, AFC informed the Committee that the long outstanding un-reconciled items relating to remittances and receipts have since been identified and cleared.
iii) The un-receipted credits in Thika, Kisumu and Narok branches have since been receipted to clients' accounts. The ex-staff who was responsible for the fraudulent transaction was reported to the police and after investigations were completed criminal proceedings commenced.
iv) The case was determined and the accused acquitted. The Corporation also managed to recover Kshs 213,500.00 from the client.

Committee Observation
The Committee observed that the Corporation did not have in-house fraud prevention, detection and handling mechanisms thereby resulting in loss of public funds.

Committee Recommendations
The Committee recommends that: -

i) The Corporation puts in place stringent mechanisms to prevent, detect and handle fraud.
ii) The EACC investigates the circumstances surrounding the fraud and the conduct of the then Managing Director, Mr. Omurende Iyadi, and General Manager –Finance, Mr. Lawrence Bokoro, that resulted in the loss of public funds in the accounts department and recommend prosecution for those found culpable.

Response on Current Status
The Committee observed that the Corporation did not have adequate in-house fraud prevention, detection and cash handling mechanism that resulted to the loss of public funds. On the basis of this observation, the committee recommended that stringent mechanisms to

avert similar frauds and other related risks be put in place. Consequently, the Corporation in accordance with the recommendations of the committee instituted the following measures: -

i) Establishment of a controls and compliance section in charge of treasury management and internal controls.
ii) Procurement of a robust banking system with higher capabilities on cash handling
iii) Functional areas within our operations were segregated to facilitate maker checker transaction oversight.

9. Loan To Staff: FYs 2009/2010 To 2011/2012 Accounts

The Committee was informed that Kshs. 40,241,000.00 owed by ex-staff, is in respect of house loans, car loans and staff advances. The Corporation has not however clarified why the amount could not be offset against the final dues of the affected staff. The Managing Director, AFC informed the Committee that the Corporation has instituted various recovery measures including repossessing and disposal of motor vehicles, tracing staff and involving their current employers to recover the money and as a last resort taking legal action where other recovery measures have failed.

Committee Observation

The Committee observed that the recovery of loans to staff had taken long and little effort had been undertaken by the management to recover the loans as indicated by the low level of recovery.

Committee Recommendation

The Committee recommends that the management recovers the loans to staff within six months of the adoption of this report failure to which the then Ag. Managing Director, Mr. Lawrence Bokoro and the Chief Accountant, Mr. Francis K. Maritim are held accountable for the debt.

Response on Current Status

AFC has put in place mechanisms to recover loans advanced to staff. The outstanding ex–staff loan balances as at 30th June 2012 was Kshs 40,241,104.60 held by 32 ex- employees. The recovery efforts put in place have seen outstanding balance reduce drastically to Kshs 9,506,125.14 to date. The outstanding balances are made up of the following accounts which the Corporation continues to pursue. The list of the accounts with outstanding balances are as indicated below:

Name	Loan Type	Balances as at 30.06.2012 Kshs	Balances as at 23.04.2024 Kshs	Status	Reference
Paul Muthini Kisio	House Loans	838,547.85	0.00	Repaid	PIC 48.8 (a)
Cyril Wayongo	Car Loans	244,031.00	315,636.79	Matter in court, case no. Milimani MCCC/6193/2009. The security already disposed	
Michael Goa	Car Loans	424,971.15	575,223.16	Case handed over to an external debt collector	PIC 48.8 (b)
Michael Goa	House Loans	5,577,747.15	7,928,597.51	The security was sold but it did not fetch enough money.	PIC 48.8 (b)

				Case handed over to an external debt collector	
Cyril Wayongo	Personal Advances	254,088.20	255,315.93	Matter in court, case no. Milimani MCCC/6193/2009. The security already disposed	
Mary Onyango	Car Loans	1,154,592.10	0.00	Account closed	
David Wekesa Khaemba	House Loans	1,729,147.20	0.00	Repaid	PIC 48.8 (c)
Francis Nyomboi Kigen	House Loans	1,885,450.10	0.00	Repaid	PIC 48.8 (d)
Wangui Mwaniki	Personal Advances	271,816.95	199,682.96	There is an active suit in court. Case number SCCCOMM/E6365/2023 Citation: AFC Vs Wangui Mwaniki. "	
George O Nyamweya	Personal Advances	224,292.50	231,668.79	Case handed over to an external debt collector	PIC 48.8 (b)
Total					

10. Loan To Farmers: Short Term Loans To 13 Farmers: FYs 2009/2010 To 2011/2012 Accounts:

The Committee heard that the balance of short-term loans to customers' of Kshs.2,980,347.00 includes an amount of Kshs.22,661,000.00 advanced to 13 farmers in Kapsabet. The Corporation advanced the amount against various collaterals in form of title deeds which appeared to be fraudulent.

Management Response

The Managing Director, AFC informed the Committee that the Corporation disbursed loans to the farmers in Kapsabet in accordance with the AFC policies. Farmers provided title deeds which were, on the face of it genuine and confirmed through official searches in the land registry. The Corporation later learnt that the titles given as security were fraudulent. The fraud was perpetuated with the connivance of the officials at the local land registry at Kapsabet. This matter was reported to the CID office at Kapsabet for investigation.

Committee Observations

The Committee observed that: -

i) The Corporation failed to undertake proper due diligence and did not put in place measures to ensure loans advanced were properly secured.
ii) There was probable collusion between the farmers, employees of AFC and the land registry to defraud the Corporation.

Committee Recommendations

The Committee recommends that: -

i) The EACC investigates the circumstances and the process of loan issuance to the farmers including the role of the officers of the Corporation and the Land Ministry with a view to recommending prosecution of those found culpable.
ii) The officers of the Corporation and Kapsabet Land Registry implicated in the fraud should be surcharged or money recovered from them and barred from holding public office.

Response on Current Status

i) The Corporation filed six (6) cases against the fraudsters, namely Eldoret HCC No 100, 102, 103, 104, 105 & 106 of 2011. Judgment was entered in favour of the Corporation and decrees accordingly extracted
ii) Warrantees were issued and the process of execution initiated. The Corporation is pursuing the properties of the 6 fraudsters for attachments and recovery. The Corporation has fully provided for these cases in our accounts.
iii) The Corporation has been seeking to enforce the judgement relying heavily on the Director of Criminal Investigations (DCI) because they have the machinery to pursue and apprehend the fraudsters. This being an active matter with the office of the Director of Criminal Investigation, the Corporation vide a letter dated 28th November, 2022 sought the investigation report from the DCI detailing the current status which has not been responded to. Attached is our letter to DCI labelled PIC 48.9 (a) to (c) for your reference.

11. Payables And Accruals: FYs 2009/2010 To 2011/2012 Accounts

The Committee heard that Payables and Accruals balance of Kshs.599,431,000.00 includes loan drafts outstanding balance and a Sundry Creditors' General balance which have not been supported with the relevant documents.

Management Response

The Managing Director, AFC informed the Committee that the balances were carried forward during conversion from the Loan Accounting System to the new Equinox Banking system in 2007. These balances have since been identified and cleared.

Committee Observations

The Committee observed that: -

i) The Corporation's outstanding balances were as a result of the conversion of the Loan Accounting System to the new Equinox Banking system.
ii) The Corporation did not appreciate the effects nor provide for safeguards for the conversion.

Committee Recommendation

The Committee recommends that the Corporation should carry out due diligence while carrying out changes in its system and to provide for safeguards for the conversion.

Response on Current Status

As per the Committee's recommendations, the Corporation put in place the following safeguards and measures to ensure seamless transitions during system change overs with minimal disruptions on operations and customer service.

i) Development of a detailed project plan outlining all aspects of the system changeover, timelines and milestones.
ii) Conducting of a thorough risk assessment to identify potential risks associated with the changeover process.
iii) Conducting of a thorough evaluation of the vendor's capabilities, track records and reputation.
iv) Development of a robust data migration plan to ensure complete data transfer.
v) Prior to changeover, extensive data tests are necessary to identify any issues and bugs.
vi) Robust security measures are put in place to protect sensitive customer data during the changeover.
vii) Conducting of a thorough risk assessment to identify potential risks associated with the changeover process.
viii) Conducting of a thorough evaluation of the vendor's capabilities, track records and reputation.
ix) Development of a robust data migration plan to ensure complete data transfer.
x) Prior to changeover, extensive data tests are necessary to identify any issues and bugs.
xi) Robust security measures are put in place to protect sensitive customer data during the changeover. The Committee commended Agricultural Finance Corporation for receiving Unqualified Accounts in the FYs 2006/2007 and 2007/2008.

Committee observations (COI)

i) The recoverability of Kshs 4,536,086,000.00. lent to farmers in the FYs 2004/2005 to 2005/2006 & 2009/2010 to 2011/2012 is doubtful unless a radical recovery strategy is used.
ii) There are issues of concern in the report that still need the input from the EACC (who were sent away from the meeting). These include the alleged collusion between farmers and officials of the Lands Registry in Kapsabet to produce questionable land title deeds that were then used to secure loans from the Corporation.
iii) The importance of AFC needs serious recognition as agriculture remains the mainstay of the economy of Kenya.

Committee resolutions

i) The Committee recognized that AFC has a cardinal role to play in Kenya on food security, the economy and employment opportunities. All measures necessary should be taken to ensure it does not fail.
ii) EACC should be re-invited to shed light on the on-goings at AFC that led to loss of funds through fraudulently acquired loans cited in the 19th PIC Report.

MIN. NO.NA/DAA & GPC/COI/2024/075: SUBMISSION BY THE INSPECTORATE OF STATE CORPORATIONS REGARDING THE IMPLEMENTATION STATUS OF THE RESOLUTIONS OF THE PUBLIC INVESTMENT COMMITTEE (PIC) 19TH REPORT ON CONSIDERATION OF THE AUDITOR GENERAL REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS FOR AGRICULTURAL FINANCE CORPORATIONS (AFC)

Mr. James Mungai Warui the Ag. Inspector-General of State Corporations appeared before the Committee to adduce evidence Implementation Status of the Resolutions of the Public Investment Committee's (PIC) 19th Report on Consideration of The Auditor-General's Report on the Financial Statements of State Corporations (Agricultural Finance Corporation (AFC). He was accompanied by Ms. Nanjala B. Christine and Ms. Grace Mwaniki.

The Committee was informed that:

As per the resolutions of the Public Investment Committee's (PIC) 19th Report on Consideration of The Auditor-General's Report on the Financial Statements of State Corporations (Agricultural Finance Corporation (AFC), the Inspectorate (Corporations) was to:

i) Pursue the recoverability of Kshs. 3,273,600 from the former Managing Director, Mr. George Omari Nyamweya, who had received a salary of Kshs. 1,166,120 per month instead of the approved gross of Kshs. 347,720 resulting to an overpayment in the FY 2003/2004.
ii) Surcharge an amount Kshs. 22,661,000 which had been advanced to 13 farmers in Kapsabet against fraudulent collateral in the form of title deeds. The amount was to be recovered from officers of the Corporation and of Kapsabet Land Registry found culpable after investigations by the Ethics and Anti-corruption Commission (EACC).

The Committee was informed that the Inspector-General (Corporations) was not able to implement the recommendations of the 19th PIC Report because of the following reasons:

i) The Office of the Inspector-General (Corporations) has over the years suffered from chronic underfunding of its operations. Consequently, the department is beset by inadequate human and financial resources as well as other facilities. This has adversely impacted Inspectorate of State Corporation's ability to effectively discharge its statutory mandate.
ii) The power of the Inspector-General (Corporations) to surcharge as stipulated in Section 19 of the State Corporations Act had lain dormant from the year 2014 following the inquorate membership of the State Corporations Appeals Tribunal (SCAT).
iii) SCAT is a statutory body established under Section 22 of the State Corporations Act to consider and determine appeals from individuals aggrieved by the decision of the Inspector General (Corporations) to surcharge.
iv) The Office of the Inspector-General (Corporations) has for the most part since the year 2014 not been duly filled either substantively or in acting capacity thereby legally compromising its ability to operate.

Way forward

1. The Office of the Inspector-General (Corporations) has embarked on efforts to revamp its operations with the primary aim of effectively and efficiently discharging its constitutional mandate.
2. The Executive has since appointed the Chairperson and members of the State Corporations Appeals Tribunal (SCAT). This will strengthen the capacity of the Inspector-General (Corporations) to take a more proactive role in combating corruption and misappropriation of public funds in state corporations given his statutory mandate is to surcharge.

Committee observations (COI)

1. Officials of the Inspectorate of State Corporations are mostly in acting capacity
2. The Inspectorate status (acting) for officials is a hindrance effective oversight since an acting Inspector-General cannot surcharge.
3. There exists a gross underfunding and understaffing within the Inspectorate which hampers service delivery and effective oversight.
4. Having 19 officers of the Inspectorate to inspect 300 state corporations is a daunting task that results in ineffective service delivery

Committee resolutions

The relevant appointing authority to ensure that officials of the ISC should be in substantive appointive positions and not acting capacity which curtails service delivery. This is more evident especially when enforcing matters such as surcharging individuals involved in financial malpractices.

MIN. NO.NA/DAA & GPC/COI/2024/076: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/077: ADJOURNMENT

Committee There being no other business, the meeting was adjourned at 2:46 pm.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....27/4/24

MINUTES OF THE 12TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 27TH APRIL, 2024 IN BAOBAB CONFERENCE ROOM, THE SERENA BEACH HOTEL, MOMBASA COUNTY AT 11:45 AM

PRESENT

1. The Hon. Elijah Memusi Kanchory, M.P - **Chairing**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Abdul Ebrahim Haro, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Julius Taitumu M'Anaiba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. Siyoi Lillian Chebet, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. George Koimburi Ndung'u, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Angela Cheror	-	Public Communications Officer
5.	Mr. James Macharia	-	Media Relations Officer
6.	Mr. Collins Namulen	-	Fiscal Analyst
7.	Ms. Shalom Migare	-	Research Officer
8.	Mr. Alex Amwata	-	Hansard Officer
9.	Ms. Beatrice Auma	-	Executive Secretary
10.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms

KENYA DEVELOPMENT CORPORATION (FORMERLY KENYA TOURIST DEVELOPMENT CORPORATION

1.	Ms. Norah Ratemo	-	Ag. Director General KDC
2.	Mr. Kennedy Wanderi	-	Ag. Director, Corporate Services, KDC
3.	Mr. Michael Koross	-	Portfolio Dept. KDC
4.	Mr. Dominic Lewa	-	Dep. Director-Strategy KDC
5.	Mr. John Karia	-	Deputy Director- Legal, KDC
6.	Mr. Andrew Wanga	-	Manager, Internal Audit, KDC

7. Mr. John Mukuna - Ass. Manager, Accounts, KDC

INSPECTORATE OF STATE CORPORATIONS

1. Mr. James Mungai Warui – Ag. Inspector-General
2. Ms. Nanjala B. Christine -Deputy Director, ISC
3. Ms. Grace Mwaniki -ISC

MIN. NO.NA/DAA & GPC/COI/2024/066: PRELIMINARIES

The Chairperson called the meeting to order at a quarter to 12:00 p.m. The agenda of the meeting was adopted as hereunder after being proposed by The Hon Prof Guyo Waqo Jaldesa, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting the Kenya Development Corporation Regarding The Implementation Status of the Report of the Auditor General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/067: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN. NO.NA/DAA & GPC/COI/2024/068: SUBMISSION B Y THE KENYA DEVELOPMENT CORPORATION REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEAR ENEDED 30TH JUNE, 1997 TO 2012

Ms. Norah Ratemo the Director General Kenya Development Corporation appeared before the Committee to adduce evidence on the implementation status of the Report of The Auditor General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012.

She was accompanied by Mr. Kennedy Wanderi - Acting Director, Corporate Services, Mr. Michael Koros - Portfolio Department, Mr. Dominic Lewa - Deputy Director, Strategy, Mr. John Karia - Deputy Director, Legal Services, Mr. John Mukuna - Assistant Manager, Accounts and Mr. Henry Wanga - Manager, Internal Audit.

The Committee was informed that:

KDC was established to merge the operations of Tourism Finance Corporation (TFC), Industrial Commercial & Development Corporation (ICDC) and Industrial Development

Bank (IDB Capital) which was done through the Kenya Development Corporation Limited (Vesting) Order, 2021. It is wholly owned by the Government of Kenya through the National Treasury & Economic Planning to serve as a strong single cross sector Development Finance Institution (DFI) that would be enabled with sufficient scale, scope and resources to play a catalytic role in Kenya's socio-economic development.

Tourism Finance Corporation (TFC) was established under Section 75 of the Tourism Act 2011 as the successor to the Kenya Tourist Development Corporation (KTDC) which was established in 1965 through the Kenya Tourist Development Corporation Act, Cap 382 of the Laws of Kenya.

1. Revolving Fund Loans: FYs 1996/1997 And 1997/1998 Accounts

The Committee heard that during the years in question, the Corporation's recovery of Revolving Fund Loans was poor. Out of the total loan and accrued interest totalling Ksh.136,172,972 outstanding, only Ksh.6,172,074 had been recovered. The unrecovered loan as at 30th June 1997 was Ksh.89,296,064.

Management Response:

The Managing Director informed the Committee that some of the loans dated back to 1970's. The loans had gone up due to interest forcing the Corporation to write off the interests and getting twice the premiums as opposed to completely wring them off. However, the committee was informed that the board has cleared majority of the loans with only six remaining by the year 2010.

Committee Observations

The committee observed that the Corporation while lending failed to undertake due diligence and follow prudential guidelines.

Committee Recommendations

The committee recommends that:

i) The Corporation recovers the loans and ensures that prudential guidelines are followed.
ii) The then Managing Director under whose tenure the loans were disbursed without prudential guidelines be surcharged for not doing due diligence.

Management Implementation Status

The Committee heard that:

i) As at 30th June 2023, out of the six (6) Revolving Fund Loans outstanding arrears of Kshs 89,296,064, five (5) loan accounts had been redeemed (paid up) and closed. Only one account (Hotel Big Five) had an outstanding loan arrears of Kshs 36,417,706. This account is currently being serviced as per the agreed registered (2022) out-of-court agreement with a monthly repayment of Kshs 325,000 as per the table below.
ii) The Corporation further reviewed the policies and procedures to ensure that lending is done as per the approved prudential guidelines to reduce such exposure in the future.

The current status of revolving fund is as follows;

Account	Approval Date	Loan Amount (Kes.)	Loan Arrears at 14/03/2024 (Kes.)	Total loan Balance (Kes.)	Status
Delight Dreamland Hotel Ltd.	1993	2,900,000	-	-	*Account redeemed & closed*

Kenya Agro Business Ltd.	1993	2,500,000	-	-	*Account redeemed & closed*
Mohazo Ex-Imp Ltd	2007	3,500,000	-	-	*Account redeemed & closed*
Pafido Fast Foods Ltd	2007	5,400,000	-	-	*Account redeemed & closed*
Proland Ltd.	2010	11,063,264	-	-	*Account redeemed & closed*
Hotel Big Five	**2004**	**8,400,000**	**36,417,706**	**36,417,706**	***Client currently servicing the loan per out-of-court agreement. They paid a lumpsum of Kes 6,500,000 and a monthly repayment of Kes 325,000***

2. Investments and Commercial Loans: FY 1996/1997 And 1997/1998 Accounts

The Committee heard that the Corporation had invested through Equity, Commercial and Revolving Fund Loans in organizations that had not been performing, non-profitable or were non-existent. The loans were not recovered and amounts outstanding may not be recoverable.

Management Response

The Managing Director informed the Committee that the loan amounts that had been advanced to the Corporation subsidiaries and their interests had been suspended. The Board had already approved the debt to be converted into equity in their respective units.

Committee Observation

The committee observed that the Corporation is owed huge debts by its subsidiaries.

Committee Recommendations

The Committee recommends that the Corporation converts the debt owed by its subsidiaries into equity.

Management Implementation Status

Only one loan has been converted into equity as explained below.

Kenya Safari Lodges & Hotels (KSLH)

i) The Board of KSLH offered rights issues to all the existing shareholders and all loans were converted into equity in March 2014 amounting to Kshs 75,553,620. Share certificate number 15 for 3,777,681 ordinary shares in the name of TFC was issued by KSLH.

ii) The remaining four subsidiaries had been earmarked for privatisation by the Privatisation Authority and the main concern affecting the conversion was from the Privatisation Authority which stated that the conversion would adversely affect the due diligence report which would state the individual shareholder values. The loan balances due from the four (4) subsidiaries will be recovered from the proceeds of the on-going privatization process. These are Kabarnet Hotel Ltd, Mount Elgon Lodge Ltd, Golf Hotel Ltd and Sunset Hotel Ltd.

iii) Additionally, the conversion of the loans to equity would have surpassed the allowed threshold of shareholding that TFC would have held being the majority shareholder.

3. Stalled Projects: FY 1996/1997 And 1997/1998 Accounts

The Committee was informed that Ksh.38,549,827 was invested in a project that was later abandoned and that no feasibility study had been done before the project was started. Further, there were additional expenditures of Ksh.109,250 on feasibility when the project was on-going.

Management Response

The Managing Director agreed with the position of the Auditor General. He informed the Committee that since the project stalled, there was no possibility of actualizing it and that the Corporation intended to remove the asset from the books of accounts.

Committee Observation

The committee observed that the Corporation invested in a project without undertaking a feasibility study; the project stalled.

Committee Recommendations

The committee recommends that:

i) The Corporation ensures that it undertakes feasibility studies before commencing any project.
ii) The Board be held accountable for the poor investment decision including recovery of the lost funds.
iii) The EACC investigates the circumstances under which the project was procured, payments made and reasons as to why the project stalled and if the board is found culpable be prosecuted and be surcharged.

Management Implementation Status

The Committee heard that:

i) Management has subsequently carried out feasibility studies before any financial commitments in line with the approved KDC Business Development Policy.
ii) As recommended, the Corporation wrote to EACC with a view to carry out investigations on this defunct project for possible recovery of the funds utilized in the project from the culpable persons.

4. Fixed Deposits/Privatization Proceeds: FYs 1996/1997 To 2005/2006

i) The Committee was informed that proceeds from privatization through sale of shares in 9 companies were invested in banks at a lower rate than the Treasury Bills rate of 24% - 26%. The proceeds were held in bank accounts not jointly operated with Treasury and withdrawals were not used for intended purposes contrary to the Treasury Circular No. 351/03 of 26th April 1993.
ii) Further, the Committee heard that part of the proceeds amounting Ksh.15,455,200 were paid to a foreign company in United Kingdom on behalf of the Parent Ministry.

Management Response

i) The Managing Director informed the Committee that the privatization proceeds totalling Ksh.386,347,440 were held by the Corporation as Fixed deposits in a Commercial Bank managed by the Corporation alone contrary to the Treasury Circular. A sum of Ksh.134,089,192 was paid out without approval of the Board and the Treasury as required by Section 15 (1) and 12 of the State Corporations Act, Cap 446.

ii) However, the Corporation is currently operating its accounts jointly with the Treasury abiding by the guidelines. Actions were taken against officers who were involved in the acts of omission and commission.

Committee Observation

The committee observed that the Inspectorate of State Corporations needed to thoroughly inspect State Corporations. Further, the committee observed that the Corporation invested proceeds of privatization in bank accounts at rates lower than Treasury Bills and paid out monies without Board and Treasury approval contrary to section 12 of the State Corporations Act, Cap 446.

Committee Recommendations

The committee recommends that;

i) The corporation should not pay for expenses incurred by their parent Ministries.
ii) The Corporation should ensure that all investments are done in line with Treasury guidelines.
iii) The then Managing Director be held accountable for poor investment decisions and investing without Treasury approval contrary to Section 12 of the State Corporations Act, CAP 446.

Management Implementation Status

The Committee was informed that:

i) The Corporation has since then not paid for any other expenses incurred by or on behalf of the parent ministry.
ii) The former Managing Director was charged under Case file number HCC 27/2003 for Abuse of office contrary to Sec. 101(1) of the Penal Code Cap 63 Laws of Kenya

5. Debtors And Pre-Payment: FYs 1996/1997, 1997/1998, 1998/1999, 1999/2000, 2000/2001, 2004/2005, 2005/2006, 2006/2007, 2011/2012 Accounts

The Committee was informed that the Corporation had long outstanding debtors who were dormant for 3 – 8 years and whose recoverability was doubtful. The debtors included ex staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi.

Management Response

i) The Managing Director informed the Committee that the Corporation had outstanding debtors as indicated by the Auditor General. The Corporation was however pursuing the debtors through all possible means including hiring private investigators.
ii) The Corporation had recovered from the benefits of the CEO imprest taken and was holding his car's logbook. Further, the Corporation had made provisions for the doubtful debts in its books of accounts.
iii) As for the Investment Forum, the Corporation was in partnership agreement not providing services.

Committee Observation

The committee observed that the Corporation had long outstanding debtors who include ex-staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investment Forum in Nairobi and whose recoverability was doubtful.

Committee Recommendations

The Committee recommends that the Managing Director ensures that all debts owed to the Corporation are recovered within six months of tabling of this report.

Management Implementation Status

The Committee was informed that:

i) Pursuant to the referred debtors in this audit, i.e Sky Perth Enterprises Ltd (Ksh.11,057,638) and the former Managing Director (Ksh.2,005,233.55) which had been outstanding, the corporation engaged a private investigator Ms. Nenle Services Agency to follow up and get details for possible recovery from one debtor Sky Perth Enterprises Limited.

ii) The investigator's report concluded that the debtor had ceased operations and it was an uncollectable debt and given that the auctioneers had already sold their equipment seized from their premises. The provisions for this doubtful debt were provided for in the books of accounts in the financial year ended 30th June 2001.

iii) The then CEO was pursued for his part of the debt and his imprest balance was recovered from his terminal dues and further committed to civil jail and eventually served his term. Thus, the debt could not be pursued any further.

6. Irregular Payments: FYs 1996/1997, 1997/1998, 1999/2000, 2000/2001, 2003/2004, 2005/2006 Accounts

The Committee was informed that irregular payments were made as follows:

a) Rent was paid for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.

b) Sitting allowances and bonuses were paid to public servants receiving a salary.

c) Payment of legal fees that were higher than was advised by the Company Secretary.

d) Sitting allowances and Christmas bonuses paid to an expired Board.

e) Salary award without approval of the parent Ministry.

f) Consultancy fee paid to human resource company without competitive selection, approval of the Board and the parent Ministry.

g) Directors' expenses exceeded budget without approval by Treasury.

Management Response

i) The Managing Director concurred with the Auditor General's position. She informed the Committee that allowances were paid to representative of the Permanent Secretary (PS) including bonuses.

ii) Further, on the issue of the expired Board, the PS recalled the Board and hence the meetings were irregular.

iii) Concerning the salary award, the Corporation was given an approval by the Head of Public Service. On the issue of HR Consultancy, the Corporation hired it on contractual basis without adhering to Treasury Circular and Procurement and Disposal Act.

iv) Regarding the Directors' emoluments, the budget was exceeded by having more board meetings than were scheduled as at that time the Managing Director had been terminated from employment.

Committee Observation

The Committee observed that KTDC management made irregular payments.

Committee Recommendations

The Committee recommends that: -

i) The Corporation urgently recovers from the then Managing Director, Directors expenses that exceeded the budget and that was incurred without Treasury approval contrary to Section 12 of the State Corporations Act, Cap 446.
ii) The Corporation urgently recovers monies paid as rent for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.
iii) The then Managing Director/CEO be held responsible for abuse of office contrary to Section 11 of the Public Officer Ethics Act, 2003 and Section 101 of the Penal Code by awarding himself hefty house allowance instead of owner occupier house allowance.
iv) The then Managing Director be held responsible and accountable for procuring consultancy services without Board and Ministerial approval and in contravention of Treasury Circular and Public Procurement and Disposal Act, 2005.
v) The Corporation recovers monies paid as allowances and Christmas bonuses to representatives of the Permanent Secretary.

Management Implementation Status
The Committee was informed that:
i) The then CEO was sued and committed to civil jail in a civil matter HCC/687/2005 and eventually convicted in 2009 where he served his term for his outstanding debts and he was further charged with Abuse of Office in a matter HCC/27/2003.
ii) Representatives of the Permanent Secretary to the Board are accorded similar treatment and recognition as the rest of the Board of Directors.

7. Bank Overdraft: FY 2000/2001 Accounts
The Committee heard that the Corporation had an overdraft of Ksh.15,562,032 in the bank against the approved ceiling of Ksh.10,000,000. The Corporation did not have an approval from the Parent Ministry for the increased overdraft ceiling.

Management Response
The Managing Director informed the Committee that the Board authorized the Corporation to operate the overdraft facility with Kenya Commercial Bank up to a maximum of Ksh.15 million. However, there was no approval from the Parent Ministry. The situation was corrected and the current limit is Ksh.10 million per Kenya Tourist Development Corporation Act.

Committee Observation
The committee observed that the Corporation exceeded the legal overdraft limit in contravention of the Kenya Tourist Development Corporation Act.

Committee Recommendations
The committee recommends that the EACC investigates and recommends prosecution by the Director of Public Prosecutions of the then Managing Director and Board of Directors for;
i) Operating an overdraft facility without ministerial approval and in contravention of the Kenya Tourist Development Corporation Act.
ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Management Implementation Status
The Committee was informed that:
The then CEO was sued and committed to civil jail in a civil matter HCC/687/2005 and eventually convicted in 2009 where he served his term for his outstanding debts and he was further charged with Abuse of Office in a matter of HCC/27/2003.

8. Procurement of Marina Project land: FY 2011/2012 Accounts

The Committee was informed that in the Financial Year 2012 the Corporation purchased land valued at Ksh.35,000,000 and paid Ksh.3,500,000 without details of compliance with the Public Procurement and Disposal Act.

Management Response

The Managing Director informed the Committee that this land was for a specific purpose of putting up a Marina due to its uniqueness and was identified with the help of Kenya Ports Authority. The Management prepared a paper to the Board to initiate the acquisition of the land and approval was granted. However, the Project has stalled and no contracts have been signed to formally acquire the land due to the absence of a functional KTDC Board.

Committee Observation

The Committee observed that the Corporation single sourced the purchase for land and paid for it in contravention of Article 10 and 226(5) of the Constitution; Section 74 of the Public Procurement and Disposal Act, 2005; and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.

Committee Recommendations

The Committee recommends that;

i) The EACC investigates the conduct of the then Managing Director and the Board (names) and the circumstances under which the purchase of land was single sourced and recommend prosecution by the Director of Public Prosecutions for;
   a) Breach of Section 74 of the Public Procurement and Disposal Act, 2005 and Regulations 62 of the of the Public Procurement and Disposal Regulations, 2006.
   b) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

ii) The then Managing Director and the Board be surcharged or money recovered from them to make good the loss incurred.

iii) The then Managing Director and the Board should not hold public office if found culpable.

Management Implementation Status

The Corporation received back the entire Kshs 3,500,000 deposit in two instalments paid in June 2019 (2018/2019FY) of Kshs 3,000,000 and the balance of Kshs 500,000 paid in July 2019 (2019/2020FY).

9. Advance Of Kshs 50 million To an Investment Company: FY 2011/2012 Accounts

The Committee was informed that the Corporation advanced Ksh.50Million to an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

Management Response

The Managing Director informed the Committee that the funds were lent to Lagoon Development Limited in Kilifi Creek. The Board formulated the Credit Policy and using their powers, could review it according to the KTDC mandate and management recommendations. The said loan is up to date in terms of repayments.

Committee Observation

The committee observed that the Corporation advanced Kshs 50 million in November 2011 to Lagoon Development Limited in Kilifi Creek, an investment company in which Kenyan shareholding was only 37% contrary to the requirements of at least 51% Kenyan shareholding.

Committee Recommendations

The committee recommends that EACC investigates the circumstances surrounding the irregular and unlawful advance of KShs 50 million and recommend prosecution by the Director of Public Prosecution of the then Managing Director and the Board for;

i) Acting beyond the mandate provided for under the Kenya Tourist Development Corporation Act.
ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Management Implementation Status

i) The Credit Policy 2010 formulated by the Board of TFC (then KTDC) had full powers under clause 1.3 to review it or lift a clause in it according to the Corporation's mandate and management recommendations.
ii) Accordingly, the Board exercised that power and waived the requirement of clause 4.1.1. on 51% Kenyan Shareholding threshold in order to catalyse the investment of Kshs.3.78 billion project by Lagoon Development Ltd in Kilifi which only had 37% Kenyan shareholding. Management clearly pointed this out to the Board and the decision to waive this requirement for this project was by the Board with full disclosure. The Board also considered the size and impact that the project would have on economic development of Kenya as a country.
iii) The loan account was fully redeemed/recovered on 1st February 2017 when the company paid Kshs. 63,948,785 as a final repayment bringing the total amount recovered by the Corporation to Kshs. 76,323,785

11. Property, Plant and Equipment: FYs 2005/2006 And 2006/2007 Accounts

The Committee was informed that the Corporation had reflected land in Mombasa and Kitale as investment and not under property, plant and equipment and the correctness of figures could not be verified.

Management Response

The Managing Director informed the Committee that these lands were reclassified.

The Committee Observation

The committee observed that the land in Mombasa and Kitale reflected as investments and not under Plant, Property and Equipment.

Committee Recommendations

The committee recommends that the Corporation ensures proper classification of items in its books of accounts.

Management Implementation Status

i) As two assets were reclassified under property, plant and equipment both totalling to KShs 8,839,009 during the 2007/2008 financial year financial statements.
ii) The Corporation no longer holds the land in Kitale as it was disposed in the 2011/2012FY as non-strategic land property.

iii) The Corporation has continued to ensure proper classification of all accounting items in its books of accounts as per the accounting standards.

12. Non-Current Assets Loans: 2005/2006, 2007/2008, 2008/2009, 2009/2010, 2010/2011 And 2011/2012 Accounts

The Committee was informed that the Corporation issued loans to Buffalo Springs, an entity whose going concern could not be verified.

Management Response

The Managing Director informed the Committee that the Corporation loaned Ksh.8,467,395 to Buffalo Springs Ltd, a subsidiary of KTDC. The premise in which the Company operated was leased out to another tenant by Isiolo Town Council crippling operations of the Company. The Company has not been servicing its loan as per the agreement. The matter was referred to the office of the Auditor General for a forensic audit; however, the request was turned down.

Committee Observation

The committee observed that the premises from which Buffalo Springs operated from was leased to someone else thus crippling the operations of Buffalo Springs.

Committee Recommendations

The committee recommends that EACC investigates the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

Management Implementation Status

The Committee was informed that:

In line with the committee's recommendations, the Corporation wrote to EACC to carry out investigations on the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

13. Taxation: FYs 1998/1999, 1999/2000, 2000/2001, 2008/2009, 2009/2010, 2010/2011, 2011/2012 Accounts

The Committee was informed that the Corporation had been granted 50% waiver of penalties and interests but had not paid the remaining 50%.

Management Response

The Managing Director informed the Committee that the Corporation had applied for total waiver for penalties and interests and had been granted. Further the Corporation has instituted measures to update its taxes and to ensure that no more penalties are accrued.

Committee Observation

The Committee observes that the Corporation had failed to meet its tax obligations thus leading to penalties and interests.

Committee Recommendations

The Committee recommends that the Corporation ensures that all taxes and levies are paid on time and in accordance with relevant laws and regulations to avoid penalties and interest.

Management Implementation Status

The Committee was informed that:

i) The Corporation, having paid all the principal taxes due, subsequently entered into negotiations for a 100% waiver of the penalties and interest with the Kenya Revenue Authority (KRA).
ii) The then Ministry of Finance through their letter dated 2nd of April 2013 communicated the Minister's decision and approval for the 100% waiver under section 94(4) of the Income Tax Act. The Corporation was therefore relieved from this Contingency Liability as at 30 June 2013.
iii) In line with the relevant laws, the Corporation has endeavoured to meet its tax obligations as expected.

MIN. NO.NA/DAA & GPC/COI/2024/069: **SUBMISSION BY THE INSPECTORATE OF STATE CORPORATIONS (ISC) REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEAR ENEDED 30TH JUNE, 1997 TO 2012**

Mr. James Mungai Warui the Ag. Inspector-General of State Corporations appeared before the Committee to adduce evidence Regarding the Implementation Status of the 19th PIC Report on the Report of the Auditor General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012. He was accompanied by Ms. Nanjala B. Christine and Ms. Grace Mwaniki.

The Committee was informed that the Inspectorate as per the recommendations of the 19th PIC Report was to:

i) Undertake investigations and ensure that the Managing Director who was in service and disbursed the revolving fund loans without prudential guidelines is surcharged the unrecovered loans of Ksh. 89,296,064.
ii) Surcharge members of the Board if found culpable after investigations by the EACC an amount of KShs. 38,549,827 which was invested in a project without carrying out a feasibility study and was later abandoned.
iii) Surcharges and recovers KShs. 35,000,000 and a further 3,500,000 for procurement of Marina Project Land from the then Managing Director and the Board. The land had been single-sourced and paid for in contravention of the existing loan.

However, the Committee was informed that the Inspectorate could not implement the recommendations of the 19th PIC Report for the following reasons:

i) The Office of the Inspector-General (Corporations) has over the years suffered from chronic underfunding of its operations. Consequently, the department is beset by inadequate human and financial resources as well as other facilities. This has adversely impacted Inspectorate of State Corporation's ability to effectively discharge its statutory mandate.
ii) The power of the Inspector-General (Corporations) to surcharge as stipulated in Section 19 of the State Corporations Act had lain dormant from the year 2014

following the inquorate membership of the State Corporations Appeals Tribunal (SCAT).

iii) SCAT is a statutory body established under Section 22 of the State Corporations Act to consider and determine appeals from individuals aggrieved by the decision of the Inspector General (Corporations) to surcharge.

iv) The Office of the Inspector-General (Corporations) has for the most part since the year 2014 not been duly filled either substantively or in acting capacity thereby legally compromising its ability to operate.

Way forward

i) The Office of the Inspector-General (Corporations) has embarked on efforts to revamp its operations with the primary aim of effectively and efficiently discharging its constitutional mandate.

ii) The Executive has since appointed the Chairperson and members of the State Corporations Appeals Tribunal (SCAT). This will strengthen the capacity of the Inspector-General (Corporations) to take a more proactive role in combating corruption and misappropriation of public funds in state corporations given his statutory mandate is to surcharge.

Committee observations

1. Officials of the Inspectorate of State Corporations are mostly in acting capacity.
2. The Inspectorate status (acting) for officials is a hindrance on effective oversight since an acting Inspector-General cannot surcharge.
3. There exists a gross underfunding and understaffing within the Inspectorate which hampers service delivery and effective oversight.
4. Having 19 officers of the Inspectorate to inspect 300 state corporations is a daunting task that results in ineffective service delivery.

Committee resolutions

1. The relevant appointing authority to ensure that officials of the ISC should be in substantive appointive positions and not acting capacity which curtails service delivery.
2. Christmas bonuses awarded are not allowable as allowances and should be recovered from the receiving officials

MIN. NO.NA/DAA & GPC/COI/2024/070: ANY OTHER BUSSINESS

There was no further business to undertake.

MIN. NO.NA/DAA & GPC/COI/2024/071: ADJOURNMENT

Committee There being no other business, the meeting was adjourned at 12:35 pm.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....27/4/24

MINUTES OF THE 8TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 18TH APRIL, 2024, AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS, NAIROBI COUNTY AT 10.00 AM

PRESENT

1. The Hon. Elijah Memusi Kanchory, M.P - **Chairing**
2. The Hon. Charles Gumini Gimose, M.P
3. The Hon Prof Guyo Waqo Jaldesa, M.P
4. The Hon. Abdul Ebrahim Haro, M.P
5. The Hon. Cynthia Jepkosgei Muge, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mohamed Ali, M.P
4. The Hon. Mark Samuel Muriithi Mwenje, M.P
5. The Hon. Johnson Manya Naicca, M.P
6. The Hon. Hilary Arap Kosgei, M.P
7. The Hon. George Koimburi Ndung'u, M.P
8. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
9. The Hon. Julius Taitumu M'Anaiba, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Siyoi Lillian, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P
13. The Hon. Stanley Muiruri Muthama, M.P
14. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Mark Namaswa	-	Clerk Assistant III
3.	Ms. Noel Amutabi	-	Legal Counsel
4.	Ms. Angela Cheror	-	Public Communications Officer
5.	Mr. James Macharia	-	Media Relations Officer
6.	Mr. Danton Kimutai	-	Audio Officer
7.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms

STATE DEPARTMENT FOR LABOUR AND SKILLS

1.	Mr. Shadrack M. Mwadime	-	PS – Labour and Skills
2.	Ms. Mary M. Wamoko	-	Ag. Director, Labour Migration

NATIONAL EMPLOYMENT AUTHORITY (NEA)

1.	Ms. Edith Okoki	-	Ag. Director General – N. Emp. Authority
2.	Mr. Festus Mutuse	-	National Employment Authority

MIN. NO.NA/DAA & GPC/COI/2024/043: PRELIMINARIES

The Chairperson called the meeting to order at half past 10 a.m. and Hon. Timothy Kipchumba Toroitich, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Abdul Ebrahim Haro, M.P and seconded by The Hon. Rael Chepkemoi Kasiwai, M.P.

The secretariat reported that they were in receipt of a letter vide **Ref: MFA/SDDA/ADM.VOL.1** from the Principal Secretary, State Department for Diaspora Ms Roseline Njogu, CBS, indicating that she was not in a position to attend the meeting as she had other prior engagements. The Committee acceded to the request and resolved that the Principal Secretary, State Department for Diaspora appears before it in two weeks' time.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting the PS - State Department for Diaspora Affairs, the PS - Labour and Skills Development - Ministry of Labour & Social Protection and the Director General National Employment Authority to deliberate on the Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from February 27 to March 3, 2019.**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/044: CONFIRMATION OF MINUTES

The following minutes were confirmed:

4th Sitting

Minutes of the 4th sitting held on Tuesday, 12th March, 2024, were read and confirmed as a true record of the proceedings as proposed by Hon. Timothy Toroitich, M.P and seconded by Hon. Abdul Ebrahim Haro, M.P. **There were no matters arising.**

5th Sitting

Minutes of the 5th sitting held on 19th March, 2024 were read and confirmed as a true record of the proceedings as proposed by Hon. Abdul Ebrahim Haro, M.P and seconded by Hon. Timothy Toroitich, M.P. **There were no matters arising.**

MIN. NO.NA/DAA & GPC/COI/2024/045: SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT - MINISTRY OF LABOUR & SOCIAL PROTECTION AND THE DIRECTOR GENERAL NATIONAL EMPLOYMENT AUTHORITY TO DELIBERATE ON THE REPORT OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE VISIT TO RIYADH, SAUDI ARABIA ON A FACT-FINDING MISSION ON THE WELFARE OF MIGRANT KENYAN WORKERS IN THE KINGDOM OF

SAUDI ARABIA FROM FEBRUARY 27 TO MARCH 3, 2019

The Committee was informed that the Principal Secretary, State Department for Irrigation - Ministry of Water, Sanitation and Irrigation, Mr. Ephantus K. Kimani, CBS was engaged in a meeting with the Head of Public Service and nominated Mr. David Kipkemei - Alt. Director to PS, Ministry of Water, SDI to represent him.

1. **The Ministry of Labour and Social Protection and the National Employment Authority must ensure thorough vetting of Employment Agencies to ensure Kenyans travel to Saudi Arabia and other destinations through officially recognized channels. The immigration Department must be equally vigilant on movement of persons to these countries to ensure only Kenyans with Musaned (an automated system through which the Saudi Ministry of Labour Monitors compliance of employers of domestic workers with established employment practices) compliant employment contracts are permitted to travel.**

a) **Licensing and Certification System of Private Employment Agencies**

i) The Committee was informed that the Inter-Ministerial Vetting Committee is established under section 54A of the Labour Institutions Act, 2007. The law requires every Employment Bureau or Agency to seek and obtain government approval prior to sending Kenyan Citizens for employment outside Kenya.

ii) The Committee is responsible for advising the Cabinet Secretary responsible for labour on matters related to vetting the application for registration made by employment bureaus and agencies. The Committee, with representation from key government agencies vets all the Private Employment Agencies in the country prior to their registration.

iii) The Ministry of Labour and Social Protection chairs the Committee and it comprises of officers from: the Ministry responsible for Labour; Immigration; Internal Security-Interior, DCI, NIS and Kenya Police; Foreign Affairs; and the Office of the Attorney General.

In order to enhance the vetting process, the Committee has undertaken certain reform

b) **Requirement to Appear in Person**

i) The Committee was told that The Ministry has reviewed the Terms of Reference and Operating Procedures for the Vetting Committee. The vetting process now requires anyone seeking to open/operate an Employment Agency or renew the license to appear in person for vetting.

ii) This is meant to ensure that only qualified employment agencies are licensed and that existing recruitment agencies have fulfilled the criteria set out in the laws and legal notice No.110 Labour Institutions (Private Employment Agencies) Regulations 2016 before their licenses are renewed.

iii) This requirement has enabled the Ministry to identify and root out rogue employment agencies including the ones run by foreigners using proxies. In addition, employment agencies are required to give proof of financial capability.

iv) A total of five hundred and thirty-five (535) Private employment Agencies have active licence to date. Information on Private Employment Agencies can be verified via the website www.neaims.go.ke. Twenty-one (21) recruitment agencies have been deregistered or denied registration due to various reasons.

c) **Enhanced Monitoring of Activities of Recruitment Agencies**

i) The Committee was informed that in order to ensure that private employment agencies adhere to the legal framework, a monitoring mechanism has been established.
ii) The mechanism involves increased frequency of physical snap inspections of the Private Employment Agencies' premises and their records as well as building the capacity of enforcement agencies, thus promoting effective responses against fraudulent recruitment practices.

Other Measures to regulate Private Employment Agencies

d) **Oversight and Community Feedback Mechanism**
   i) The Committee was informed that the Ministry in collaboration with the International Organization for Migration (IOM) has established an Oversight Mechanism and a Community Feedback Mechanism to facilitate continuous monitoring of Private Employment Agencies.
   ii) A distress reporting mechanism has been established through a Web Portal under NEAIMS and a **Toll-Free Line 0800222223** to report Migrant workers distress cases as well as fraudulent activities by recruitment agencies.
   iii) To ensure adequate awareness creation of the established mechanisms at the community level, 277 resource persons have been trained on the Oversight and Community Feedback Mechanism in the five pilot counties of Nairobi, Mombasa, Kilifi, Nandi and Busia.

e) **Capacity Building of Private Employment Agencies on Ethical Recruitment**
   i) The Ministry with support from International Organization for Migration (IOM) is implementing a Programme geared towards capacity building of Private Recruitment Agencies (PRAs) to enable adoption and adherence to the International Recruitment Integrity System (IRIS) standards.
   ii) The IRIS standards relate to the entire recruitment process, from recruitment, deployment, employment and return/onward migration.
   iii) A total of 162 Private Employment Agencies (PEAs) have been trained on introductory International Recruitment Integrity, 18 PEAs enrolled in the International Recruitment Integrity System (IRIS) capacity building Programme and 4 PEAs audited for compliance with international standards. In addition, the Ministry has supported recruitment agencies to form five associations and Code of Conduct

f) **Code of Conduct for Private Employment Agencies**
   i) The Committee was informed that the Ministry of Labour and Social Protection has supported recruitment agencies to form five (5) associations and develop a code of conduct. The Code of Conduct seeks to enhance self-regulation among the recruitment agencies.
   ii) It aims to establish acceptable recruitment standards, uphold high standards of ethical and professional conduct, enhance integrity, professional and fair practice; maintain and uphold respect for human rights; and enhance terms and conditions of employment for migrants. The Code of Conduct will be reviewed periodically to address any emerging issues.

g) **Information on Recruitment Agencies**

Further, the Committee was informed that The list of registered recruitment agencies is available and accessible on the NEA website https://neaims.go.ke/ . The list includes registration status of employment agencies.

h) **Use of Musaned & Clearance of Workers**

i) The Committee was informed that Kenya embraced the MUSANED- an electronic platform developed by the Government of Saudi Arabia to facilitate recruitment of domestic workers in 2019.

ii) The system has enhanced transparency and protection of our migrant workers. Negotiations are ongoing to integrate the Musaned with other information system such as NEAIMS to enhance seamless flow and sharing of information. In addition, the scope of use of the Musaned system has been expanded to include other categories of workers.

2. **The Ministry of Labour and Social Protection and that of Foreign Affairs must continuously monitor the implementation of the Bilateral Labour Agreement to ensure the measures initiated to protect Kenyans working in Saudi Arabia are fully adhered to. The office of the Labour Attache must be strengthened and allocated adequate resources in order to fully monitor employment trends in the Kingdom.**

a) Bilateral Labour Agreements (BLAs)

i) Bilateral Labour Agreements (BLAs) have emerged as important instrument in enhancing the protection or migrant workers. There are currently four (4) signed Bilateral Labour Agreement with Governments of Qatar (2012), United Arab Emirates (2018), Kingdom of Saudi Arabia (2017) and concluded and signed a Bilateral Labour Agreement (BLA) on 29th July, 2021 with the United Kingdom of Great Britain and Northern Ireland on recruitment of Health Care Worker.

ii) The BLAs with Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates (UAE) have been reviewed to improve terms and conditions of service, enhance protection of Kenyan Migrant Workers and increase the cadres of skilled and professional workers covered by these agreements.

The status of development of BLAs is summarized in the table below:

Status of Bilateral Labour Agreements (Blas) and Memorandums of Understanding (MoUs) on Employment of Kenyan Migrant Workers with key countries of destination

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
	FOUR (4) SIGNED BILATERAL LABOUR AGREEMENTS	
1.	Bilateral Labour Agreement between the Government of the Republic of Kenya and. Government of the United Kingdom of Great Britain and the Northern Ireland for Collaboration on Health Care Workforce	• The BLA was signed in September, 2021 and Guidelines developed. The Guidelines have been cleared by the office of the Attorney General and forwarded to UK for consideration. • 280 Nurses have been employed in UK through the agreement. • A total of five (5) Private Employment Agencies have been identified and names submitted to UK National Health Services (NHS) for listing. • There is Need to create awareness among interested Kenyan Health Care workers on the UK National Health Services (NHS) requirements (language testing and the immigration process).

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
2.	Bilateral Labour Agreement between Government of Kenya and Government of Kingdom of Saudi Arabia on Recruitment of Domestic Workers	• The Agreement was **signed in May, 2017** covering recruitment of Domestic Workers. • The agreement has been reviewed and finalized in-cooperating counter proposals from both parties. The Kingdom of Saudi Arabia notified the Ministry of labour on its willingness to sign the reviewed agreement. The Ministry is awaiting the confirmation of the exact date for signing.
3.	Memorandum of Understanding on Labour Cooperation between the Republic of Kenya and the United Arab Emirates (UAE)	The MOU was **signed in April 2018** and is operational. • The Joint Implementation Committee held a virtual meeting on 31st October,2023. During the meeting, both parties affirmed their commitment to implement the MOU.
4.	Draft Bilateral Agreement between the Government of the Republic of Kenya and Government of the State of Qatar on Regulation and Employment of Kenyan migrant workers	• Initial Agreement was signed in 2012. The Agreement was to remain in force for a period of three (3) years renewable for a similar period. • The first (initial) Agreement has since expired and the Ministry submitted a revised draft BLA to the State of Qatar for consideration. A meeting was held in August, 2023 with the Chargé d'Affaires of the Embassy of Qatar in Kenya where it was agreed that a negotiating team be constituted and propose dates for the negotiation for confirmation by the Qataris.
	SEVEN (7) NEW DRAFT BILATERAL LABOUR AGREEMENTS - NEGOTIATIONS COMMENCED	
5.	Agreement between the Republic of Kenya and the Federal Republic of Germany on employment of Kenyan Workers. ***(Proposed BLA name: Agreement on a comprehensive migration and mobility partnership)***	• A taskforce drawing membership from the two countries was launched on the 13th of February, 2024 to commence negotiations during the official engagements between the Cabinet Secretary, Ministry of Labour and Social Protection and the Commissioner for Migration, for the Federal Republic of Germany. • Germany officially submitted their counter proposal in response to the draft agreement submitted by Kenya. Their counter proposal is an agreement on a comprehensive migration and mobility partnership. The agreement seeks to address the whole cycle of migration including a return and Readmission framework • The 1st round of official negotiations took place in Berlin, Germany from 5th- 7th, March 2024. The Kenyan delegation was led by the Principal Secretary

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
		for Labour and Skills Development while the German Delegation was led by the Commissioner for Migration, The Federal Republic of Germany. • Officials from various agencies in both governments deliberated on the counter proposal from the German Government. Due to the complexity and the sensitivity of issues that the agreement seeks to address, the 2nd round of technical negotiations have been scheduled for Nairobi in May, 2024.The second round seeks to look into areas that both governments have requested for more time to allow for further consultations. • The Bilateral Agreement is due for signing in mid-2024. • The targeted group are students and apprentices, and skilled workers
6.	Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Sultanate of Oman on Regulation of Employment.	• An agreed negotiated Draft MOU between the two countries has been finalized, and forwarded to the heads of the Ministries in charge of Labour in the respective countries for approval and signing. • The Government of Kenya and the Sultanate of Oman held two (2) days of bilateral meetings on the 7th and 8th June,2023 and concluded negotiations on the draft MOUs. • The final BLA is awaiting signing.
7.	MOU between the Government of the Republic of Kenya and the Government of the Kingdom of Bahrain on Regulation of Employment of Kenyan workers	• MOU approved by Office of the Attorney General and the National Treasury. The MOU was forwarded to and comments received from the Kenyan Embassy in Kuwait • The MOU has been revised to incorporate comments received from the Kingdom of Bahrain and was re-submitted to the Kingdom of Bahrain for further consideration
8.	Memorandum of Understanding between the Government of Kenya and the United Republic of Tanzania on labour matters	• A draft BLA was prepared and submitted to MFA on 15th December, 2022 for onward submission to the United Republic of Tanzania. • The draft MOU was discussed during the high-level Bilateral forum between the Government of Kenya and Republic of Tanzania held in April,2023 and is awaiting finalization.
9.	Bilateral Labour Agreement between the Government of the Republic of Kenya and the Government of the	• A draft BLA has been prepared and was submitted to MFA for onward submission to the Republic of Austria

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
	Republic of Austria on Recruitment and Employment	• The Ministry held a consultative discussions with the Director General for Labour in Austria and agreed to include Labour Clauses in the Economic Agreement with Kenya. • Even though the process of negotiations is still on-going, the labour migration has started taking place as Austrian employment agencies are in collaboration with the Private Recruitment Agencies in Kenya. • There is also an MOU between Austria and Mount University of Kenya in sourcing for 40 nurses every year from Kenya to provide their services and skills in the health industry for Austria.
10	Cooperation between the Government of Canada and the Republic of Kenya.	• The Ministry submitted a Draft BLA to the Government of Canada and was advised by the Canadian High Commission officials to engage directly with the Government of the provinces of Manitoba, Saskatchewan and Alberta as labour migration issues are devolved in Canada. • Advisory from the Canadian Minister for International Cooperation for Kenya to consider exploring employment opportunities using the Atlantic and Rural Immigration Programmes which provide for easy entry requirements for migrants because they are employer driven. • The State Department for Diaspora Affairs has since shared two draft MOUs with provinces of Nova Scotia and New Brunswick for their consideration. The provinces have acknowledged receipt and committed to send their responses.
11	Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Republic of Serbia on Regulation of Employment	• The draft BLAs have been forwarded to Ministry of Foreign Affairs and Diaspora Affairs for onward submission to Serbia for consideration. • There is already an on-going negotiation between the Kenya National Chambers of Commerce and Industry (KNCCI) and the Republic of Serbia on the modalities of the recruitment process.
	Fourteen (14) NEW DRAFT BILATERAL LABOUR AGREEMENTS – AWAITING NEGOTIATIONS	
12	Agreement on Recruitment and Employment of Kenyan Workers between the Government of the Republic of Kenya and the following Countries of Destination: • Kingdom of the State of Kuwait	• The draft BLAs have been forwarded to Ministry of Foreign Affairs and Diaspora Affairs for onward submission to the Countries of Destination for consideration. • The Ministry is yet to receive feedback or counter-proposals from the identified countries of destination.

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
	• United Kingdom • Kingdom of Saudi Arabia • Hashemite Kingdom of Jordan • Republic of Poland • Republic of Ireland (Nursing and Midwifery Workforce) • Arab Republic of Egypt • Republic of Kazakhstan • Republic of Rwanda • Federal Republic of Ethiopia • Republic of Malta • State of Israel • Vietnam • Russia	• These BLAs are focusing on employment of Kenyans skilled and professional cadres. • The Kingdom of Saudi Arabia has acknowledged the receipt of the draft BLA and has affirmed commitment to submit their counter proposal in due course. • The Framework Agreement between Kenya and Israel is on the temporary recruitment and employment of Kenyans to work in the Agricultural sector in the state of Israel.

b) Policy and legal Reform

i) The Committee was informed that the Ministry of Labour and Social Protection finalized the National Policy on Labour Migration. The Policy aims to provide a framework for promotion of inclusive and sustainable development of the country through safe, orderly and productive labour migration.

ii) The Policy outlines strategies whose implementation will enhance protection of Kenyan migrant workers. The Policy was approved by the Cabinet and is awaiting approval by the National Assembly.

iii) The Ministry in consultation with the stakeholders has developed the Labour Migration Management Bill, 2024 which seeks to promote safe, ethical and orderly recruitment; and safeguard the rights and the welfare of migrant workers.

iv) The Bill has introduced additional clauses to make recruitment agencies more accountable and periodically report on the welfare of the migrant workers recruited.

v) The Bill underwent public participation in September, 2023 where comments received have been considered and incorporated, The Office of Attorney General is yet to finalize the legal drafting of the Bill, it will then be submitted to Cabinet before submitting to Parliament for approval and enactment.

c) Kenyan Migrant Workers Welfare Fund

i) The Cabinet approved the establishment of a Kenyan Migrant Workers Welfare Fund in February 2021. Executive order No.1 of 2023 directed that the Ministry of Labour and Social Protection establish a Kenyan Migrant Workers Welfare Fund (KMWWF).

ii) The main objective of the Fund is to provide protection, welfare and assistance to Kenyan migrant workers during migration, stay in destination country and upon return to the country. The establishment of the Fund is anchored under the Labour Migration Management Bill, 2024.

d) Operationalization of the Labour Migration Desk at the Major Airports

i) The Ministry with support from the Kenya Airports Authority (KAA) has operationalized the Labour Migration Desk at the Jomo Kenyatta International Airport. The purpose of the desk is to ensure compliance with Labour Migration

Procedures before exiting the country and upon returning. This is expected to curb irregular migration, unethical recruitment, and human trafficking to ensure the realization of safe, orderly, regular labour migration for all Kenyans.

ii) The desk is manned by officers from the State Department of Labour and Skills Development, National Employment Authority (NEA) in collaboration with the immigration officers and the Kenya Airports Authority. A total of 3590 migrant workers have been cleared the Labour migration desks.

e) **Development of Information Handbooks**

i) The Committee was informed that the Ministry developed Information handbooks for Bahrain, Kuwait, Qatar, Oman, Jordan, United Arab Emirates, Saudi Arabia, United Kingdom (for health care workers) have been developed to provide information to prospective health care workers.

ii) The Committee learnt that the Ministry has also initiated development of information handbooks for Canada, Australia and Poland. The handbooks are meant to empower Kenyan migrant workers by providing factual information on the country of destination, and assist them in setting realistic goals and developing the key skills and attitudes needed to succeed in their new work environment. The information include geography to basic laws, healthcare system, and cultural. Such background will help any potential migrant, worker or family member, in mitigating any risk (including sociocultural shocks).

iii) NEA is also upgrading the Kenya migrant worker website (https://kmw.nea.go.ke/). The website is dedicated to provide migrant workers with country specific information.

f) **Return and Re-Integration Programme**

i) The Committee was informed that the Ministry through the National Employment Authority (NEA) with support from the International Labour Organization (ILO) has operationalized five (5) Migrant Resource Centres to offer redress to migrant workers and returnees. The MRCs are in located in Nairobi, Mombasa, Kisumu, Eldoret and Thika.

ii) The Ministry with support from the International Organization for Migration (IOM) has developed Standard Operating Procedures (SOPs) and guidelines to ensure the implementation of dignified return and sustainable reintegration programmes that entail economic, social and psychosocial dimensions, as well as provide a holistic and a needs-based response at the individual, community and structural levels.

3. **The National Employment Authority and the Directorate of Diaspora Affairs, Ministry of Foreign Affairs should embark on a rigorous campaign to market Saudi Arabia as an important destination country for foreign employment. The current notion that foreign workers in Saudi Arabia go through suffering need to be corrected and the citizens sensitized on the correct procedure of travel to Saudi Arabia.**

Marketing Saudi Arabia as Preferred Destination Country

The Committee was informed that the ministry has aggressively embarked on marketing of Saudi Arabia as the preferred labour destination country.

a) **Visit to the Kingdom of Saudi Arabia**

i) The Committee was informed that the delegation engaged various stakeholders (Government officials, recruitment agencies and stakeholders) in order to gain insights into the experiences of the agencies on labour migration management.

ii) During these engagements, the delegation discussed good practices, challenges as well as good practices that can assist our government in designing and implementing appropriate strategies on labour migration with a view to enhancing the promotion of safe and orderly migration of our workers to the Kingdom. The team also gained useful insights on grievance reporting and handling procedure, which is key in addressing issues arising from the employment contracts.

iii) Arising from the visit, the Ministry picked four Priority Areas. These are:

a) Strengthening the capacities and monitoring operations of Private Recruitment Agencies;
b) Review and complete overhaul of pre-departure training;
c) Restructuring of the attestation and management of foreign contracts; and
d) Development and integration of labour migration information management systems.

iv) The two countries have been holding bi weekly meetings to discuss issues affecting labour migration. The discussions are already yielding positive results as the reported number of Kenyan migrant workers in distress in KSA has drastically reduced.

b) Visit to Saudi Arabia in December 2023

The Committee was informed that in December 2023, a delegation visited the Kingdom of Saudi Arabia (KSA) to among others things discuss the possibility of increasing our share in the Kingdoms vast labour market. The delegation held discussions with various state and non-state actors. A major outcome of the visit was the offer of 2,500 job opportunities for Nursing professionals.

c) Visit by a Delegation from Saudi Arabia

Further, the Committee was informed that a delegation from Takamol (Musaned) visited Kenya in December 2023 and held consultations with the Ministry of Labour and other stakeholders on enhancing safe and orderly labour migration from Kenya to Saudi Arabia. Arising from these consultations, the two countries have embarked on integration of Musaned with NEAIMS as well as other systems. This initiative will facilitate sharing of information between the two countries.

d) **Engagements with Other Countries**

The Committee was informed that the Ministry has embarked on various strategies to secure decent employment opportunities with a number of countries and has been able to source for jobs in different sectors such as Health, Agriculture, Construction, Hospitality and Domestic among others.

Germany:

i) The Committee was informed that the engagement with the Federal Republic of Germany marks a significant milestone in our efforts to expand employment opportunities for Kenyan workers. The Ministry is working towards establishing a robust Labour mobility and migration partnership.

ii) This partnership seeks to create pathways for Kenyan workers to access employment opportunities in Germany through various channels, including apprenticeship programs, university pathways, skilled worker visas, and the Opportunity Card initiative. In March 2024, there was an exchange of proposals between the special commissioner for migration in Germany and the Ministry of Labour and Social

Protection. A second round of technical negotiations is scheduled for May 2024 in Nairobi for increased employment opportunities for Kenyan workers in Germany.

Canada:

i) The Committee learnt that market assessment was conducted in the Atlantic Provinces of Canada, namely New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island. This assessment aimed to identify employment opportunities and labor shortages in key industries within these provinces, laying the groundwork for potential collaboration and the export of Kenyan labour to Canada.

ii) Kenya has initiated discussions with the the Provinces of Nova Scotia and New Brunswick, to explore employment opportunities for Kenyan workers through the Provincial Nominee Programs (PNPs) and other immigration pathways

Republic of Austria:

i) The Committee was informed that the Ministry has initiated engagements with the Republic of Austria which aims at seeking enhanced cooperation in labor mobility, apprenticeship, student training, and employment. Austria has submitted a draft agreement outlining areas of potential collaboration between our two countries. In response, Kenya has reviewed the proposal and has formulated a counterproposal aimed at furthering our mutual interests and strengthening bilateral ties.

ii) The following job orders have been secured with different countries and recruitment is on-going.

4. **The Ministry of Labour should initiate and strengthen pre-departure training to prepare Kenyans travelling to Saudi Arabia for the challenges expected in Saudi Arabia as a way of assisting them fit in well into the Saudi Social Economic System.**

a) **Pre-Departure Training programmes for Kenya Migrant Workers**

i) The Committee was informed that the Ministry through the National Industrial Training Authority (NITA) has put in place a comprehensive pre-departure and orientation programme for migrant workers.

ii) The Home Care Management Curriculum for domestic migrant workers is being implemented to address the challenges faced by workers locally and abroad. The curriculum has 4 Courses including Pre-Departure Training for out-bound migrant workers and aims at creating a qualified, productive, healthy workforce with practical knowledge and skills in homecare management.

b) **Review of The Homecare Management Training Course**

i) The Committee learnt that in January 2023, a delegation from Kenya led by the Ministry of Labour and Social Protection visited the Kingdom of Saudi Arabia (KSA) to address labour migration issues.

ii) During the visit, it was noted that whereas KSA employers appreciate the professionalism and productivity nature of Kenyan migrant workers, there are a few concerns which appear to constrain full exploitation of the potential benefits of labour migration to both countries and in particular the migrants and respective employers.

iii) NITA embarked on the review of the current homecare management curriculum and was supported by the International Labour Organization (ILO). In June 2023, NITA released a draft of the reviewed curriculum for piloting.

iv) A number of changes were proposed in the revised curriculum which include;

a) Renaming of the programme from Homecare Management course Syllabus and Regulations to Homecare Assistant III Curriculum;

b) The duration of the curriculum was reviewed from 360 to 400 hours consisting of; 200 hours institutional training while the other 200 hours shall be workplace placement (industrial attachment);
c) Inclusion of a formative assessment accounting for 10% of the final grade that will be internally carried out by the training institution;
d) Inclusion of an additional assessment (final assessment) after industrial attachment to determine award of NSC-I Certificate;
e) Inclusion of the requirements for resource persons (teachers) and accreditation of training institutions (schools);
f) Inclusion of specific content as proposed by the stakeholders including; Saudia culture and laws, social media management, Customer service techniques, Practical home management practices for modern house, Basic Arabic and Employment contracts.

v) The Committee was informed that following further engagements with the Saudi Arabian authorities in December 2023, further proposals were done on the reviews to the curriculum. A key proposal was reduction of the processing time for unskilled domestic workers from the average of 60 days to less than 30 days. In essence, this meant that the training duration had to be affected. Consequently, the following was done:

a) Developed two training structures for homecare management training based on the agreements with the Saudi authorities, A 14 days training programme (112 hours) for KCSE holders and a 21 days training programme (174 hours) for KCPE holders. The two structures were piloted during Cohort-31 and Cohort-32.
b) Developed an independent 40-hour (5 days) module for pre-departure training targeting cross cutting occupations to include recommendations from the KSA team.
c) Additional sub units were introduced to reinforce training on Saudi Culture and Customs. These are: Introduction to the Kingdom of Saudi Arabia, Saudi Culture.
d) Arabic Conversation, Arabic non-verbal expression, Arabic numbers and symbols, Employment Contract, Ministerial Decision No. 605 - Transfer of Domestic Workers, trained 176 resource persons (industry specialists) from 75 institutions on the revised curriculum module enhance their capacity to deliver the same.
e) NITA adopted the training and assessment of the pre-departure training as a Stand-alone course applicable to all persons migrating for work to the Kingdom of Saudi Arabia.

vi) To enhance efficiency in predeparture training NITA has:

a) Developed a registration portal where details of all prospective domestic migrant workers are uploaded for training in various schools. The system captures name, ID, recruitment agency and schools the migrant worker will be enrolled in for Pre-Departure training;
b) Developed a transcript with security features including a QR reader to ensure it is not duplicated elsewhere;
c) Resulted to submission of results to all schools through an administrator log. This ensures only authorised persons or school directors can access the transcript. The log in details for transcripts are different from that of registration to ensure security of the transcript;

d) Set strict timelines which ensure no students are uploaded un-procedurally into the system; and
e) Integrated their systems with NEA to enable the prospective migrant workers be recruited through the NEA portal which also enables the results release for processing for travel.
f) Domestic migrant workers headed to Saudi Arabia are only approved by NEA through the Musaned System, once they have been assessed and certified by the National Industrial Training Authority (NITA), and the successful candidates are accessed by NEA through the integrated system.
g) NEA in collaboration with NITA and the Ministry, conducts Physical inspections in the Accredited Training Institutions offering Pre-departure training to check on the quality of training being offered and the safety and health of the trainees.

vii) Since its inception, the following are the key achievements:

a) Trained 217,200 Domestic workers.
b) Accredited 136 specialized training institution for migrant workers with a combined capacity of 10,238 trainees.
c) Trained 667 resource persons (industry professionals) for ToT to enhance their capacity to roll-out training of migrant workers by September 2023.
d) Regulated 32 training Cohorts (for Module-I) during which 227,536 migrant workers were trained and assessed as of 15th April 2024.

Support Required from the Committee

i) Fast Track the approval and enactment of Labour Migration Management Bill, 2024 after the approval of the AG and Cabinet.
ii) Establishment of Safe Houses in the Gulf Region (Cities of Riyadh, Jeddah, Dammam in Saudi
iii) Arabia and State of Qatar) with priority in the Kingdom of Saudi Arabia where numerous
iv) distress cases have been reported.
v) Support towards establishment of additional Labour Attaché Offices in key labour destination
vi) countries (Cabinet approved the establishment of 7 Labour Attaches Offices in February, 2021 however this has been hampered by lack of allocation.
vii) Adoption of Sessional Paper on National Policy on Labour Migration.
viii) Support in Establishment of the Kenya Migrant Workers Welfare Fund
ix) Additional resources on local and international travel to pursue the Bilateral Labour
x) Agreements (BLAs) by ksh.353,500,000.

Committee Observations

1. The Committee observed that the PS – State Department for Diaspora Affairs did not give a valid reason for not honouring the Committee invitation to a meeting. Consequently, the Departmental Committee of Labour Report recommendations were skipped during the meeting.
2. Committee noted that all staff accompanying the PS – State Department for Labour and Skills Development (Ms. Mary M. Wamoko -Ag. Director, Labour Migration and Ms. Edith Okoki - Ag. Director General – National Employment Authority) were all in acting capacity). Committee was informed that a civil society group had gone to court to block a recruitment requirement that stipulated a CEO be below 35 years old.

3. Additionally, the Committee was made aware that the substantive NEA Director General was in court over corruption allegations although interviews to fill the position were underway.
4. The Committee sought to know whether the toll-free number (0800222223) provided in case of distress by Kenyan Migrant workers was functional.
5. The Committee noted that the challenge facing Kenya in addressing the welfare of its migrant worker citizens was failure by partner countries such as Oman and Qatar to sign bilateral labour agreements (BLAs).
6. The Committee observed that the Ministry had initiated formulation of the Labour Migration Management Bill, 2024 which seeks to promote safe, ethical and orderly recruitment. However, the Bill was still at the Attorney-General's Office pending fine tuning.
7. The figures provided for workers employed through BLAs only showed 280 Nurses have been employed in UK through the agreement.
8. That 200,000 jobs have been advertised on the National Employment Authority's (NEA) website though the uptake had been low.
9. The National Employment Authority might be willing to do more to address the unemployment situation in Kenya but is limited in funding that is needed for publicity, awareness and civic education of Kenyans concerning available opportunities.

Committee Resolutions

1. The Committee resolved that the PS – State Department for Diaspora Affairs be invited in a fortnight's time and provide a valid reason for not honouring the Committee invitation to the meeting.
2. That the State Department for Labour considers partnering with Parliament to aid in raising awareness of employment opportunities for Kenyans. This can be done through setting aside a day in Parliament dedicated to this cause.
3. That the State Department for Labour finds ways of accessing niche areas such as opportunities for veterinary doctors, pastoralist and livestock keepers in areas such as Saudi Arabia where their services are needed. This would give Kenyans a variety of job opportunities to take advantage of.
4. That the State Department for Labour takes a forefront approach in championing for employment opportunities in Kenya through disseminating accurate information to Government and members of the public.

MIN. NO.NA/DAA&GPC/COI/2024/046: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA&GPC/COI/2023/047: ADJOURNMENT

Committee There being no other business, the meeting was adjourned at five minutes to midday.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....27/4/24

MINUTES OF THE 7TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 11TH APRIL, 2024 IN THE MAIN CHAMBERS, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Charles Gumini Gimose, M.P
4. The Hon. Hilary Arap Kosgei, M.P
5. The Hon Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Abdul Ebrahim Haro, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. John Okwisia Makali, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. George Koimburi Ndung'u, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. Siyoi Lillian, M.P
8. The Hon. Hamisi Kakuta Maimai, M.P
9. The Hon. Cynthia Jepkosgei Muge, M.P
10. The Hon. Stanley Muiruri Muthama, M.P
11. The Hon. Zamzam Mohamed Chimba, M.P
12. The Hon. Rael Chepkemoi Kasiwai, M.P

IN-ATTENDANCE

The Hon. Bernard Kibor Kitur, M.P – **Friend of the Committee**

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant II
2.	Mr. Mark Namaswa	-	Clerk Assistant III
3.	Ms. Noel Amutabi	-	Legal Counsel
4.	Ms. Angela Cheror	-	Public Communications Officer
5.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
6.	Mr. James Macharia	-	Media Relations Officer
7.	Mr. Danton Kimutai	-	Audio Officer

STATE DEPARTMENT FOR IRRIGATION (SDI)

1.	Mr. David Kipkemei	-	Alt. Director to PS, Ministry of Water, SDI
2.	Eng. Vincent Kabuti	-	State Department for Irrigation

NATIONAL IRRIGATION AUTHORITY (NIA)

1.	Eng. Charles Muasya	-	CEO, National Irrigation Authority
2.	Mr. Joel Tanui	-	Ag. Dep. GM, Operations and Irrigation
3.	Mr. Daniel Atula	-	Dep. Gen Manager, Corporate

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

1. Mr. Jackson Mue - Director Field Services, EACC
2. Mr. George Ojowi - Deputy Director Forensic Investigations, EACC
3. Mr. Abraham Kemboi - Western Regional Manager, EACC
4. Ms. Mary Kakuvi - Legal Officer, EACC

MIN. NO.NA/DAA & GPC/COI/2024/037: PRELIMINARIES

The Chairperson called the meeting to order at half past 10 a.m. and The Hon. Mark Samuel Muriithi Mwenje, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Charles Gumini Gimose, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, MP.

The Committee was made aware vide a letter that the Auditor-General was not in a position to attend the meeting as she had been invited to another three (3) Committee meetings in Parliament at the same date and time. Additionally, the Auditor-General in the letter informed the Committee that her office had not received prior information of the resolutions of *the Public Petition Committee Reports in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme* for their action. Committee resolved to check with the Table Office to establish the facts of the matter.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Principal Secretary, State Department for Irrigation - Ministry of Water, Sanitation and Irrigation, the Chief Executive Officer -Ethics and Anticorruption Commission, and the Chief Executive Officer -National Irrigation Authority regarding the Public Petition Committee Report in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/038: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next meeting.

MIN.NO.NA/DAA & GPC/COI/2024/039: SUBMISSIONS BY THE PRINCIPAL SECRETARY STATE DEPARTMENT FOR IRRIGATION-MINISTRY OF WATER & IRRIGATION AND THE CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY – REGARDING THE PUBLIC COMMITTEE REPORT IN THE PETITION NO. 8 OF 2022 BY PASTOR OCHIENG ODINDO, REGARDING THE EACC INVESTIGATIONS OF WEST KANO IRRIGATION SCHEME

The Committee was informed that the Principal Secretary, State Department for Irrigation - Ministry of Water, Sanitation and Irrigation, Mr. Ephantus K. Kimani, CBS was engaged in a meeting with the Head of Public Service and nominated Mr. David Kipkemei - Alt. Director

to PS, Ministry of Water, SDI and the Chief Executive Officer National Irrigation Authority to represent him. Mr. Ephantus K. Kimani, CBS submitted the following in response *to* **the Public Petition Committee Reports in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme for their action**

i) The Committee was informed that West Kano Irrigation Scheme is located in the Kano plains between Nandi Escarpment and Nyabondo Plateau on the shores of Lake Victoria in Kisumu County.

ii) The scheme was constructed in the year 1974 and became operational in 1976. It has 837 farmers with a total area of 4,396 acres and a gross farm land area of 2,230 acres.

iii) The average farm size is 2-4 acres per farmer. Irrigation water is abstracted by pumping from Lake Victories and water drainage is by pumping back water to the Lake.

iv) The committee was made aware that West Kano Irrigation Scheme is managed under Participatory Irrigation Management where the farmers through their elected representatives participate in day to day running of the scheme activities.

v) The scheme has Irrigation Water User Association, West Kano Farmers Management Committee. All these committees are formed by the farmers as anchored the Irrigation Act of 2019.

vi) In the financial year 2009/10 the Government of Kenya initiated the Economic Stimulus Program (ESP) which was an economic recovery plan started to boost economic growth and address some of the key economic challenges.

vii) One for the project component was food production whose aim was to increase availability and accessibility and accessibility of maize/rice crop in the Ministry of Agriculture and Livestock Development, Ministry of Water and Irrigation, Ministry of Regional Development and the Ministry of Youth Affairs.

viii) The Ministry of Agriculture and Livestock Development was to provide farm inputs which included, fertilizers, seed and pest control chemicals while the Ministry of Water through the then National Irrigation Board was to offer operation and maintenance services such as: provision of irrigation water, rehabilitation of infrastructure and co-ordinate farmers. This support was structured to be a one-off grant to the farmers and thus they were not required to pay back.

ix) The committee was informed that the then National Irrigation Board (NIB), currently National Irrigation Authority (NIA) coordinated the provision of seeds, fertilizers, ploughing (rotavation) and offered operation and maintenance (O&M) services which included water, electricity, puddling and transplanting.

x) Though the support had been given as a grant, the joint management of the scheme comprising of the NIB scheme Management and West Kano Farmers recommended that this support be recovered at the end of the growing season and be converted into a revolving fund that will be used to ensure sustainability of scheme production and operation activities.

xi) All the records have been provided to the EACC as requested.

xii) The West Kano revolving fund was formed by farmers to manage the funds and an account opened in 2010. The model of establishing and running a revolving fund collapsed as farmers resisted to pay back due to lack of a binding obligation to recover and contribute to the revolving fund.

xiii) As per the records; the following funds were disbursed to the farmers;

Schedule		Farmers disbursed	Admin expenses
1.	Land preparation and rotavation	10,962,302.00	
2.	Nursery advances	5,360,100.00	

3.	Transplanting and paddling	5,806,895.00	
4.	Spraying	72,400.00	
5.	Harvesting	2,052,430.00	
6.	Gunny/Harvesting	1,319,720.00	
7.	Loading & offloading	27,965.80	27,965.80
	Sub-Total	**25,601,812.80**	27,965.80
	Inputs disbursed		
1.	Rice seeds	6,971,400.00	
2.	SA Fertilizer	8,155,350.00	
3.	Chemicals	1,911,695.00	
4.	3212 Acres@3640.00	11,691,680.00	
	Sub-total	28,730,125.00	
	Grand total	**54,331,937.80**	**27,965.80**

xiv) The Committee was informed that the petitioner moved ahead to report the matter to the EACC Western Region, and upon the invitation by the investigators, all the required documentation to support the position of the fund was provided.

xv) There was no misappropriation of the funds as alleged by the petitioner. All records were presented to the EACC

xvi) Further, the Committee was informed that Ahero and West Kano Schemes through the Farmers Cooperative Societies received various farm machinery through the 2KR project in the year 2015 to help famers improve production by enhancing mechanization of their operations, mainly rice production. The machinery issued to the farmers' cooperative in West Kano are in operation under the management of the society.

xvii) National Irrigation Authority (NIA) has not been involved on the 4 management of the tractors. Information on management of the same is under the Kisumu County Government; department of Cooperatives Development.

MIN.NO.NA/DAA & GPC/COI/2024/040: SUBMISSIONS BY THE CHIEF EXECUTIVE OFFICER ETHICS AND ANTI-CORRUPTION COMMISSION REGARDING THE PUBLIC PETITION COMMITTEE REPORT IN THE PETITION NO. 8 OF 2022 BY PASTOR OCHIENG ODINDO, REGARDING THE EACC INVESTIGATION OF WEST KANO IRRIGATION SCHEME

The Committee was informed that the Ethics and Anti-Corruption Commission received the following allegations from a member of public in 2015;

An alleged embezzlement of public funds, which had been released to the West Kano Irrigation scheme by the government through the then Ministries of Agriculture and Water and Irrigation under the Economic Stimulus Programme (ESP) in 2009/2010 Financial Year of Ksh. 64 million and a further alleged misappropriation of Ksh. 18 million for a revolving fund.

a) Allegation regarding mismanagement of tractors
b) Allegation on suspected misappropriation of rice purchase funds

Findings and status of investigations

i) **Embezzlement of West Kano Economic Stimulus Funds**

a) The West Kano Irrigation Scheme was established in 1974 and became operational in 1976. The scheme is owned by 837 rice farmers, organized into 59 groups. The total acreage of the scheme is 2,230 acres.

b) The scheme received a grant of Kshs. 54,331,938.00 under the economic stimulus programme (ESP) in the Financial Year 2009/2010 to be advanced to farmers to improve rice production. The money was accounted for as indicated in Table 1

Table 1: Expenditure of ESP Grant

No.	Activities	Amount
1.	Cash advances (tilling, seed bed preparation and transplanting spraying, harvesting, post-harvest activities- drying, packaging and storing)	**27,573,847.00**
2.	Inputs (Chemicals, Rice, Fertilizer)	17,038,445.00
3.	Operation and maintenance (piping, pumping of water, dykes, water-pans, electricity, canals and access roads)	11,691,680.00
4.	Loading & offloading of farm inputs	27,966.00
	Total	**54,331,938.00**

Status: The investigation has been completed and did not disclose loss of funds under the ESP Grant.

ii) **Embezzlement of Revolving Fund**

a) On 31st December 2010, the scheme members formed a Revolving Fund which they named West Kano Irrigation Scheme Revolving Fund (WKIRF)

b) THE Commission established that the revolving fund (WKIRF) was not registered. The fund had no policies, structures or any governance instruments for accountability.

c) The farmers elected officials on 31st December 2010to manage the Fund. The officials opened a bank **account number 1124565752,** at the Kenya Commercial Bank Kisumu Branch with four signatories. The signatories included Chairperson, Secretary, Treasurer and an official from the National Irrigation Board.

d) On 31st December 2012, the revolving fund received a grant of **Kshs. 18,468,752.20** through the Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing.

e) The funds received were disbursed by the Fund as shown in **Table 2.**

Table 2: Disbursement

No.	Institution	Amount
1.	The National Irrigation Board	2,124,860.00
2.	Mwea Irrigation Agriculture	975,000.00
3.	Ahero Irrigation Scheme	495,000.00
4.	Kenya Women Microfinance	145,000.00
5.	National Cereals and Produce Board	130,000.00
6.	Unaccounted	14,598,882.00
	Total	**18,468,752.00**

f) An amount of **Kshs 14,598,882.00** was unaccounted for.

Status: The investigation has been concluded and appropriate recommendations made which include recovery of Kshs. 14,598,882.00 from three officials. Note that the former Secretary is deceased.

iii) **Allegation of Mismanagement of Tractors**

a) The Commission established that in 2015, West Kano Irrigation Co-operative Society received 13 tractors from Japan International Corporation Agency (JICA) and the Ministry of Agriculture, Livestock and Fisheries at subsidized rates.
b) The machinery was partially paid by the County Government of Kisumu at Kshs. 32.1 million which was supposed to be paid by the two Cooperatives society was still outstanding.
c) The Commission observed that the 13 tractors were not serviceable as at April, 2023.
d) The Commission has established that the Kisumu County Government has initiated an audit to assess the status of the tractors and farm machinery for West Kano Irrigation Co-operative Society to inform remedial action.

Status: Investigations are complete and recommendations

iv) **Alleged Misappropriation of Rice Purchase Funds**

a) Between 202 and 2021, the Government of Kenya through the Kenya National Trading Corporation (KNTC) resolved to buy milled rice from farmers in Mwea, Ahero, West Kano Irrigation and Bunyala Irrigation schemes.
b) The Government set aside Ksh. 600 million for the said rice purchases. The rice purchases were to be executed through Farmer's cooperatives within the rice schemes.
c) West Kano farmers were paid Kshs. 74,032,493 for rice deliveries.
Status: Investigations are complete with no evidence of loss.

Committee Observations

1. That the EACC did conduct the investigations after receiving allegation of misappropriation of the funds from a member of the public in 2015.
2. That the said amount of money was in the form of funds from the Economic Stimulus Programme (Ksh 54 million and not Ksh. 64 million as earlier cited in the petition).
3. The money in question was provided in 2009/2010 financial year.
4. That according to the EACC, there were two instances of irregularities: concerning alleged misappropriation of **Ksh. 18 million** for a revolving fund and concerning **misuse of tractors** (a matter that Kisumu County was auditing).
5. That the alleged embezzlement of **ksh.14,598,882.00** on 31st December 2012, of the revolving fund received through a grant of **Kshs. 18,468,752.20** through the Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing, involved two government officers.
6. That the West Kano irrigation Scheme Farmers' Revolving Fund was an unregistered entity without proper accountability framework.
7. That so far, no action had been taken by the EACC against the two officials implicated in the embezzlement of the Kshs. 14,598,882.00.
8. That the EACC is undertaking civil proceedings to recover **Kshs. 14.598,882** million from the said National Irrigation Authority staff implicated in the loss of the funds.
9. That the EACC has reported loss through destruction of some crucial documents related to the loss of funds

Committee Resolutions

1. The Committee to establish from the Table Office why the Office of the Auditor General was not communicated to concerning undertaking an audit of the West Kano Irrigation Scheme.
2. That in two (2) months' time, the EACC to provide the Committee with an update concerning the civil recovery of Kshs. 14 million from the two officials of the National Irrigations implicated in the embezzlement of the funds from the West Kano Irrigation Scheme.

MIN. NO.NA/DAA&GPC/COI/2024/041: ANY OTHER BUSINESS

There was no further business to undertake.

MIN. NO.NA/DAA&GPC/COI/2023/042: ADJOURNMENT

There being no other business, the meeting was adjourned at five minutes to midday.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE 6TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 2ND APRIL, 2024 IN THE COMMITTEE ROOM ON 5TH FLOOR, ROOM 21, BUNGE TOWER, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. The Hon. Mark Samuel Muriithi Mwenje, MP - **Chairing**
2. The Hon Prof Guyo Waqo Jaldesa, MP
3. The Hon. Siyoi Lillian, MP
4. The Hon. Cynthia Jepkosgei Muge, MP
5. The Hon. Julius Taitumu M'Anaiba, MP

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, MP – **Chairperson**
2. The Hon. Rose Museo Mumo, MP – **Vice Chairperson**
3. The Hon. Mohamed Ali, MP
4. The Hon. Elijah Memusi Kanchory, MP
5. The Hon. Johnson Manya Naicca, MP
6. The Hon. Hilary Arap Kosgei, MP
7. The Hon. Charles Gumini Gimose, MP
8. The Hon. Nicholas Ng'ikor Nixon Ngikilong MP
9. The Hon. George Koimburi Ndung'u, MP
10. The Hon. Abdul Ebrahim Haro, MP
11. The Hon. John Okwisia Makali, MP
12. The Hon. Timothy Kipchumba Toroitich, MP
13. The Hon. Hamisi Kakuta Maimai, MP
14. The Hon. Stanley Muiruri Muthama, MP
15. The Hon. Zamzam Mohamed Chimba, MP
16. The Hon. Rael Chepkemoi Kasiwai, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant I
2.	Mr. Mark Namaswa	-	Clerk Assistant III
3.	Ms. Noelle Amutabi	-	Legal Officer
4.	Mr. Collins Namulen	-	Fiscal Analyst
5.	Ms. Shalom Migare	-	Research Officer
6.	Mr. James Macharia	-	Media Relations Officer
7.	Ms. Catherine Mukunyi	-	Sergeant-at-Arms
8.	Mr. Danton Kimutai	-	Audio Officer

STATE DEPARTMENT FOR INDUSTRY – MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY

1.	Dr. Juma Mukhwana, PhD., CBS-		Principal Secretary, State Dept. for Industry (SDI)
2.	Mr. Nobby Macharia	-	Ag. Secretary, Industry
3.	Mr. Joseph Mbeva	-	Director, Industry
4.	Mr. Mutie Nzau	-	State Department for Industry

5. Ms. Caroline Kungu - SDI, Parliamentary Liaison Officer
6. Mr. Paul Kinyanjui - SDI, Parliamentary Liaison Officer

MIN. NO.NA/DAA & GPC/COI/2024/032: PRELIMINARIES

The Chairperson (The Hon. Mark Samuel Muriithi Mwenje, MP) called the meeting to order at half past ten o'clock and said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon Prof Guyo Waqo Jaldesa, MP and seconded by The Hon. Julius Taitumu M'Anaiba, MP.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. **Substantive agenda:** Meeting with the: **Principal Secretary**, State Department for Industry - Ministry of Industry, Trade and Development, and the **Principal Secretary, Treasury** - The National Treasury and Economic Planning regarding the implementation of status of the **Report of the Departmental Committee on Finance and National Planning on its Consideration of the Public Petition on Payment of Terminal Dues to former Employees of Pan Paper Mills Company Limited.**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/033: CONFIRMATION OF MINUTES.

Confirmation of minutes was deferred to the next sitting.

MIN.NO.NA/DAA & GPC/COI/2024/034: SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR INDUSTRY-MINISTRY OF INDUSTRY, TRADE AND DEVELOPMENT

Dr. Juma Mukhwana, PhD., CBS - Principal Secretary, State Department for Industry - Ministry of Industry, Trade and Development submitted the following in response to the implementation status of the recommendations contained in the **Report of the Departmental Committee on Finance and National Planning on its Consideration of the Public Petition on Payment of Terminal Dues to former Employees of Pan Paper Mills Company Limited.**

1. **Whether the Ministries of Trade, Industry and Investment and the National Treasury compiled a list of all the former employees of Pan Paper Mills Company Limited;**

Management Response

i) The Committee was informed that the Ministry (Ministry of Industry, Trade and Development) was not involved in the valuation of assets and liabilities of Pan African Paper Mills.

ii) This was done by the Joint Receiver/ Manager Messrs Muniu Thoithi and Kuria Muchiru and the Ministry of Finance. However, for the purpose of paying their terminal dues, the

Ministry in conjunction with the Ministry of Finance was directed by the National Assembly through the Implementation Committee to undertake verification of all former employees of Pan African Paper Mills.

iii) The Ministry immediately engaged the Receiver Manager Muniu Thoithi requesting for the necessary and relevant documents and information regarding pending payments to the former employees.

iv) It is worth noting that on behalf of the GOK, the Joint Receiver Muniu Thoithi and Kuria Muchiri c/o PWC undertook a verification exercise of former employees of Pan African Paper Mills with the details and records availed to them by the former senior employees of Pan African Paper Mills.

v) The State Department submits the list of 1,349 employees developed by the receiver managers and verified by the ministry.

2. **The status of payment of the former employees of Pan Paper Mills Company Limited provided for under Section 66 of the Employment Act 2012 and other related legislations;**

Management Response

i) The Committee was informed that; due to budgetary limitation/constraints, the Ministry (Ministry of Industry, Trade and Development) has not been able to pay the former employees of Pan African Paper Mills as provided under section 66 of the Employment Act.

ii) However, the Ministry has continuously been engaging with the National Treasury, with the view of availing funds to settle the terminal dues of the former employees of Pan African Paper Mills.

iii) The Committee was made aware that the Ministry Investment, Trade and Industry is desirous of ensuring that this matter is brought to rest and is working closing with the National Treasury to ensure that the matter is settled.

3. **Compliance by The National Treasury in availing funds in 2017/2018 Financial Year for payment of terminal dues to former employees of the Pan Paper Mills Company Limited**

Management Response

The Committee was informed that as indicated in the response to Questions above, The National Treasury is yet to provide funds for settlement of the former employees' dues. However, the two Ministries are in consultation with a view of resolving the matter. The correspondences between the Ministry of Investments, Trade and Industry, specifically The State Department for Industry and the National Treasury suffices.

Committee Observations

The Committee observed the following:

i) The National Treasury was not available for the meeting and at the time of the meeting, had not sent responses;

ii) On whether the former employees of Pan Paper Company had received part payment of the amounts owed the Committee noted the following:

   a) The total amount due to the former employees was Kshs. 304 million.

b) In a previous payment, Kshs 74 million was paid with a pending balance of Kshs. 229 million still due

iii) Pan Paper Company was sold for Kshs. 900 million which the Committee observed was not commensurate with its true value;

iv) The sale of the company and its premises as demonstrated before the Committee was solely to solve the issue of insolvency and not to make a profit;

v) The failure by the government to pay the former workers a sum of Kshs. 300 million; fifteen (15) years after they lost their jobs indicates lack of goodwill and commitment to settle the amounts due;

vi) The evidence presented indicates that the Ministry of Industry, Trade and Development was not involved in the valuation of the Pan Paper Company Limited which undermined their ability to make binding and timely decisions on the fate of the workers dues;

vii) Committee noted that the list of former employees was generated by the receiver manager for Pan Paper Company Limited;

viii) As it stands at the moment, the Ministry of Industry, Trade and Development has no capacity or budget that can settle the dues owed to the former employees for Pan Paper Company Limited;

ix) The Ministry of Industry, Trade and Development had proposed to have the Ksh. 220 million owed to former Pan Paper employees include in their budget estimates for FY 2024/2025 but were informed by the National Treasury that the figure could not be accommodated;

x) The Ministry of Industry, Trade and Development provided two letters to the National Treasury requesting for the inclusion of Kshs. 229 million in their sector ceiling.

Committee Resolutions

i) That the Ministry of Industry, Trade and Development be re-invited to provide evidence of their submissions during the Budget Policy Statement process indicating sums they proposed to be used in settling the former employees of Pan Paper Company Limited;

ii) That the Principal Secretary, State Department of Industry treats the matter of settling dues owed to former employees of Pan Paper Company Limited as a matter of priority and urgency;

iii) That the Principal Secretary, State Department of Industry uses the option of the Second Supplementary Budget provisions to settle part of the payment of sums owed to the former Pan Paper employees. This was proposed to be done in tranches of **Kshs. 100 million, Kshs 50 million and Kshs 30 million until the entire amount owed is cleared**. The PS Ministry of Industry, Trade and Development was in agreement.

MIN. NO.NA/DAA & GPC/COI/2024/035: ANY OTHER BUSINESS

No other business arose.

MIN. NO.NA/DAA & GPC/COI/2024/036: ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes to midday.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....27/4/2024.....

MINUTES OF THE 2ND SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON SATURDAY, 10TH FEBRUARY, 2024 IN THE PIER CONFERENCE ROOM AT THE ENGLISH POINT MARINA HOTEL, MOMBASA COUNTY AT 10.30 AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, MP – **Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, MP
3. The Hon. Elijah Memusi Kanchory, MP
4. The Hon Prof Guyo Waqo Jaldesa, MP
5. The Hon. Siyoi Lillian, MP
6. The Hon. Cynthia Jepkosgei Muge, MP
7. The Hon. Julius Taitumu M'Anaiba, MP
8. The Hon. Timothy Kipchumba Toroitich, MP
9. The Hon. Hamisi Kakuta Maimai, MP
10. The Hon. Rael Chepkemoi Kasiwai, MP
11. The Hon. Stanley Muiruri Muthama, MP
12. The Hon. Zamzam Mohamed Chimba, MP

APOLOGIES

1. The Hon. Rose Museo Mumo, MP – **Vice Chairperson**
2. The Hon. Mohamed Ali, MP
3. The Hon. Johnson Manya Naicca, MP
4. The Hon. Charles Gumini Gimose, MP
5. The Hon. Hilary Arap Kosgei, MP
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong MP
7. The Hon. Abdul Ebrahim Haro, MP
8. The Hon. George Koimburi Ndung'u, MP
9. The Hon. John Okwisia Makali, MP

IN-ATTENDANCE

THE NATIONAL TREASURY

1. Mr. Samson Wangusi, CBS	-	Principal Administrative Secretary, NT
2. Ms. Isabella Kogei, FA, CPA	-	Dir' Parliamentary Affairs National Treasury

EQUALIZATION FUND

1. Mr. Guyo Boru	-	Chief Executive Officer, Equalization Fund
2. Ms. Emily Muema	-	Economist, Equalization Fund
3. Mr. Kennedy Otieno	-	Liaison Officer Equalization Fund

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2. Mr. Abdiaziz Shobay	-	Clerk Assistant II
3. Mr. Mark Namaswa	-	Clerk Assistant III
4. Ms. Noel Amutabi	-	Legal Counsel
5. Ms. Winnie Kiziah	-	Media Relations Officer
6. Mr. Joshua Lenambeti	-	Sergeant-at-Arms

MIN. NO.NA/DAA & GPC/COI/2024/009: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past eleven O'clock and Hon. Timothy Toroitich, MP said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Cynthia Jepkosgei Muge, MP and seconded by The Hon. Zamzam Mohamed Chimba, MP.

The Committee was informed that both the Cabinet Secretary and the Principal Secretary for Treasury were not available, having accompanied the President on a working trip to Japan but had appointed Mr. Samson P. Wangusi, CBS, the Principal Administrative Secretary - Treasury to represent them. He was accompanied by Mr. Guyo Boru, CEO, Equalization Fund.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes

Substantive agenda: **Meeting with The Cabinet Secretary for National Treasury & Economic Planning and The Chief Executive Officer, Equalization Fund Advisory Board to Consider Implementation Status of the 13th Report of the Special Funds Accounts Committee (SFAC) on the status of the Equalization Fund.**

4. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/010: CONFIRMATON OF MINUTES.

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAA & GPC/COI/2024/011: STAKEHOLDER'S SUBMISSIONS CONCERNING THE IMPLEMENTATION STATUS OF THE 13TH REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE (SFAC) ON STATUS OF THE EQUALIZATION FUND.

Mr. Samson Wangusi, CBS the Principal Administrative Secretary, National Treasury and the Mr. Guyo Boru, Chief Executive Officer, Equalization Fund Advisory Board ssubmitted the following in response to the implementation status of the 13th Report of the Special Funds Accounts Committee (SFAC) on the status of the Equalization Fund.

1. **Actual Transfers to the Fund as at 31st January, 2024 Vis a Vis the Total Summary Entitlement of the Equalization Fund**
   i) The Committee was informed that in the first three Financial Years after its establishment i.e., 2011/12, 2012/13 and 2013/14, the Equalisation Fund had no allocation since the First Policy identifying the marginalized areas had not been developed by the CRA;
   ii) The total entitlement to the Fund since inception is **Kshs 62,403,758,050.** The total allocation to the Fund (approved by Parliament) since inception is Kshs. **33,597,717,433.** Out of this, **KSh.12,400,000,000** was appropriated through the Equalisation Fund Appropriation Act 2018;
   iii) Out of the outstanding **Kshs 21,197,717,433, Ksh.10,330,317,433** has been appropriated through the Equalisation Fund Appropriation Act 2023 being EF allocation for FY 2021/22 (Kshs **3,261,843,222**) and FY 2022/23 (**Kshs 7,068,474,211**) and outstanding balance of **Kshs. 10,867,400,000** considered in Equalisation Fund Appropriation Bill 2023 currently in the legislative process;

iv) However, the amount appropriated in the Equalisation Fund Appropriation Act 2023 **Kshs. Ksh.10,330,317,433** being EF allocation for FY 2021/22 and FY 2022/23 was not transferred to the Equalisation Fund since the allocation was reduced to zero during the Supplementary budget of 2022/2023 FY. Therefore, the total arrears entitled to Equalisation Fund amount to **Kshs. 39,136,358,050 (Kshs. 28,806,040,617+ Ksh.10,330,317,433);**

v) It is important to note that the FY 2023/24 allocation of **Kshs. 10,867,400,000** will be applied to implement Equalisation Fund Appropriation Act 2023;

vi) The table below tabulates the total entitlement to Equalization Fund and the Allocation approved by Parliament since inception to the FY 2023/2024.

Table 1: Equalisation Fund Entitlement and Allocation since Inception

S/N.	Financial Year	Most recent audited revenues approved by the National Assembly		Equalization Fund Allocation (Kshs.)	Equalization Fund Entitlement (0.5% of most recent audited and approved revenues) (Kshs.)	Amount Reflected in the DORA
		Base Year for most recent audited revenues approved by National Assembly	Audited and approved revenues by National Assembly (Kshs.)			
	(a)	(b)	(c)	(d)	(e)	
1)	2011/12	2008/2009	468,151,970,000	0	2,340,759,850	0
2)	2012/13	2009/2010	529,300,000,000	0	2,646,500,000	0
3)	2013/14	2009/2010	529,300,000,000	0	2,646,500,000	0
4)	2014/15	2009/2010	529,300,000,000	400,000,000	2,646,500,000	3,400,000,000
5)	2015/16	2012/2013	776,900,000,000	6,000,000,000	3,884,500,000	6,000,000,000
6)	2016/17	2013/2014	935,653,000,000	6,000,000,000	4,678,265,000	6,000,000,000
7)	2017/18	2013/2014	935,653,000,000	0	4,678,265,000	7,727,000,000
8)	2018/19	2013/2014	935,653,000,000	0	4,678,265,000	4,700,000,000
9)	2019/20	2014/2015	1,038,035,000,000	0	5,190,175,000	5,760,000,000
10)	2020/21	2016/2017	1,357,698,000,000	0	6,788,490,000	6,788,490,000
11)	2021/22	2016/2017	1,357,698,000,000	3,261,843,222	6,788,490,000	6,825,317,433
12)	2022/23	2017/2018	1,413,694,840,000	7,068,474,211	7,068,474,200	7,068,474,211
13)	2023/24	2019/20	1,673,715,000,000	10,867,400,000	8,368,574,000	8,368,574,000
GRAND TOTAL			**12,480,751,810,000**	**33,597,717,433**	**62,403,758,050**	**62,637,855,644**

The National Treasury committed to pay the arrears as follows:

Table 2. Proposed Plan on Appropriation of Equalization Fund Arrears

Financial Year (A)	Budget Estimates (B)	Equalization Fund Arrears (C)
2023/24	8,368,574,000	-
2024/25	8,368,574,000	9,976,766,000
2025/26	9,590,000,000	9,976,766,000
2026/27	10,960,000,000	9,976,766,000
2027/28	14,393,000,000	9,976,766,000
Grand Total	51,680,148,000	39,907,064,000

Committee Observation

The Committee observed that there was need for impact assessment done to determine the efficacy of the Equalization Fund projects and programmes in Kenya.

2. Progress of Implementation of First Marginalization Policy Projects

i) The Committee was informed that as a pre-condition to the utilization of the Equalisation Fund, Article 216(4) of the CoK requires that the Commission on Revenue Allocation (CRA) determines, publishes and regularly reviews a policy in which it sets out the criteria by which to identify marginalized areas for purposes of Article 204 (2);

ii) The First Marginalization Policy was developed in 2013 and was approved by Parliament in December 2014;

iii) Based on the triangulation of data, fourteen (14) counties were identified as marginalized and have since benefited from the Fund;

iv) Since inception to November 2019 the EF was administered ***directly*** through the nullified Guidelines published in 2015. During this period the First Policy was implemented directly by the National Government through Ministry Department Agencies;

v) However, the implementation of the First Marginalisation Policy stalled due to the High Court ruling on Petition no. 272 of 2016 which declared the EF Guidelines as unconstitutional, null and void. This in effect disbanded EFAB and barred any further expenditure from EF hence delay in completion of the projects;

vi) In order to ensure completion of ongoing projects under the first Marginalisation Policy, Regulation 3(d) of the Equalisation Fund Regulations, 2021 provide for completion of projects;

vii) As at 31st January, 2024, and based on submission from MDAs, a total of 354 projects were financed by allocation to the Equalisation Fund for the FYs 2014/15, 2015/16 & 2016/17 as appropriated through Equalisation Fund Appropriation Acts 2017 and 2018;

viii) The projects are at different stages of implementation. Out of the 354 projects:

a) **189** projects are 100% complete and ready for handover
b) **87** projects between 75% and 99%
c) **25** projects between 50% and 74%
d) **28** projects below 50%
e) **24** projects in inception stage
f) **1** project Stalled.

ix) The details of each project for each of the **14 counties** is as per Equalisation Fund Appropriation Act 2018 and submissions by implementing MDAs.

Table 3: First Marginalization Policy Equalization Fund Projects

Implementing MDA	No. of Projects	Inception	Stalled	<50 %	50% - 74%	75%-99%	100% (Completed)
Ministry of Health	84	11	1	5	9	51	7
State Department for Infrastructure, through KERRA	84	6	0	12	1	6	59
State Department for Irrigation	30	0	0	0	1	10	19

Ministry of Water and Sanitation	122	1	0	9	14	18	80
State Department for Technical and Vocational Training	4	3		1	0	0	0
State Department for Early Learning Basic Education	10	3	0	0	0	2	5
Ministry of Energy	20	0	0	1	0	0	19
Total	**354**	**24**	**1**	**28**	**25**	**87**	**189**

x) The completion of all the First Policy projects is ongoing and the Fund expects the implementing MDAs to conclude implementation by end of the current Financial Year (2023/24).

Disbursements from the Equalization Fund to date

xi) Based on the Equalization Fund appropriation Act 2018 which appropriated **KSh.12,400,000,000,** the National Treasury has to date disbursed a total of **Kshs. 10,956,075,433 in** various FYs to the MDAs implementing the identified projects in the 14 marginalized counties as shown below:

Table 4: Total Disbursements from the Equalization Fund as at 31st January, 2024

No.	Financial Year	Amount in Kshs
1.	2016/17	942,313,944
2.	2017/18	6,937,847,293
3.	2018/19	2,466,411,814
4.	2022/23	585,228,546
5.	2023/24	24,273,836
	TOTAL	**10,956,075,433**

Table 5: Disbursements from the Equalization Fund to Specific Implementing MDAs from FY 2018 to Date

No.	Ministry	Amount Disbursed
1	State Department for Medical Services	**1,803,199,253**
2	State Department for Technical, Vocational Education and Training	**160,499,975**
3	State Department for Transport	**3,791,095,723**
4	State Department for Energy	**556,450,000**
5.	State Department for Irrigation	**1,082,284,823**
6.	State Department for Water and Sanitation	**3,562,545,659**
	Total	**10,956,075,433**

xii) Out of the total allocation for the Equalisation Fund Appropriation Act 2018, **Kshs.12,400,000,0000, Kshs.11,971,837,433** was development expenditure. The total disbursed to implementing MDAs is **Kshs. 10,956,075,433.** Therefore, the amount available for payment of pending bills and the completion of ongoing projects is **Kshs.1,015,761,637;**

xiii) The disbursement to the implementing MDAs is subject to provision of payment certificates, project implementation status report and approved works.

Committee Observation

The Committee observed that there was still need for impact assessment to be carried out to determine the efficacy of the Equalization Fund projects and programmes in Kenya.

3. **Progress of Amendment to the Public Finance Management (Equalization Fund Administration) Regulations, 2021 for the Appointment of the Fund Administrator and Accounting Officer of the Equalization Fund Advisory Board**

   i) Section 18 (1) of the Public Finance Management Act 2012 provide that the National Treasury shall administer the Equalisation Fund in accordance to Article 204 of the Constitution. Additional, Section 24 (5) provide that the Cabinet Secretary National Treasury to designate a person to administer every national public fund established under Section 24 (4);

   ii) In view of the above the CEO Equalisation Fund was appointed by the Cabinet Secretary National Treasury as the administrator of the Fund;

   iii) However, Regulation 20 (i) of the Public Finance Management Act Regulations 2015 provide that the Accountant-General Department shall be responsible for administering the Consolidated, Equalization and Contingencies Funds;

   iv) It is important to note that currently there are two Bills which are in different stages of legislation process before Parliament.

   a) The Equalization Fund (Administration) Bill (Senate Bills No.14 of 2023)

   v) The Bill proposes to establish administrative structures for the management of the Equalisation Fund to ensure efficient and effective mechanisms are in place for smooth implementation or utilization of the Fund. The Bill was passed by the Senate on 12/10/2023 with amendments and referred back to the National Assembly.

   b) The Equalisation Fund Bill, 2022

   vi) The Bill sponsored by Hon. Kassait Kamket, MP underwent 1st Reading on 30th November, 2022 and committed to the Departmental Committee on Finance and National Planning.

   vii) The Objective of the Bill is to;

      a) Operationalize the Equalization Fund as established under Article 204 of the Constitution; and

      b) Establish a board to administer the Fund in instances where the Fund is directly used for the provision of basic services to marginalized areas;

      c) Therefore, to avoid multiple legislations on Administration of the Fund the process of amendment of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 is pending the finalization of the two Bills;

      d) Additionally, the Fund recommends for amendment of Regulation 20 (i) of the Public Finance Management Act Regulations 2015 which provides that the Accountant-General Department shall be responsible for administering the Equalisation Fund to expressly appoint the Chief Executive Officer, Equalisation Fund to be the Fund Administer and the Accounting Officer of Equalisation Fund.

4. **Steps Taken to Ensure That the Equalization Fund Advisory Board Provides Adequate Facilitation, Including Functional Physical Offices at the Secretariate, to Parliament Representatives**

   i) The Committee was made aware that Section 4 (1) of the Public Finance (Equalisation Fund Administration) Regulations 2021 established an Advisory Board charged with the responsibility of providing policy and strategic direction;

   ii) The Board as outlined comprises of nine (9) members which comprise of:

      a) The Chairperson who shall be appointed by the Cabinet Secretary;

b) The Principal Secretary to the National Treasury or his representative designated in writing;
c) The Principal Secretary responsible for matters relating to devolution or his or her representative designated in writing;
d) one person from a pastoralist community nominated by the National Assembly;
e) one person nominated by the Senate;
f) one person nominated by the Council of Governors drawn from the areas defined as marginalised;
g) the Chief Executive Officer who shall be the secretary to the Board; and
h) three other persons nominated from organizations working in equalization fund beneficiary counties and special interest group, appointed by the Cabinet Secretary.

iii) The Equalisation Fund Advisory Board was constituted as per the Regulations and as at 31st January 2024 the Board has held has held a total of **16** Board meetings;
iv) The Public Finance (Equalisation Fund Administration) Regulations 2021 provides for appointment by the Cabinet Secretary of two nominees of Parliament: National Assembly and the Senate respectively;
v) The nominees were competitively nominated by Parliament and appointed by the Cabinet Secretary National Treasury and Economic Planning for a non-renewable term of six years;
vi) As per the provision of the Equalisation Fund Administration Regulations 2021, the nominees are Board directors upon appointment;
vii) The facilitation, benefits and Board allowances of the Board Directors are as guided by *Mwongozo the Code of Governance for State Corporations*, National Government Circulars. Additionally, the Equalisation Fund Board Charter provides for the role, responsibilities, and functions of the Board in the governance of the Equalisation Fund;
viii) Nevertheless, the Equalisation Fund Secretariate will seek guidance from the Salaries and Remuneration Commission on the benefits that can accrue to the Board Directors especially for Parliament nominees considering the competitive nature of nomination and the fixed term of non-renewable six years.

Committee Observation

The Committee noted that the Fund's tenure as originally intended was to lapse in 2032, however, Parliament could extend the life of the Fund, subject to an impact assessment exercise.

5. **Status of Development of the Second Marginalisation Policy**

i) The Committee was informed that the PFM (Equalisation Fund Administration) Regulations 2021 operationalized the EF which shall be utilized indirectly as conditional grants to the affected counties in accordance with the Division of Revenue Act and the EF Appropriation Act for the respective FY;
ii) The County Technical Committees and all other lower tier committees as stipulated in PFM (Equalisation Fund Administration) Regulations, 2021 have been established in the 34 beneficiary counties and the committees have since been sensitised and inducted;
iii) The Second Policy on Marginalization was developed and published in 2018. The area of analysis changed from county to sub location. There are 7,131 sub locations across the **47** counties. The Policy identified **1,424** marginalized areas as planning units spread in **366** wards, **111** constituencies and **34** counties: ***Turkana, West Pokot, Narok, Mandera, Wajir, Samburu, Garissa, Baringo, Kilifi, Marsabit, Tana River, Kajiado, Kitui, Kwale, Migori, Isiolo, Homa-Bay, Laikipia, Nandi,***

Elgeyo Marakwet, Kericho, Bungoma, Lamu, Tharaka-Nithi, Siaya, Meru, Kisumu, Bomet, Busia, Taita Taveta, Machakos, Trans Nzoia, Nakuru and Murang'a;

iv) The implementation of the Second Marginalisation Policy has commenced and is applied against the Equalisation Fund Appropriation Act 2023 enacted on 30th June, 2023 of **Ksh.10.3 billion** (Copy attached);

The Implementation of the Second Marginalisation Policy was delayed due to the following challenges:

1. **Court Cases:**
   v) **Petition number 003 of 2023** in the High Court of Kenya at Garissa and court order dated 31st May, 2023. In the Petition, Sahal Sugow Muhamud, Abdi Madow Elmi, Muhamud Mohamed Abdi and Kusuw Degow Maow have petitioned Equalisation Fund Board, Commission on Revenue Allocation, Controller of Budget, the National Treasury and Office of the Attorney General. The questions for determination were:
      a) That the Commission on Revenue Allocation (CRA) published the Second Marginalisation Policy and criteria for sharing revenue among Marginalised areas without conducting effective and efficient public participation as prescribed in Article 10 of the Constitution;
      b) That CRA and Equalisation Fund Board have discriminated against Dadaja Ward in Wajir South Constituency by comparatively allocating it a lower revenue allocation compared to other wards in Wajir South Constituency as a result of discimination and political interference in contravention to Article 27 of the Constitution of Kenya
   vi) **Petition 4 of 2023** in the High Court of Kenya at Garissa. In the Petition, Sahal Sugow Muhamud, Rashid Billow Adan, Muhfuda Hajji, Mahat Mohamed, Mohamed Ibrahim Hussein and Ayub Abdi Osman have petitioned Equalisation Fund Board, the National Assembly, the National Senate, Commission on Revenue Allocation, Office of the Attorney General and Controller of Budget.

      The questions for determination were:
      a) What criteria was used by the respondents (Equalisation Fund Board, the National Assembly, the National Senate, Commission on Revenue Allocation, Office of the Attorney General and Controller of Budget) in omitting certain wards in Wajir County from the Equalisation Fund Appropriation Bill,2023 yet there was no public participation in the entire county;
      b) What was the basis of allocation of funds under the Bill and the creation of fake wards (Ganyure and Wagalla) in Wajir County; and

      c) Why was public participation not carried out in Wajir County and what was the basis of allocating funds in that County. The Appropriation Bill, 2023 mentioned Ganyure and Wagalla wards as beneficiaries do not exist in Wajir county.

   vii) In the Petitions, the Court ordered that pending the hearing and determination of the applications:
      a) An order restraining the respondents from implementing the Commission on Revenue Allocation Second Marginalisation Policy and Criteria 2022/2023 for sharing revenue amongst marginalised areas;
      b) Conservatory orders issued restraining the Controller of Budget from authorising the withdrawal of Equalisation funds; and

c) Conservatory orders issued restraining the National Treasury from disbursing the Equalisation funds.

viii) This has delayed implementation of the Second Marginalisation Policy.

2. **Tight fiscal space to allocate and appropriate all Equalization Fund entitlement.**

xiv) The allocation to Equalisation Fund appropriated in the Equalisation Fund Appropriation Act 2023 was reduced to zero during the Supplementary budget II of 2023;

xv) The Court order was vacated on 26th November, 2021 and this signaled commencement of implementation of the Second Marginalisation Policy;

xvi) The Committee was informed that as at 31st January, 2024, the Equalisation Fund Advisory Board received project proposals from **30** beneficiary counties: **Baringo, Busia, Bungoma, Elgeyo Marakwet, Homa Bay, Isiolo, Laikipia, Lamu, Kisumu, Kwale, Kilifi, Kitui, Kajiado, Machakos, Marsabit, Mandera, Meru, Migori, Nandi, Nakuru, Narok, Turkana, Trans Nzoia, Taita Taveta, Tharaka Nithi, Tana River, Samburu, Siaya, Wajir and West Pokot;**

xvii) Out of the **34** beneficiary Counties **4** counties: **Bomet, Garissa, Murang'a and Kericho** are yet to submit their project proposals to the Equalisation Fund Advisory Board;

xviii) As at 31st January, 2024, the Equalisation Fund Advisory Board analysed, considered, and approved **644** projects from **14** Counties: **Baringo, Busia, Homa Bay, Laikipia, Kisumu, Meru, Nandi, Tharaka Nithi, Samburu, Marsabit, Mandera, Siaya, West Pokot, and Tana River**. The Board resolutions were communicated to the Counties to begin implementation of the projects;

xix) Projects Proposals from **16** counties: **Bungoma, Elgeyo Marakwet, Isiolo, Kwale, Kilifi, Kitui, Kajiado, Lamu, Narok, Machakos, Migori, Nakuru, Turkana, Trans Nzoia, Taita Taveta and Wajir** have been analysed pending Board's consideration and approval.

Table 6: Analysis of County Project Proposals from 14 Counties Per Sector Priority

S/N	Sector	Number of Projects	Budgeted Amount	Percentage (%)
1.	Education	93	327,834,842	7.4
2.	Energy	54	370,693,796	8.4
3.	Health	120	924,170,798	21.0
4.	Water	155	1,466,088,614	33.3
5.	Roads	220	1,298,410,386	29.5
6.	Others	2	21,367,000	0.5
	Total	644	4,408,565,436	100.0

xx) Regulation 30(3) of the PFM (Equalisation Fund Administration) Regulations 2021 provides that the authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund account in accordance with the authorization and instructions given;

xxi) Further Regulation 30(4) provides that All withdrawals made from the Fund under sub-regulation (1) shall be deposited into the respective spending counties account;

xxii) Therefore, the disbursements of the funds to the respective marginalised Counties for implementation of the Second Marginalisation Policy will commence upon implementation of the projects and guidelines issued by the Controller of Budget.

Committee Observations

The Committee observed that there was no clear picture whatsoever of the nature and measurability of the Fund's projects and the efficacy levels of the programmes put in place.

Committee recommendations

1. The Committee resolved to visit counties with the Equalization Fund's projects as a way of assessing its impact on the local communities.
2. The Committee also recommended that an impact assessment survey would be an important exercise for the Committee to gauge the efficacy of the Fund's projects, priorities and advise accordingly on the way forward including the extension of its tenure (Sunset clause) among other key determinants.

MIN. NO.NA/DAA & GPC/COI/2024/012: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAA & GPC/COI/2024/013: ADJOURNMENT

There being no other business, the meeting was adjourned at a quarter to One o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....27/2/24.....

MINUTES OF THE 1ST SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 9TH FEBRUARY, 2024 IN THE PIER CONFERENCE ROOM, THE ENGLISH POINT MARINA HOTEL, MOMBASA COUNTY AT 3.00 PM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Mark Samuel Muriithi Mwenje, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon Prof Guyo Waqo Jaldesa, M.P
5. The Hon. Siyoi Lillian, M.P
6. The Hon. Cynthia Jepkosgei Muge, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Hamisi Kakuta Maimai, M.P
10. The Hon. Rael Chepkemoi Kasiwai, M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. Abdul Ebrahim Haro, M.P
8. The Hon. George Koimburi Ndung'u, M.P
9. The Hon. John Okwisia Makali, M.P

IN-ATTENDANCE

MINISTRY OF WATER/ COAST WATER WORKS DEVELOPMENT AGENCY

1.	Eng. Martin Tsuma	-	Ag. Chief Executive Officer, CWWDA
2.	Mr. Hamadi Mwazito	-	Internal Audit, CWWDA
3.	Mr. Stephen Masai	-	Head of Finance, CWWDA
4.	Mr. Sidney Chihanga	-	Hydrologist, CWWDA

ETHICS AND ANTI-CORRUPTION COMMISSION

1.	Mr. Jackson Mue	-	Director Field Services, EACC
2.	Mr. David K. Too	-	Director General Services, EACC
3.	Mr. Pascal K. Mweu	-	Director Investigations
4.	Mr. Mark Ndiema	-	Regional Manager, Coast Region

NATIONAL LAND COMMISSION

Mr. Edward M. Bosire	-	Official-NLC, Mombasa

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Lucy Kimathi	-	Principal Clerk Assistant/HOD
2.	Mr. Abdiaziz Shobay	-	Clerk Assistant II
3.	Mr. Mark Namaswa	-	Clerk Assistant III
4.	Ms. Noel Amutabi	-	Legal Counsel
5.	Ms. Winnie Kiziah	-	Media Relations Officer
6.	Mr. Joshua Lenambeti	-	Sergeant-at-Arms

MIN. NO.NA/DAA & GPC/COI/2024/001: PRELIMINARIES

The Chairperson called the meeting to order at three O'clock and Hon. Guyo Jaldesa, MP said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P.

The meeting was informed that the Cabinet Secretary for Water, Sanitation, and Irrigation was not available but had appointed Eng. Martin Tsuma, Chief Executive Officer, Coast Water Works Agency, to represent her.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretary, Ministry of Water, Sanitation & Irrigation and the Chief Executive Officer, Coast Water Works Development Agency (CWWDA); to consider implementation status of the Public Investment Committee's (PIC) 21st and 23rd Reports on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAA & GPC/COI/2024/002: CONFIRMATON OF MINUTES.

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAA & GPC/COI/2024/003: SUBMISSIONS BY THE CEO COAST WATER WORKS DEVELOPMENT AGENCY REGARDING THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENT COMMITTEE'S (PIC) 21ST AND 23RD REPORTS ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS

The Chief Executive Officer, Coast Water Works Development Agency (CWWDA), Eng. Martin Tsuma submitted the following in response to the implementation status of the report by the Public Investment Committee's (Pic) 21st And 23rd Reports on Consideration of the Auditor-General's Report on the Financial Statements of State Corporations.

a) **Property, Plant & Equipment**

1. **The Ministry of Water and Irrigation ensures that the transfer of assets from the National Water Conservation and Pipeline Corporation to CWSB and other water service boards across the country is finalized within six (6) months of adoption of this Report.**

    i) The Ag. Chief Executive Officer Eng. Martin Tsuma informed the Committee that no transfer of Assets has been done to date. However, the Agency has undertaken searches and registering restrictions and instituted Court matters through the EACC (Filed Pleadings);
    ii) The Agency has lodged complaints to the National Land Commission (NLC) and the EACC on behalf of the Ministry of Water and National Water. Additionally, the Agency has placed restrictions on these lands while investigation by EACC is ongoing.

2. **The Ministry of Water and Irrigation engages the Ministry of Lands and the National Land Commission with the aim of acquiring ownership documents of the said parcels of land;**
    i) The Ag. CEO informed the Committee that they had initiated a consultative meeting between the Ministry of Lands, NLC, EACC, and National to create a road map on reclaiming the grabbed and asset and liability transfer;
    ii) The Agency has in place a grounds report that provides individual details of the property within their jurisdiction.
3. **The CEO ensures that the Board maintains an asset register as a financial prudence measure.**
    The Ag. CEO informed the Committee that the Agency has an Asset register in place as per the prescribed format of the National Treasury and being submitted on quarterly basis to National Treasury.
4. **The CEO seeks a court order for immediate eviction of the illegal occupants from its parcels of land and Shanzu Staff Housing and puts a caveat on its properties.**
    The Committee was informed that, the matters are being handled by EACC, with orders being sought will invoke the evictions.

Committee Observations

The Committee noted that among the alleged land grabbers were government officials as well as absentee landlords who lived in the Gulf but still collected rent from the buildings set up on the grabbed land. The committee noted that if demolitions and evictions were effected as a recovery measure for the 19 parcels of grabbed land belonging to the Coast Water Works Agency, approximately 1,000 people would be affected, which would not be the ideal situation.

Committee Recommendations

The Committee recommended tabling a motion in Parliament aimed at the recovery of grabbed government land, and the Ministry should come up with a carefully executed out-of-court settlement, which would be the ideal scenario.

b) **Trade and other Receivables: FY 2012/2013- 2014/2015 Accounts**

1. **The CEO ensures that the Board regularly reconciles payables and receivables between CWSB and the six water service providers it serves and ensures that all reconciliation and outstanding debts are well documented.**

   The CEO informed the Committee that he constituted a team to undertake both the trade and other receivables from WSP's, who regularly meet and undertake this exercise.

2. **The Board reviews the policies in place governing management of debts in the CWSB to establish areas of weaknesses and recommend prudent debt management system, debt restructuring and write-off if any under the Limitation Act.**

   The CEO informed the Committee that reviews of the policies will be completed by June 30, 2024.

3. **The County Governments of Mombasa, Kilifi, Kwale, Taita Taveta and Lamu under whose jurisdiction the indebted WSPs fall come up with measures to bail out the companies and fully settle the debts owed to CWSB within six (6) months of adoption of this Report.**

   The CEO informed the Committee that several meetings have been done between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency but no tangible results have been achieved.

4. **The parent Ministry of Water and Irrigation intervenes and ensures that the County governments settle the debts owed by their respective WSPs.**

   The CEO informed the Committee that reconciliatory meetings were constantly held to address this issue and that the matter was pending. The Ministry will be notified by Monday, February 12th 2024 to take up the matter.

5. **The CEO ensures that the outstanding Imprest owed by ex-staff members are fully recovered from their terminal dues and further enforce the Board's policy on surrender of Imprest by staff in addition to section 92 of the Public Finance Management Act Regulations of 2015 which allows surcharging of officers for any imprest held beyond the stipulated seven (7) days after return to the work station.**

   The CEO informed the Committee that recovery for Imprest by ex-staff not recovered as final dues have not been claimed. The concerned staff passed on and the family is yet to claim. Management has enforced the Board's policy on surrender of imprest by staff within the stipulated time.

c) **Trade and Other Payables: FY 2012/2013 Accounts**

1. **The Board reviews its water tariffs charged on WSPs to enhance its revenue and enforce debt collection measures to obtain revenue to enable it meet its financial obligations and cover for losses.**

   The CEO informed the Committee that a new water tariff has been gazetted and is effective from November 2024 with a loan repayment component. Once implemented will set aside the component of loan repayment.

2. **The CEO ensures that the Board maintains its operational costs below its revenue.**

The Committee was informed that this has been complied with and the agency ensures its operational costs are below the revenues generated. Additionally, the Agency is in the process of implementing an Alternative Energy source for Baricho and Tiwi Bulk water systems to reduce the over reliance on expensive power.

d) **Trade and Other Payables: FY 2012/2013 Accounts**

The Committee recommends that the CEO ensures that the Board undertakes reconciliation of its accounts regularly and further avails all the documents to the Auditor- General for verification during the audit process.

The CEO informed the Committee that the issue was well noted and complied with accordingly. Reconciliations will be done quarterly, and reports will be submitted to the Auditor-General annually for Audit.

e) **World Bank Loan: FY 2013/2014 & 2014/2015 Accounts**

1. **The Board requests the Water Service Regulatory Authority (WASREB) to increase water tariffs so as to factor in a loan repayment component in the new proposed water tariffs.**

The Committee was informed that a new water tariff has been Gazetted and is effective from November 1, 2024, with a loan repayment component. The WSPs and the Agency will deposit money in a designated loan repayment account.

2. **The CEO CSWB requests the National Treasury to negotiate for rescheduling of the loan repayment period as the Board explores alternative sources of revenue to repay the loan.**

The CEO informed the Committee that the Agency is undertaking reconciliation with the National Treasury on the loan balances and the actual position will be reported once the exercise is completed and further negotiate for rescheduling of loan repayment.

f) **Other Matter - 2013/2014 Financial Year Accounts**

The Committee recommends that the CEO ensures that the Board complies with the International Public Sector Accounting Standards in preparing its financial statements.

The CEO informed the Committee that the observation was noted and the Agency has applied the Format prescribed by the Public Sector Accounting Standards Board on the Presentation of Financial Statements in the subsequent financial years.

g) **The Board Expenses: FY 2014/2015 Accounts**

1. **The CEO seeks post-facto approval of KES 5,094,049 from the National Treasury for the over-expenditure in FY 2014/2015.**

The CEO informed the Committee that the Agency was yet to receive concurrence from the National treasury on the Approval and would step up the follow up so that the matter can be closed by end of the Financial Year

2. **The CEO ensures that the Board complies with the Section 10 of the State Corporations Act and the Mwongozo Code of Governance for State Corporations on remuneration of Board's Chairpersons and Directors.**

   The CEO informed the Committee that the Agency do comply with Section 10 of the state corporation and the Mwongozo code of Governance in handling remuneration for the chairperson and the directors.

3. **The CEO ensures that Board Chairman refunds the sitting allowances amounting to KES 99,790 for his failure to attend the training.**

   The CEO informed the Committee that the chairman was yet to refund the funds though he was notified accordingly. Further follow up will be done to ensure the matter is closed by end of the Financial Year.

Committee Observations

The Committee observed that the Coast Water Works Agency had reached out to the former Board chair and expressed concern over the failure of the Board Chairperson who was paid the Kshs. 99,000 and his reluctance to refund the money.

Committee Resolutions

The Committee resolved that the Coast Water Works Development Agency should write a letter to the said former Board chairperson demanding why he was unwilling to refund the money.

h) **Local Travel and Accommodation: FY 2014/2015 Accounts**

1. **The Committee recommends that the CEO avails all documents to the Auditor-General for verification during the audit process.**

   The Committee was informed that the matter was well noted and complied with accordingly in all subsequent years.

i) **Other Matter: FY 2014/2015**

The Committee recommends that the Water Services Regulatory Board provides a justification for exemption of Tana River County from payment of water services provided by the Coast Water Services Board. WASREB should also provide a time frame for which the county is exempted from such payments.

i) The Agency bills WSPs for water supplied to cover the operational costs of water systems. The Agency has not been operating and maintaining the water systems in some counties, including Tana River County. Tana River County was and is overseeing the operations and maintenance of all water systems. For this reason, the Agency cannot charge water service charge.
ii) The Agency used to charge only Administrative/Lease fees up to 2018 but this was stopped after the enactment of the Water Act 2016.

FY 2015/16 TO FY 2017/18

a) **Other Matter Property Plant & Equipment (FY 2015/16)**

1. **Management should follow up the matter with the National Land Commission to secure titles for the land within three months of adoption of this report.**

   The CEO informed the Committee that the Agency has lodged complaints to the National Land Commission (NLC) and the EACC on behalf of the Ministry of Water and National Water. Additionally, the Agency has placed restrictions on these lands while investigation by EACC is ongoing.

Committee observations

The Committee noted that amongst the alleged land grabbers, were government officials as well as absentee landlords who lived in the Gulf but still collected rent from the buildings set up on the grabbed land. Committee proposed tabling a motion in Parliament aimed at recovery of grabbed government land.

Committee recommendations

The Committee recommended that the EACC and other relevant bodies follow up with the matter of recovery of lands from the said parties including government officials in court and settle the matter to its full conclusion. That responsible government officials who aided and abated the land grab be held responsible for their actions.

b) **Trade And Other Receivables FY 2015/16 TO FY 2017/18**

i) **The Board should sue Counties which undertook to clear their long outstanding water bills but had failed to do so.**

The CEO informed the Committee that several meetings were held between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency.

2) **The presidential directive on clearance of all pending bills should be implemented**

The Committee was informed that WSP's do pay partly their water bills to KPLC and at the same time remit partly to CWWDA. Follow ups are also done by the revenue collection team of CWWDA.

3) **Management should seek write off for imprest held by deceased staff after ascertaining that it cannot be recovered from their estate.**

The Committee was informed that the recovery had not yet been done as family is yet to claim final dues. Management endeavors to comply to recover full un-surrendered imprest within the stipulated time as stated in the PFMA.

c) **Trade & Other Payables FY 2015/16 TO FY 2016/17**

The authority should expeditiously reconcile the audit fees and settle the matter

This matter was resolved.

d) **World Bank Loan FY 2015/16 TO FY 2017/18**

1) **The Board should disconnect water to entities that were not paying their water bills as the lack of revenue was impacting the Board's ability to meet its financial obligations.**

The CEO informed the Committee that several meetings were held between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency. Reconciliations have been two times in FY 2012 and FY 2024.

2) **All the counties that owe CWSB should pay all the pending bills as per the presidential directive and treasury circular**
The CEO informed the Committee that WSP's do pay partly their water bills to KPLC and at the same time remit partly to CWWDA. Follow ups are also done by the revenue collection team of CWWDA. The current board and management have constituted a team to follow up on the same and have managed to meet with all the Governors.

Committee Observations

The Committee observed a trend in which several counties at the Coast still owed the Coast Water Works Agency money accruing from unpaid water bills. The Committee proposed that the Coast Water Works Development Agency should invite all governors from counties owing the Coast Water Works Agency to explain why and outline their payment plans for the debts.

Committee Resolutions

The Committee resolved that the Chief Executive Officer, Coast Water Works Development Agency should provide minutes of the board meeting and resolutions arrived at, in effort to resolve the pending bills arising from unpaid water bills.

e) **Board Expenses FY 2015/16 TO FY 2016/17**

The then board of CWSB should be reprimanded for over expenditure without approval from the National Treasury pursuant to Section 12 of the State Corporations Act

The CEO informed the Committee that CWSB Management will confirm with National Treasury on the status of the approval

f) **Other Matter FY 2015/16**

The Board should desist from having staff acting for more than 6 months.

This was well noted and complied with accordingly.

Committee Observations

The Committee noted that the current Coast Water Works Agency CEO was on acting capacity for two-and-a-half years (2 ½) yet it should ideally not be more than six (6) months.

Committee Resolutions

The Committee noted that the matter would require closer deliberations since there was no law that expressly stated that appointments on acting capacity should not exceed six (6) months.

g) **Other Matter FY 2016/17**

The explanation given was satisfactory and the query resolved.

The CEO informed the Committee that this matter was well noted and complied with accordingly

h) **Finance Costs FY 2017/18**

The board should use an amortization schedule provided by treasury and adjust its books accordingly.

The CEO informed the Committee that this matter was well noted and complied with accordingly in subsequent financial statements.

Committee resolutions

The Chair informed the sitting that the Committee on Implementation was keen on following up on the findings and resolutions of all Parliamentary Committees to their conclusion as mandated in the Standing Orders.

MIN.NO.NA/DAA & GPC/COI/2024/004: SUBMISSIONS BY THE ETHICS & ANTI-CORRUPTION COMMISSION REGARDING THE IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENT COMMITTEE'S (PIC) 21ST AND 23RD REPORTS ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS

Mr. Pascal Mweu, the Director Investigations, Ethics & Anti-Corruption Commission (EACC) submitted the following in response to the implementation status of the report by the Public Investment Committee's (Pic) 21st And 23rd Reports on Consideration of the Auditor-General's Report on the Financial Statements of State Corporations.

a) **Recovery Suits for Various Properties Belonging to Coast Water Works Development Agency**
   i) The Committee was informed that on 9th September, 2021, Coast Water Works Development Agency (CWWDA) lodged a complaint at the Ethics and Anti-Corruption Commission;
   ii) The report alleged that there has been illegal alienation of public land belonging to CWWDA and issuance of Titles No. MN/1/10401 and MN/1/9647 to private entities. The parcels of land are within Coast Water Works Development Agency's Shanzu Staff Quarters;
   iii) The Commission commenced investigations on the complaint and established that Coast Water Works Development Agency's Shanzu Staff Quarters was well reserved in the Development Plan for the entire Shanzu area, in the Development Plan number CT/112/25/88/1 dated 15th January 1988;
   iv) The complaints resulted into **15 investigation files** out of which **3 suits** have been filed in Court for recovery of properties worth approximately **Kshs. 365 million** while **12 cases** are under investigation at various stage. The particulars of each case and status thereof are as follows:

b) **Cases pending before Court**

1) **EACC/MSA/AT/INQ/25/2023**

i) Inquiry into the allegation of irregular alienation of public land MN/I/10401 entities. The said land is situated in Shanzu and belongs to the Kenya Water Harvesting and Storage Authority-a government agency to whom the land is vested upon.

ii) The land is valued at **Kshs. 300,000,000.00**
Status: Recovery suit **E023/2023** filed for asset recovery of land MN/I/10401 at Environment and Land Court Mombasa **(pending hearing)**.

2) **EACC/MSA/AT/INQ/13/2023**

i) Inquiry into allegation of irregular alienation of public land MN/I/9648. The said land is situated in Shanzu and belongs to the Kenya Water Harvesting and Storage Authority-a government agency to whom the land is vested upon.

ii) The land is valued at **Kshs. 30,000,000.00**
Status: Recovery suit ELC LC 39/2023 – suit for asset recovery of land MN/I/9648 at Environment and Land Court Mombasa **(pending hearing)**.

3) **EACC/MSA/AT/INQ/12/2023**

i) Inquiry into allegation of irregular alienation of public land MN/I/9647. The said land is situated in Shanzu and belongs to the Kenya Water Harvesting and Storage Authority-a government agency to whom the land is vested upon.

ii) The land is valued at **Kshs. 35,000,000.00**
Status: Recovery suit ELC LC 40/2023 – suit for asset recovery of land MN/I/9647 at Environment and Land Court Mombasa **(pending hearing)**.

iii) In the above cases, the Commission is seeking the following orders from Court;
   a) A declaration that the letters of allotment for the said properties are illegal, null and void *ab initio*;
   b) An order for cancellation and revocation of the Letters of Allotment;
   c) A declaration that the excision and creation of the suit properties were illegal, null and void *ab initio*;
   d) A declaration that the issuance of grant was incapable of vesting an interest in land or proper title to land to the private entities;
   e) An order for compensation for loss of use of the suit property; among others

c) **Cases under Investigation**

The Commission is currently undertaking investigation relating to 12 properties belonging to Coast Water worth approximately Kshs. 576 million broken down as follows:

a) MN/I/16701, MN/I/16702 and MN/I/16703 situated in Nyali;
b) MN/I/9620, MN/I/9621, MN/I/9623 in Shanzu;
c) LR.NO. MSA/BLOCK/XXV/121 and MSA/BLOCK/XXX/121;
d) MSA/BLOCK/XXV/169 occupied by Coast Car Park;
e) MSA/BLOCK/XXV122 which is registered under Nakumatt Investments Limited;
f) MN/10121 (CR.32130) in Shanzu.

Committee observations

The Committee observed that EACC was itself frustrated in its quest to obtain crucial documents needed for the land cases since in many instances, documents disappeared whenever

EACC wrote to the Ministry of Lands. In this case, EACC only recorded success in obtaining the documents through raiding the local lands offices.

Committee recommendations

The Committee suggested that Judiciary should set up a special tribunal to handle land matters that relate to government land disputes involving grabbers for the purpose of speedy recovery and conclusion of such cases.

MIN.NO.NA/DAA & GPC/COI/2024/005: CONSIDERATION OF COMMITTEE WORKPLAN

1. The Committee adopted the draft committee work plan for the period from 1st February to 30th June, 2024.
2. The Committee resolved to look into pending business from the previous year (2023) which include the following entities:
    i) Revisit the matter on Ronald Ngala Utalii College in Kilifi County;
    ii) Kenya Wildlife Service (KWS);
    iii) Kenya Marine and Fisheries Research Institute (KEMFRI);
    iv) Kenya Ports Authority (KPA)
    v) National Social Security Fund (NSSF); and
    vi) Sondu Miriu Project.

MIN.NO.NA/DAA & GPC/COI/2024/006: ANY OTHER BUSSINES (AOB)

1. Members pointed out that in most cases, Cabinet Secretaries do not honour invites to Committee meetings. The Committee resolved to enforce the provisions of Standing Order 201 which requires Cabinet Secretaries to within sixty days; provide a report on implementation of resolution of the House or adoption of the report of a select committee.
2. Members pointed out that there was need to ensure they do not miss out on foreign trips. The Committee resolved that creative avenues should be explored to ensure more members get travelling and training opportunities without exhausting the Committee budget which was capped at Kshs. 6.2 million per quarter.
3. The meeting further resolved that the Committee should lobby funds allocated to Committees should be commensurate with the number of members. For instance, committees with fifteen (15) members should not receive the same allocation with those with twenty-one (21) members.

MIN. NO.NA/DAA & GPC/COI/2024/007: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAA & GPC/COI/2024/008: ADJOURNMENT

There being no other business, the meeting was adjourned at a quarter past six o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date. 27/2/24

MINUTES OF THE FIFTY-FIFTH (55th) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 21ST NOVEMBER, 2023 IN MEDIA CENTRE MAIN PARLIAMENT BUILDINGS AT 10:00AM

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Charles Gumini Gimose, M.P
4. The Hon Prof Guyo Waqo Jaldesa, M.P
5. The Hon. Siyoi Lillian, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Timothy Kipchumba Toroitich, M.P
8. The Hon. Rael Chepkemoi Kasiwai, M.P
9. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. George Koimburi Ndung'u, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. John Okwisia Makali, M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Mark Samuel Muriithi Mwenje, M.P
12. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Abdiaziz Shobay - Clerk Assistant II
2. Ms. Kafuyai Wamae - Clerk Assistant III
3. Mr. Abdimalik Ahmed - Clerk Assistant III
4. Ms. Noel Amutabi - Legal Officer
5. Ms. Winnie Kizia - Media Relations Officer
6. Mr. Danton Kimutai - Audio Officer III

MIN. NO.NA/DAAOSC/COI/2023/290: PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past ten o'clock and the Hon. Elijah Memusi Kanchory, M.P said a word of prayer.

AGENDA

1. Prayers

2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Consideration of pending business before the Committee**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/291: CONFIRMATION OF MINUTES.

39th Sitting
Minutes of the 39th sitting held on 29th August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Elijah Memusi Kanchory, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, M.P. There were no matters arising.

40th Sitting
Minutes of the 40th sitting held on 29th August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, M.P. There were no matters arising.

41st Sitting
Minutes of the 41st sitting held on 30th August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Elijah Memusi Kanchory, M.P and seconded by The Hon. Siyoi Lillian, M.P. There were no matters arising.

42nd Sitting
Minutes of the 42nd sitting held on 30th August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Elijah Memusi Kanchory, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, M.P. There were no matters arising.

43rd Sitting
Minutes of the 43rd sitting held on 7th September, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Rael Chepkemoi Kasiwai, M.P. There were no matters arising.

44th Sitting
Minutes of the 44th sitting held on 7th September, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Rael Chepkemoi Kasiwai, M.P. There were no matters arising.

45th Sitting
Minutes of the 45th sitting held on 12th September, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, M.P. There were no matters arising.

46th Sitting

Minutes of the 46th sitting held on 26th September, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P. There were no matters arising.

47th Sitting

Minutes of the 47th sitting held on 5th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Elijah Memusi Kanchory, M.P and seconded by The Hon. Siyoi Lillian, M.P. There were no matters arising.

48th Sitting

Minutes of the 48th sitting held on 12th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Timothy Kipchumba Toroitich, M.P. and seconded by The Hon. Siyoi Lillian, M.P. There were no matters arising.

49th Sitting

Minutes of the 49th sitting held on 13th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Elijah Memusi Kanchory, M.P. and seconded by The Hon. Julius Taitumu M'Anaiba, M.P. There were no matters arising.

50th Sitting

Minutes of the 50th sitting held on 24th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, M.P. There were no matters arising.

51st Sitting

Minutes of the 51st sitting held on 16th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Timothy Kipchumba Toroitich, M.P. and seconded by The Hon. Siyoi Lillian, M.P. There were no matters arising.

52nd Sitting

Minutes of the 52nd sitting held on 17th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Rael Chepkemoi Kasiwai, M.P. and seconded by The Hon. Siyoi Lillian, M.P There were no matters arising.

53rd Sitting

Minutes of the 53rd sitting held on 17th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Siyoi Lillian, M.P and seconded by The Hon. Timothy Kipchumba Toroitich, M.P. There were no matters arising.

54th Sitting

Minutes of the 54th sitting held on 17th October, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Timothy Kipchumba Toroitich, M.P. and seconded by The Hon. Siyoi Lillian, M.P. There were no matters arising.

MIN. NO.NA/DAAOSC/COI/2023/292: ANY OTHER BUSSINESS

Committee Retreat/Inspection Visit.

The Committee proposed to undertake a retreat/inspection visit from 30th November – 3rd December 2023 in Kisumu County with the following agencies to assess implementation status of the recommendations contained in the PIC's 21st, 22nd and 24th report of the Auditor General's report on audited financial statements of State Corporations.:

i) Lake Basin Development Authority (LBDA)
ii) Kenya Airport Authority (KAA)
iii) Kenya Railways Corporation (KRC)

Additionally, the Committee also proposed to undertake an inspection visit to Meru County in February, 2024 to assess the implementation status of the report on the public petition regarding Miraa Farming and Marketing by the Departmental Committee on Agriculture.

MIN. NO.NA/DAAOSC/COI/2023/293: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past eleven o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....28/11/23.....

MINUTES OF THE FIFTY FOURTH (54TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 17TH OCTOBER, 2023 AT TEMBO ONE MEETING ROOM, BEST WESTERN HOTEL, KISUMU COUNTY AT 2.30 PM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Hilary Arap Kosgei, M.P
3. The Hon. George Koimburi Ndung'u, M.P
4. The Hon. Mark Samuel Murithi Mwenje, M.P
5. The Hon. Siyoi Lillian, M.P
6. The Hon. Julius Taitumu M'Anaiba, M.P
7. The Hon. Zamzam Mohamed Chimba, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Elijah Memusi Kanchory, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P

ABSENT

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Rael Chepkemoi Kasiwai, M.P
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
8. The Hon Prof Guyo Waqo Jaldesa, M.P
9. The Hon. Cynthia Jepkosgei Muge, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo - Director, DAA& OSC
2. Mr. Abdiaziz Shobay - Clerk Assistant II
3. Ms. Noel Amutabi - Legal Counsel
4. Dr. Kuria Waitara - Research officer III
5. Ms. Winfred Kiziah - Media Relations Officer
6. Mr. Collins Namulen - Fiscal Analyst

NATIONAL SOCIAL SECURITY FUND (NSSF)

1. Mr. David Koross - Chief Executive Officer/Managing Trustee, NSSF
2. Mr. Moses N. Cheseto - Ag. General Manger, Finance & Investment, NSSF
3. Mr. Marietta Mutinda - Ag. Manager, Finance, NSSF
4. Ms. Peter Muiruri - Manager Property Development, NSSF
5. Mr. Evans Ombui - Regional Manager Western/Nyanza, NSSF
6. Mr. Fred Kiplaingia - Technical Advisor to the CEO, NNSF
7. Ms. Hellen Koech - Ag. Manager Legal Manager, NSSF

8. Mr. Hillary K. Mwaita - Manager Registration and Compliance, NSSF

MIN. NO.NA/DAAOSC/COI/2023/286: PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past two o'clock and Hon. Zamzam Mohamed, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Timothy Kipchumba Toroitich, M.P and seconded by The Hon. John Okwisia Makali, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive Agenda: **Meeting with the National Social Security Fund (NSSF) to consider the implementation status of the Public Investment Committee's (PIC) 22nd Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.**
5. Any other Business

MIN. NO.NA/DAAOSC/COI/2023/287: CONFIRMATION OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/288:

SUBMISSIONS BY THE CEO, NSSF REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE PUBLIC INVESTMENT COMMITTEE'S (PIC) 22ND REPORT ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS.

The CEO/Managing Trustee, National Social Security Fund (NSSF) Mr. David Koros submitted the following in response to the implementation status of the report of the Public Investment Committee's (PIC) 22nd Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.:

1. **On the recommendations of the 19th PIC report that recommended that the Fund publishes in the media all the money held in suspense accounts to allow members to come and clear their accounts.**

Management Response

The Fund finds this approach too expensive and practically not possible due to the huge amount of data involved. Further, the Data Protection Act now makes it legally impermissible to publish member identification data online or in the media. Instead, the Fund has chosen to deal directly with the employers and members through the following means: -

i) The Fund has deployed Zonal Compliance Officers who routinely collect missing returns and particulars for uploading as they conduct Employer Record inspections.

ii) All field offices have a dedicated team that exclusively works on clearing the Contributions in Transit. In the Financial year 2022/2023, a clearance of KES 245,882,722.35 was resolved and posted to Member accounts. In quarter one of FY 2023/2024, KES 87,290,748.05 was cleared. This is a routine exercise undertaken daily.

Strategies to Halt and Reduce the Allocation in Transit

The following are the key strategies put in place to halt and reduce growth of the Contributions in Transit:

i) Automated the Member registration process where Members are able to register via their mobile phones and check their provisional contributions statements.
ii) Reduction of the Contributions in Transit by 30% by 30th June 2024 is a key performance indicator for the financial year 2023/2024.
iii) Enhance usage of the e-service in the processing and management of member returns and contributions to reduce data error and enhance efficiency in contributions processing and returns management.

Committee Observation

The Committee observed that the management has not implemented the recommendation satisfactorily since in Financial Year 2022/2023 members contributions amounting to 942,134,660.52 were still held in suspense accounts.

Committee recommendation

The Committee recommended that the NSSF should resolve the matter since pensioners whose contributions were not captured on time suffers while following up with their employers.

2. **On PICs recommendation that the Fund should not receipt any contributions not accompanied by a full receipt.**

Management Response

i) The Fund has progressively reduced the amount of data errors acceptable, from an initial 5% to the current 2%. Setting the limit to ZERO would trigger significant challenges to employers who have to deal with late joiners who would either have to be excluded from the payroll or would lead to delay in entire payrolls.
ii) The 2% limit allows one or two new entries per 100 to join the payroll and be processed as they go through the NSSF registration process. The Fund has deployed online and USSD registration processes to hasten that registration process.
iii) Further the Fund receives contributions from Government entities with missing NSSF numbers. It was only until recently that the Integrated Payroll and Payroll Database (IPPD) was amended to include the column for NSSF in County and Central Government payrolls.
iv) The Fund allows the amounts to be receipted under such exceptional circumstances to allow capture of the payments otherwise the amounts could end up being allocated to competing resource requirements. A process then follows that allocates these contributions to the individual members using data already held in the system. The changes in IPPD shall significantly improve on this.
v) In all cases, the Fund collects and holds sufficient data to identify the specific member when he comes to make a claim or when he finally completes the registration process.

Committee observations

The Committee observed that addition of the column requiring provision of NSSF number in Integrated Payroll and Payroll Database will reduce the data errors.

3. **On recommendation that NSSF should only pay amount approved by the State Department of Public works concerning the completion of Hazina Trade Centre in the FYs 2014/15 and 2015/16.**

Management Response

i) The contractor presented a claim for cost of extended preliminaries due to the lost time. The State Department Public Works (SDPW) was directed by the Public Investments Committee of the National Assembly to evaluate the claim and present a report which they did. In their report, the SDPW determined that Kshs. 871,697,124.00 was contractually payable to cover the costs incurred by the contractor during the delays (extended preliminaries) up to that point in time, i.e. 15th March 2018.

ii) The Fund sought the opinion of the State Law Office on the legality of the claim and the Attorney General responded that according to the contract, the contractor had the right to claim the amounts claimed under compensation event clauses. Variation Order No. 2 was prepared and executed formalizing the amount that was agreed between the Fund and the Contractor and approved by the SDPW and Project Consultants. This amount was paid in four equal installments of Kshs. 271,924,281.05 each vide Certificates Nos. 14, 15, 16 and 18.

Committee observation

The Committee observed that the response offered was satisfactory.

4. **On recommendations that KRA should refund Ksh. 904,904,000 overpaid by NSSF.**

Management response

NSSF has continued to pursue the refund, a matter which escalated to the High Court, and a ruling delivered in favor of NSSF on 29th June 2016 but KRA is yet to honor the court ruling.

Committee observations

The Committee observed that the recommendation has not been implemented.

Committee recommendations

The Committee recommended that the Kenya Revenue Authority present a payment plan for the Kshs 904,904,000 overpaid by NSSF within 90 days of the adoption of this report.

5. **On the recommendation that the NSSF continues to engage the National Land Commission on the irregular disposal of undeveloped land (LR. NO 209/11642) in the FY 2015/16.**

Management Response

The Fund wrote a letter on 9th March 2016 demanding the reinstatement of the title. On 18th April 2016 the Chair of the National Land Commission (NLC) wrote to NSSF stating "it was not possible to reinstate the land to NSSF as it was already allocated to the PS Treasury on 12th March, 2010 to hold in trust for the Judiciary for the development of Court facilities" The NSSF sued the Chief Land Registrar and Lekuna Limited for recovery of the purchase price and interest (HC Case No. HCC/ELC No. 153 of 2018). The case is yet to be determined.

Committee Observations

The Committee observed that the case by NSSF has taken inordinately long time to be determined.

MIN. NO.NA/DAAOSC/COI/2023/289: **ADJOURNMENT**

There being no other business, the meeting was adjourned at fifty-five minutes past four o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P

(CHAIRPERSON)

Date.....21/11/23.....

MINUTES OF THE FIFTY THIRD (53RD) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 17TH OCTOBER, 2023 AT TEMBO ONE CONFERENCE ROOM, BEST WESTERN HOTEL, KISUMU COUNTY AT 11.30 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Mark Samuel Murithi Mwenje, M.P
6. The Hon. Siyoi Lillian, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P

ABSENT

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Abdul Ebrahim Haro, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon Prof Guyo Waqo Jaldesa, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P
9. The Hon. Rael Chepkemoi Kasiwai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo - Director, AA& OSC
2. Mr. Abdiaziz Shobay - Clerk Assistant II
3. Ms. Noel Amutabi - Legal Counsel
4. Dr. Kuria Waitara - Research officer III
5. Ms. Winnie Kizia - Media Relations Officer
6. Mr. Collins Namulen - Fiscal Analyst

KENYA MEDICAL SUPPLIES AUTHORITY (KEMSA)

1. Dr. Andrew Mulwa - Ag. Chief Executive Officer, KEMSA
2. Ebla M. Mohamed - Director Human Resource & Admin' KEMSA
3. Waiganjo Karanja - Director Finance & Strategy, KEMSA
4. Gilbert Mamati - Ag. Director, Procurement, KEMSA
5. Fredrick Wanyonyi - Director Legal Services, KEMSA

MIN. NO.NA/DAAOSC/COI/2023/282: PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past eleven o'clock and Hon. Zamzam Mohamed, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Stanley Muiruri Muthama, M.P and seconded by The Hon. Hamisi Kakuta Maimai, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive Agenda: **Meeting with the Kenya Medical Supplies Agency to consider the implementation status of the Public Investment Committee's (PIC) 22nd Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.**
5. Any other Business

MIN. NO.NA/DAAOSC/COI/2023/283: CONFIRMATION OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/284: SUBMISSIONS BY THE AG. CEO, KENYA KEMSA REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE PUBLIC INVESTMENT COMMITTEE'S (PIC) 22ND REPORT ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS.

Ag. Chief Executive Officer, Kenya Medical Supplies Agency (KEMSA) Dr. Andrew Mulwa submitted the following in response to the implementation status of the report of the Public Investment Committee's (PIC) 22nd Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations:

1. **On recommendation that KEMSA should obtain ownership documents of various parcels of land owned across the country, including that which had been transferred by the Ministry of Health.**

Management Response
The Authority instructed Ong'anda and Associates Advocates to conduct searches on all its properties in order to gather accurate and verified information regarding the land ownership status. The Authority has managed to acquire most of the title deeds and the lawyer vide a letter dated 5th October, 2023. They provided the status to be as follows:

a) **Parcels of land with available documents of ownership**

KEMSA currently has obtained documents of ownership for the following parcels of land:
i) **KEMSA Supply Chain Centre (Embakasi)**

i) Registration: LR NO 9042/ 176
ii) Status: KEMSA owns this property in Embakasi.

The property was purchased from Kenya Airways Ltd, and the transfer was duly registered on 30th August, 2016.

ii) **KEMSA Head Office-Commercial Street, Industrial Area, Nairobi.**
   a) Registration: LR No. 209/7154/2.
   b) Status: The property was transferred to KEMSA from Government of Kenya. It officially belongs to KEMSA under LR. 209/20026
   c) The lease has expired and is currently being reviewed.

iii) **Nakuru Depot**
   a) Registration: 209163/A11
   b) Status: The property was transferred to KEMSA by Government of Kenya. The Parcel Card(s)for this property is not available. The Lease, however, is in KEMSA's name.

iv) **Nyeri Depot**
   a) Registration:3/173/174 (merged to Nyeri Block 3/337)
   b) Status: The property belongs to KEMSA, free from any encumbrances, confirming our rightful ownership. The property was transferred to KEMSA by Government of Kenya.

v) **Meru Depot**
   a) Registration: Isiolo/ Ngarema/2567.
   b) Status: The property was allocated to KEMSA by the Meru County Government and is confirmed to be under the ownership of KEMSA, devoid of any encumbrances.

vi) **Meru Depot**
   c) Registration: Meru Central/ Ruiri Rwarera.
   d) Status: The property was allocated to KEMSA by the Isiolo County Government and is confirmed to be under the ownership of KEMSA, devoid of any encumbrances.

b) Parcels of land without documents of ownership

i) **Embakasi - Green Site**

a. Registration: LR NO.123525 and LR NO. 123536.

b. Status: The titles for these properties were revoked by Gazette Notice No. 1547. The Gazette notice further recommended that both of the sub-leases for the parcels be issued under the Kenya Airport's Authority (KAA) overarching title deed.

ii) **Garissa Green Site**

a. Registration: N/A- PDP

b. Status: This property was allocated to KEMSA by the Garissa County Government. The parcel is unregistered and KEMSA's proof of ownership is an unregistered Part Development Plan.

iii) **Eldoret depot:**

a) Registration: BLOCK 10/ 156

b) **Status:** The Eldoret property was transferred to KEMSA by Government of Kenya. The Parcel Card(s) for this property is

not available. The property lease exists but is not yet registered since no green /white cards exist on file.

iv) **Kakamega Green site:**
KEMSA was allocated 3 acres by the County Government of Kakamega. The lease has been signed by KEMSA's and is awaiting signature by the County Government of Kakamega.

v) **Kisumu depot:**

a) Registration: 209163/IX
b) Status: The parcel was allocated to KEMSA by Government of Kenya and currently registered under the National Treasury. KEMSA has initiated the transfer process by writing to the Cabinet Cabinet Secretary, Ministry of Health, to coordinate with the Cabinet Secretary, National Treasury, for the direct transfer of 209163/IX.

vi) **Mombasa depot:**

a) Registration: N/A - Unsurvey land
b) Status: The Mombasa property is held under an allotment letter and a Part Development Plan. This property was allocated to KEMSA by the GoK.

Further, KEMSA submitted that based on the official search provided through the letter from Ong'anda and Associates Advocates, it has developed a matrix to ensure a conclusion of the outstanding matters on properties at Commercial Street HQ-Nairobi, Nakuru, Eldoret, Kisumu, and Kakamega by 31st December 2023, and pursue titling of land for Garissa, Mombasa, and Embakasi Green-site 1&2 by the end of June 2024.

Committee Observations
The Committee observed:

i) That KEMSA has not implemented the recommendation as provided in the PIC report since they have not obtained ownership documents for seven out of thirteen properties.
ii) The Parcel Card for Nakuru property was not available, even though KEMSA listed it under parcels with document of ownership.
iii) The Green/White cards for the Eldoret property were not available thus KEMSA had not registered the property.
iv) The Mombasa parcel was un-surveyed thus KEMSA is exposing it to encroachment.

Committee Recommendation
The Committee recommended that, KEMSA should expedite the processing of the ownership documents and provide a well-structured status report to the Committee within 90 days.

2. **On the current budgetary allocation by the National Treasury and the Ministry of Health for the purchase of Drugs;**

Management Response
The Current Budgetary Allocation by the National Treasury & Ministry of Health for the purchase of drugs for FY 23/24 is **Kshs. 6,303,033,902.**

Committee Observations
The response provided was satisfactory.

3. **On the status of Receivables from exchange transactions for FY 2015/16 and 2016/17 specifically on the outstanding balance of Kshs. 1,708,524,634.**

Management Response
All the debts adding up to Kshs. 1,708,524,634 have been settled. However, KEMSA's debts owed by the various stakeholders as at 30th September 2023 is Kshs. 5,625,048,807.

4. **On detailed information on the nature of the outstanding Debts, the entities or Persons these Debts are due and the status of all pending bills;**

Management Response
The Current outstanding KEMSA debt is at Kshs. 5,625,048,807. The outstanding pending bills (amount owed to various suppliers of Goods and Services) as at 30th September 2023 are Kshs. 4,427,754,912.12.

5. **On strategies adopted by KEMSA to prevent wastage of public resources due disposal of expired drug;**

Management Response
KEMSA procures Health Products and Technologies (HPTs) with more than 75% remaining shelf life to ensure sufficient utilization time. However, despite this and other measures in place, some HPTs may still end up expiring due to low consumption.

Committee Observation
The Committee was satisfied with the response.

6. **On the status of KEMSA's engagement with civil society groups and medical camps to utilize drugs with short lives.**

Management Responses
Previously, KEMSA would provide Short-dated Health Products and Technologies (HPTs) to any medical camp upon request as a donation. This included Camps organized by Civil Societies, faith-based groups, and Political Leaders.

It was discovered that there was inadequate accountability for the donated HPTs, as some ended up in the wrong hands and posed a high risk of being repackaged and resold.
KEMSA took a different approach in handling donations of short-dated commodities to medical camps as follows;

i) KEMSA supplies drugs to health facilities that are duly registered by the Medical Practitioners and Dentists Board.
ii) KEMSA does not engage directly with civil society groups on the utilization of short-shelf-life drugs, drugs are only issued to health facilities.
iii) We support medical camps if they are conducted within the Medical Practitioners and Dentists (Medical Camp) Rules, 2016 under the Medical Practitioners and Dentists Board Act (Cap. 253). KEMSA can support a medical camp being conducted outside of a medical facility, only if the medical camp is led by a medical practitioner who assumes overall responsibility for the medical camp.
iv) KEMSA systems routinely isolate all HPTs whose shelf life runs below six months from the normal sales stock. KEMSA does not issue for sale products with a shelf life of 6 months and below.

v) On a monthly basis the list of short shelf-life HPTs is shared by the sales and marketing team with the County, Sub-County & hospital health managers.
vi) Based on their needs, the health managers formally request in writing for donation of short shelf-life HPTs.
vii) Once approval is granted by the Chief Executive Officer (CEO), the short shelf-life HPTs are processed and shipped out to the customers whose requests have been approved.
viii) Short shelf-life donation orders are managed centrally by the Customer service department at the Supply Chain Centre in Embakasi.

Committee Observations

The Committee observed that the measures put in place by KEMSA regarding donation of Health Products and Technologies with lower shelf-life are adequate.

7. **On detailed appraisal on how KEMSA manages the transition from old drugs regimens to new one under expired/damaged drugs**

Management Response

Medicines may be transitioned for various reasons, however key among these;

a) Toxicity - to a less toxic medicine with fewer side effects, less adverse drug reaction, better tolerated, and improved adherence to treatment.
b) Efficacy - to a more efficacious medicine offering better treatment outcomes
c) Cost-effectiveness - to a cheaper effective medicine, which may have a simpler dosing schedule.

The transition to a new drug regimen may be informed by a shift in policy which may be communicated via a revised Kenya Essential Medical List (KEML) as happened in 2016 or a circular. The KEML 2016 deleted two medicines that were in use at facilities and stocked at KEMSA i.e., Chloramphenicol and Aminophylline injection leading to the reported expiries in the FY2016/17. The reason was a switch to safer more effective alternatives.

When the reason to change is due to toxicity, then the result is a drastic shift to the new alternative. As no one would wish to be on a toxic medicine when there is a safer alternative. However other reasons may offer an opportunity for a gradual approach to the shift.

KEMSA's approaches to manage change of Treatment Regimens

i) Involvement of the users; county pharmacists and pharmacists from the referral hospitals through Technical Working Group (TWG) meetings to deliberate on items to be included or omitted from the procurement stock list. A key consideration is inclusion in the current KEML. If a medicine is no longer in *use*, not preferred in the various facilities or has been deleted from the KEML then a decision is made not to procure the same and KEMSA will no longer stock it.
ii) During Procurement if an item is no longer recommended after it had been previously used, it is no longer called off if under framework contracting and subsequently no additional stocks of the same are received.
iii) For program medicines, the World Health Organization (WHO) may make a recommendation to countries to consider adoption of a new medicine over an existing one following research findings that support this. The Committee of Experts convened by the MOH may review the findings and recommend the adoption of the same. Following a policy directive, the Technical Working Groups at Program level may initiate the change. KEMSA ensures that the TWGs take into consideration the stocks

of medicine held at KEMSA and at health facilities and also what is in the pipeline to inform the best decision.

iv) A phased approach (phase in/ phase out) is adopted so that as utilization of the old regimen declines the facilities are supplied with stocks of the new regimen which ensures minimal disruption of treatment and expiries of the oleh regimen.

v) Donors and Partners in most cases prefer to fund the procurement of the newer more effective regimen. The Partners are approached to consider supporting the disposal of the old regimen.

Committee Observations

The Committed was satisfied with response provided by KEMSA.

MIN. NO.NA/DAAOSC/COI/2023/285: ADJOURNMENT

There being no other business, the meeting was adjourned at fifty minutes past twelve o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....21/11/23.....

MINUTES OF THE FIFTY SECOND (52ND) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 17TH OCTOBER, 2023 AT TEMBO ONE MEETING ROOM, BEST WESTERN HOTEL, KISUMU COUNTY AT 9.30 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Mark Samuel Murithi Mwenje, M.P
6. The Hon. Siyoi Lillian, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P

ABSENT

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon Prof Guyo Waqo Jaldesa, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Rael Chepkemoi Kasiwai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo - Director, Audit, Appropriations & OSC
2. Mr. Abdiaziz Shobay - Clerk Assistant II
3. Ms. Noel Amutabi - Legal Counsel
4. Dr. Kuria Waitara - Research officer III
5. Mr. Collins Namulen - Fiscal Analyst
6. Ms. Winfred Kizia - Media Relations Officer

NATIONAL CEREALS AND PRODUCE BOARD (NCPD)/ MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT.

1. Mr. Joseph Kimote - Managing Director, NCPB
2. Mr. John Ngetich - Legal Counsel/Company Secretary
3. Mr. Samuel Karogu - General Manager, Finance and Accounting, NCPB
4. Mr. John Gichuru - Finance Manager, NCPB
5. Mr. Joseph Mutinda - Representative Ministry of Agri' & Livestock Dev't
6. Mr. David Kithale - Representative Ministry of Agriculture & Agri' Dev't

MIN. NO.NA/DAAOSC/COI/2023/278: PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past two o'clock and Hon. Zamzam Mohamed, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Julius Taitumu M'Anaiba, M.P and seconded by The Hon. John Okwisia Makali, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the National Cereals and Produce Board (NCPB); to consider implementation status of the Public Investment Committee's (PIC) 22nd Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/279: CONFIRMATON OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/280: SUBMISSIONS BY THE MANAGING DIRECTOR, NCPB REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE PUBLIC INVESTMENT COMMITTEE'S (PIC) 22ND REPORT ON CONSIDERATION OF THE AUDITOR-GENERAL'S REPORT ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS.

The Managing Director, Mr. Joseph Kimote submitted the following in response to the implementation status on the report of the Public Investment Committee's (PIC) 22nd Report on consideration of the Auditor-General's Report on the Financial Statements of State Corporations.:

1. **On recommendation that NCPD should fast-track the implementation of the Previous PIC reports which provided that the Managing Director ensures the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside.**

Management Response

1. The Board had established through investigations that the parties alleged to have been contracted by Erad to supply grains were not aware of the transaction. The report was submitted as part of the evidence adduced during the arbitration proceedings but was not considered during the proceedings.
2. From the recommendations contained in the 21st PIC report; EACC was directed to undertake investigations to confirm the Board's position and institute proceedings against Erad and its directors.
3. Through mutual assistance, EACC was able to finalize investigations and confirm that parties claimed to have been contracted by Erad were not aware of the transaction.

4. Based on the investigations and findings, EACC instituted a case against Erad and its directors which culminated into conviction of Erad directors as well as the company.
5. In the matter at the Court of Appeal where the Board was seeking to set aside the arbitral award, EACC applied to be enjoined as an interested party and to adduce additional evidence which had been obtained through the investigations which were successfully used during the criminal proceedings.
6. The Court of Appeal heard and admitted the new evidence on 16th December 2022.
7. The evidence adduced is the same which was used during the Criminal Court Case (Republic -vs- Grace Sarapei Warungu & 2 others) which ruled the conviction of the directors as well as fines for both the company and its directors.
8. It is expected that this matter will come to a close and probably the arbitral award may be set aside. NCPB is waiting for the court to invite the parties for a hearing. Additionally, the Management of the Board has always made a disclosure of this contingent liability in all proceeding financial statements.

Committee Observations

i) The Committee observed that NCPD has not made enough effort to ensure speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside since there was no evidence requesting the court to deal with the case.
ii) The Management of the NCPD has not attempted to prosecute the employee who has overseen the signing of the contract with the Erad Suppliers.

Committee Recommendation

i) The Management of NCPD should engage the Courts within 60 days to ensure that the matter is concluded.
ii) The Management of NCPD should conduct internal investigations to identify current and former employees of the Board who led to loss of public funds and ensure they are prosecuted.

2. **On recommendation that the Auditor General should undertake a forensic audit of the 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment to the lawyers to establish whether there has been fraud, corruption or other financial improprieties.**

Management Response

1. As recommended by PIC the forensic audit is yet to be undertaken; The Board of Directors approved the write-off of the debt subject to approval by The National Treasury.
2. That notwithstanding, NCPB has vigorously been pursuing payments of debts including taking legal action against defaulters and currently cases involving Kshs.56.9 million are under litigation. Goods and properties for other defaulters especially for rental have been confiscated and will be sold to defray the rental arrears.
3. The management has set up a Debts Recovery Unit (DRU) with the sole mandate to pursue all debts that are one year and above. However, as a prudent measure, NCPB has provided Kshs.943 million as provision for doubtful debts.

Committee Observation

i) The Auditor General has not undertaken a forensic audit of the 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment to the lawyers to establish whether there has been fraud, corruption or other financial improprieties.

ii) The Auditor General is considering to consolidate various PIC recommendations direct to it due to budgetary constraints. However, the Office of the Auditor General committed to undertake the audit within three months.

4. **On recommendation that the multiagency team formed by Management should resolve the matter of bad debts within three months of the adoption of this Report.**

Management Response

The Management of the Board requested the Permanent Secretary (PS) Ministry of Agriculture Livestock and Fisheries to constitute a Committee to scrutinize the documents, authenticate the claim and make recommendations so that the matter can be concluded vide a later dated 5th January 2018 which is yet to be responded to.

Committee Observations

The Management of the Board has not pursued the matter with the seriousness it deserves and as per the PIC recommendation since the last letter was done on 5th January 2018 whereas, it was supposed to resolve the matter of bad debts within three months of the adoption of the report.

MIN. NO.NA/DAAOSC/COI/2023/281: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past eleven o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....21/11/23.....

MINUTES OF THE FIFTY FIRST (51ST) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON MONDAY, 16TH OCTOBER, 2023 IN KENGEN'S BOARD ROOM AT SONDU-MIRIU HYDRO-POWER STATION, KISUMU COUNTY AT 2.30 PM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Mark Samuel Murithi Mwenje, M.P
6. The Hon. Siyoi Lillian, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Zamzam Mohamed Chimba, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. John Okwisia Makali, M.P
11. The Hon. Stanley Muiruri Muthama, M.P
12. The Hon. Hamisi Kakuta Maimai, M.P

ABSENT

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Charles Gumini Gimose, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon Prof Guyo Waqo Jaldesa, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Rael Chepkemoi Kasiwai, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo	-	Director, Audit, Appropriations & OSC
2. Mr. Abdiaziz Shobay	-	Clerk Assistant II
3. Ms. Noel Amutabi	-	Legal Counsel
4. Dr. Kuria Waitara	-	Research officer III
5. Mr. Collins Namulen	-	Fiscal Analyst
6. Ms. Winfred Kizia	-	Media Relations Officer

KENYA ELECTRICITY GENERATING COMPANY (KENGEN)

1. Eng. Peter Njenga	-	Managing Director/CEO, KENGEN.
2. Eng. Julius Odumbe	-	General Manager Operations, KENGEN
3. Eng. Alfred Abiero,	-	Manager, Power Generation, KENGEN
4. Mr. Joshua Were	-	Manager, Environment & Sustainable Dev't KENGEN
5. Grace Chepkwony	-	Community Relations Manager, KENGEN

MIN. NO.NA/DAAOSC/COI/2023/273: PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes past two o'clock and Hon. Hillary Kosgei, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Mark Samuel Murithi Mwenje, M.P and seconded by The Hon. George Koimburi Ndung'u, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Ministry of Energy, Kenya Electricity Generating Company (KENGEN) to consider the implementation status of the Report of the Department Committee on Energy on a public petition regarding degradation of the Environment along Sondu-Miriu Dam due to failure by KENGEN to fully comply with the Environmental Impact Assessment of 1995.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/274: CONFIRMATON OF MINUTES

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/275: SUBMISSIONS BY THE MANAGING DIRECTOR/ CEO KENYA ELECTRICITY GENERATING COMPANY (KENGEN) REGARDING THE IMPLEMENTATION STATUS OF THE REPORT ON A PUBLIC PETITION REGARDING DEGRADATION OF THE ENVIRONMENT ALONG SONDU-MIRIU DAM.

The Managing Director, Eng. Peter Njenga submitted the following in responses to the implementation status of the report on a public petition regarding degradation of the environment along Sondu-Miriu dam:

1. **On recommendation that KENGEN should conclude the tender process towards dredging of the silt, and removal of all resultant hippo grass, along the intake area and along the banks, within 90 days of tabling of this report.**

Management Response

The length of the Sondu Regulating Pond (dam) measures approximately 6 km. Dredging was split into 3 phases (Phase I, II & III) for ease of budgetary allocation.

i) **Phase I Tendering and Progress-** The Contract was signed on 19.09.2022 while the work commenced on 12th October 2022. Phase I of the contract involves desilting and removal of hippo grass at Sondu power station intake area constitute 40% of the entire project scope, covering the intake area and extending upstream to about 1km. It involves removal of 150,000m^2 of hippo grass and dredging 180,000m^3 of silt and slurry. Hippo grass removal is ongoing as well as pumping of the silt slurry (desilting) which is currently at 70%. The contract duration was one year, and this has been extended to cover the remaining work.

ii) **Phase II Tendering and Progress** - The second Phase covers 30% of the entire project scope. A tender awarded to Phase I contractor through competitive bidding and contract signed on 21.09.2023. It involves removal of 70,000m^2 of hippo grass and dredging 330,000m^3 of silt and slurry.

iii) **Phase III** - Phase III of the Tendering will cover 30% of the entire project scope and will be reviewed and tendered after phase II completion. These will be implemented in 2024/25 financial year.

Committee Observations

The Committee observed that Kengen is implementing the recommendation to make it possible for the people living near the reservoir to access the water.

2. **On recommendation that KENGEN should construct safe access points to the reservoir by residents for human and domestic use, by 31st December 2022.**

Management Response

Mapping of safe access points to the reservoir has been done. A total of eight access points, four on each bank, have been identified. KENGEN is in the process of scoping and designing the access points in readiness for construction that will be done in phases due to budget constraints, starting with two access points in the 2024/2025 fiscal year.

Committee Observations

i) The Committee observed that KENGEN has failed to provide safe access points to the reservoir within the recommended timelines. The Management of KENGEN was directed to strictly ensure that they construct the water points after engaging the community around the reservoir in order to ensure that they are constructed in mutually agreed points.

ii) Additionally, the Committee recommended that KENGEN should construct water troughs for animals.

3. **On the recommendation that, the petitioners should further canvass priority CSR projects to include construction of a health centre at Mamboleo grounds, with the stakeholder's coordination committee, and the County Government of Homa-bay.**

Management Response.

The Stakeholders' Coordination Committee (SCC) informed on the committee that during the period 2021-2023, KENGEN spent over KShs.70 million in undertaking Corporate Social Initiatives (CSI) within the project area environs. Additionally, KenGen was reviewing the scope and considering the option to developing a dispensary for 20,000 people in 2024/2025 fiscal year and therefore, sensitization on the subject matter is ongoing.

Committee Observation

i) The Committee was dissatisfied with failure of KENGEN in implementing this recommendation. During the inspection visit around the project area the Committee did not see tangible projects undertaken through Corporate Social Initiatives (CSI) by KENGEN.

ii) The Committee observed that even the water points in place had no water.

Committee Recommendation

The Management of KENGEN should engage the community to identify suitable projects which can be undertaken by the KENGEN within 60 days.

4. **On recommendation that KENGEN should construct adequate bridges as part of the discharge channel construction, as noted under clause 6.2.2 of the EIA report, within the within the financial year, 2022/23.**

Management Response
A total of seven (7) bridges were incorporated in the design of the outlet channel during construction of the Sang'oro Power Station. The bridges provided access to vehicles and human beings.

Committee Observation
The Committee noted that the recommendation has been implemented.

5. **On recommendation that KENGEN should repair patches of untarmacked sections on the Kolweny Nyamarimba-Anding'o Opanga road.**

Management Response
KenGen engaged KeRRA on 13th October 2023 on the subject matter. KeRRA confirmed availability of a budget within 2023/2024 fiscal year for rehabilitation of the untarmacked sections on the Kolweny-Nyamarimba-Adingó Opanga road (C757). In case KeRRA runs out of budget, KenGen will support rehabilitation of about 4km of the road in 2024/2025 fiscal year.

Committee Observation

i) The Committee observed that KENGEN has not repaired patches of the untarmacked sections of the Kolweny-Nyamarimba-Adingó Opanga road.
ii) The Committee was concerned on delay in implementation of the recommendation considering that KENGEN is earning a lot of income from the project.

Committee recommendations

i) The Committee recommended that KENGEN should engage KERRA within the next 60 days on behalf of the community to seek support to construct the road.
ii) KENGEN should make the untarmacked sections motorable within the shortest time possible.

6. **On recommendation that KENGEN should consider rehabilitation, construction of other feeder and access roads, bridges and culverts in Kodhoch West and Kawuor Locations, in the 2022/23 financial year.**

Management Response
KenGen in 2022 rehabilitated Ramula-Intake Road (left Bank) and Intake - Jogoo centre in Andingo- Opanga (Right Bank).

Committee observations
The Committee observed that majority of the feeder roads has not been rehabilitated.

Committee recommendation
The Committee recommended that KENGEN should engage KERRA and the County Government's within the next 60 days on behalf of the community to seek support to construct the feeder and access roads in Kodhoch West and Kawuor Locations.

7. **On recommendation that KENGEN should liaise with KPLC and REREC towards ensuring neighboring communities, especially those in Kodhoch West and Kawuor Locations, are connected to the grid through last mile connectivity, in the 2022/23 financial year.**

Management Response

KENGEN is working with other players in the energy sector to address this. So far KenGen engaged REREC vide a letter dated 24th April 2023 to consider implementation of the last mile project on areas around KenGen installations. Further follow-up confirmed that REREC has done a budget estimate in 2024/2025 fiscal year for electricity connection to the local community.

Committee Observations

i) The Committee observed that the recommendation has not been implemented.
ii) During the inspection visit the Committee observed that even a home next to the power station was not connected to the grid.

Committee Recommendation

KENGEN, KPLC and REREC management should jointly prepare an electrification implementation plan within 60 days to be presented before the Committee on Implementation.

8. **On recommendation that the petitioners should canvass for priority CSR projects with the stakeholder's coordination committee**

Management Response

KENGEN has undertaken scoping of work and is looking for funds to face lift the three schools namely Abuoye, Nyandolo and Ogeka Primary Schools by constructing classrooms and provision of learning materials. During the period 2021-2023, KENGEN has spent over KShs.70 million in undertaking Corporate Social Initiatives (CSI) within the project area environs.

Committee Observations

i) The Committee observed that there was a disconnect between KENGEN and the local community.
ii) The Kshs. 70 million worth projects are not adequate compared to the revenue the company has earned and continues to earn over the years.

Committee recommendation

The Management of KENGEN should meet with the Stakeholder's Coordination Committee and prepare the priority list of the projects to be undertaken in the area and present it before the Committee on Implementation within 60 days.

9. **On KENGEN should hasten the process of issuance of all pending title deeds and ensure they are issued by 31st December 2022**

Management Response

A total of 298 titles were to be processed and issued out to the local community.

i) KenGen facilitated processing and issuance of 227 titles to the local community
ii) KenGen is following on processing of the following titles
iii) 12 titles that had errors, requiring correction of particulars at the Lands Registry
iv) 59 titles for deceased cases, requiring appointment of Administrators.

The status on the titles with errors and for deceased cases is as follows:

a) 59 titles for deceased cases

i) KenGen facilitated succession through the office of the Public Trustee.
ii) KenGen is awaiting the families to appoint the administrators in order to proceed with the process.
iii) In December 2022 and February 2023, KenGen engaged the Office of the Public Trustee in Kisumu and obtained confirmation that files relating to the deceased/succession cases were intact and ready for transmission to bona fide beneficiaries upon them presenting the duly appointed Administrators of the respective affected estates.
iv) In February 2023, KenGen convened six public barazas and sensitized Members of the Community on the actions they should undertake to have the titles processed by the office of the Public Trustee in Kisumu.

b) 12 titles with errors requiring correction of particulars at the Lands Registry.

i) KenGen is assisting to have the errors corrected at the land registry.
ii) Unfortunately, the Awasi Lands Registry was razed down by a fire incident on 18th February 2023 and it was subsequently Gazetted as having been closed.
iii) KenGen has engaged the Land Registrar for the said Lands Registry, and he has advised that the Ministry of Lands is undertaking reconstruction of Land Records after which they will inform the Public on reopening of the said Lands Registry.

Committee Observations
The Committee observed that KENGEN has not explored adequate options to facilitate the issuance of the 59 titles requiring appointment of Administrators.

Committee Recommendation
The Committee Recommended that KENGEN should expedite process of issuance of the 59 titles to the Administrators within 60 days.

10. **On recommendation that KenGen should liaise with Lake Basin Development Authority (LBDA), who have been involved in a number of conservation and small holder irrigation activities in the region, to actualize this intention.**

Management Response
KenGen contacted Lake Basin Development Authority (LBDA) with the intention to implement the recommendation. It was noted that LBDA was currently overseeing the Kimira-Oluch Smallholder Farm Improvement Project (KOSFIP) in Rangwe and Rachuonyo North sub-counties in Homabay County. The project funded by African Development Bank & the Kenya Government, draws water from River Awach Tende and Awach Kibuon for irrigation purposes in an area covering approximately 3,685 acres.

Committee observations
The Committee observed that this recommendation has not been implemented since no irrigation project is being supported by LBDA and KENGEN along the Sondu-Miriu hydropower project outlet despite the provision for irrigation outlet.

Committee Recommendation
KENGEN and Lake Basin Development Authority (LBDA) should implement irrigation projects in order to benefit local community.

11. **On recommendation that the Environmental Impact Assessment study for the proposed dredging of the Sondu Intake be completed**

Management Response
ESIA license for the proposed dredging was issued by NEMA on 26th October 2022.

Committee Observation
The recommendation has been implemented.

12. **On recommendation that the provisions for mitigating measures for unforeseen negative consequences of the project to be done as contained in the Environmental Impact Assessment (EIA) study report for the proposed dredging of the Sondu Intake.**

Management Response
The ESIA report was given to the contractor awarded tender for dredging of Sondu Intake for implementation of the mitigation measures upon commencement of the works.

Committee Observations
The recommendation has been implemented.

MIN. NO.NA/DAAOSC/COI/2023/276: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/277: ADJOURNMENT

There being no other business, the meeting was adjourned at five o'clock.

Signed.....
Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date 21/11/23.....

MINUTES OF THE FIFTIETH (50TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 24TH OCTOBER, 2023 IN MAIN CHAMBER-NATIONAL ASSEMBLY, PARLIAMENT BUILDINGS AT 10:00AM

PRESENT

1. The Hon. Elijah Memusi Kanchory, M.P - **Chairing**
2. The Hon. Charles Gumini Gimose, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. Siyoi Lillian, M.P
5. The Hon. Julius Taitumu M'Anaiba, M.P
6. The Hon John Okwisia Makali, M.P
7. The Hon. Mark Samuel Muriithi Mwenje, M.P
8. The Hon. Rael Chepkemoi Kasiwai, M.P
9. The Hon Timothy Kipchumba Toroitich, M.P
10. The Hon Gathoni Wamuchomba, M.P

APOLOGIES

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
3. The Hon. Mohamed Ali, M.P
4. The Hon. Johnson Manya Naicca, M.P
5. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
6. The Hon. George Koimburi Ndung'u M.P
7. The Hon. Zamzam Mohamed Chimba, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Prof Guyo Waqo Jaldesa M.P
10. The Hon. Cynthia Jepkoskei Muge, M.P
11. The Hon. Hamisi Kakuta Maimai M.P
12. The Hon. Rael Chepkemoi Kasiwai, M.P
13. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant II
2.	Ms. Kafuyai Wamae	-	Clerk Assistant III
3.	Mr. Abdimalik Ahmed	-	Clerk Assistant III
4.	Ms. Noel Amutabi	-	Legal Officer
5.	Ms. Carol Waweru	-	Hansard Officer III
6.	Mr. Mohammed Said	-	Sergeant at Arms

MINISTRY OF EDUCATION

1.	Hon. Ezekiel Machogu	-	Cabinet Secretary, Ministry of Education
2.	Mr. Elyas Abdi	-	Director General, Basic Education
3.	Mr. Joshua Wabwire	-	Legal Officer

MIN. NO.NA/DAAOSC/COI/2023/268: PRELIMINARIES.

The Chairperson called the meeting to order at thirty-five minutes past ten o'clock and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Julius Taitumu M'Anaiba, M.P and seconded by The Hon John Okwisia Makali, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretary, Ministry of Education regarding the implementation status of House Resolution on Standardization and Production of School Uniforms.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/269: CONFIRMATION OF MINUTES.

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/270: MEETING WITH THE CABINET SECRETARY, MINISTRY OF EDUCATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS ON STANDARDIZATION AND PRODUCTION OF SCHOOL UNIFORMS.

The Cabinet Secretary, Hon. Ezekiel Machogu, submitted the following in response to the implementation of the resolution on standardization and production of school uniforms in the country; -

i) That at the time of the House Resolution, the President had already constituted the Presidential Working Party on Education Reform which has a wide range mandate of reviewing various aspects of Kenya's education system. One of the mandates is on the financing frameworks at all levels of basic education.
ii) He submitted that the Working Party had presented its report to the President on 3rd August,2023 and it had captured the views of stakeholders on school uniforms. The views were captured as follows:

"School uniforms are expensive for parents because school administrators collude with suppliers and force parents to purchase from a specific supplier identified by the school administration"

iii) The Working Party recommended that the Ministry of Education provides guidelines to regulate and liberalize the question of school uniforms in basic education institutions.
iv) That the Ministry had already issued directives to ensure that school administrations do not compel parents to purchase uniforms from schools or from specific suppliers.
v) The Ministry issued a directive vide a Circular dated 30th May,2023 (MOE/HQS/3/13/3) to all regional and county directors of education to ensure the stoppage of practices where schools stock uniforms and compel parents to buy or direct parents to purchase uniforms from specific dealers. The names of noncompliant schools will be noted for necessary action within the provisions of the law.
vi) The CS informed the Committee that the Ministry has also issued a directive to school principals to this effect. No school is to direct parents to any particular outlet for the

purpose of purchasing uniforms and no school will stock any uniforms and boarding related items.

Committee Observations

1) Arising from the submissions by the cabinet secretary, the Committee observed that the circular issued by the Ministry only focused on secondary education yet the concern of school uniforms is cross cutting. Primary schools ought to be included in this circular.
2) The Committee also observed that there is need to encourage learners who complete schools to leave their school uniforms in school for the needy children who cannot afford such. This will create more homogeneity among students irrespective of their socio-economic status and it will keep the students focused on education and not their clothes.
3) Lastly, the Committee observed that the implementation of the House Resolution is ongoing.

Committee Recommendations

i) Arising from the submissions, the Committee recommends that the Cabinet Secretary makes physical announcement of the circular in the various broadcasting outlets so that the information reaches all Kenyans.
ii) The Committee recommends that the Ministry puts in place a more detailed standardization framework and enforceability mechanisms.
iii) That no school should direct parents to any particular outlet for the purpose of purchasing uniforms and no school would stock any uniforms and boarding related items whatsoever;

MIN. NO.NA/DAAOSC/COI/2023/271: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/272: ADJOURNMENT

There being no other business, the meeting was adjourned at fifteen minutes past eleven o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date...21/11/23.....

MINUTES OF THE FORTY-NINTH (49th) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 13TH OCTOBER, 2023 IN MAIN CHAMBER-NATIONAL ASSEMBLY, PARLIAMENT BUILDINGS AT 10AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Johnson Manya Naicca, M.P
3. The Hon. Elijah Memusi Kanchory, M.P
4. The Hon John Okwisia Makali, M.P
5. The Hon. Hilary Arap Kosgei, M.P
6. The Hon. Mark Samuel Muriithi Mwenje, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Siyoi Lillian, M.P
4. The Hon. Zamzam Mohamed Chimba, M.P
5. The Hon Timothy Kipchumba Toroitich, M.P
6. The Hon. Abdul Ebrahim Haro, M.P
7. The Hon George Koimburi Ndung'u M.P
8. The Hon. Prof Guyo Waqo Jaldesa M.P
9. The Hon. Charles Gumini Gimose, M.P
10. The Hon Cynthia Jepkoskei Muge, M.P
11. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
12. The Hon Hamisi Kakuta Maimai M.P
13. The Hon. Rael Chepkemoi Kasiwai, M.P
14. The Hon. Stanley Muiruri Muthama, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Abdiaziz Shobay - Clerk Assistant II
2. Ms. Kafuyai Wamae - Clerk Assistant III
3. Ms. Noel Amutabi - Legal Officer
4. Mr. Collins Mahamba - Public Communications Officer
5. Ms. Carol Waweru - Hansard Officer III
6. Mr. Joshua Lenambeti - Sergeant at Arms

MINISTRY OF DEFENCE & KENYA SPACE CENTER (KSA)

1. Hon. Patrick Mariru - Principal Secretary, Ministry of Defence
2. Maj Gen (Rtd) James Aruasa- Board Chair, Kenya Space Agency Board
3. Brig. Hillary Kipkosgey - Ag. Director General, Kenya Space Agency
4. Mr. Muchemi Muriithi - Director Europe, Ministry of Foreign Affairs
5. Lt. Col Andrew Nyawade - Director Technical, Kenya Space Agency

ITALIAN SPACE AGENCY

1. Mr. Teodoro Valente - President of the Italian Space Agency(ASI)
2. Mrs. Lorenza Gambacorta- Charge d'Affaires a.i. of the Italian Mission

3. Col. Luigi Riggio - Advisor-Italian Prime Minister's Office
4. Mr. Giacomo Montemarani - Political Counsellor of the Italian Mission
5. Mrs. Gabriella Arrigo - Director, International Affairs, ASI
6. Mr. Munzer Jahjah - ASI Manager at Luigi Broglio Space Centre
7. Mrs. Maria Chiara Noto - International Affairs Officer of ASI

MIN. NO.NA/DAAOSC/COI/2023/263: PRELIMINARIES.

The Chairperson called the meeting to order at eleven o'clock and said Hon.Hillary Kosgei said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretaries, Ministry of Defence, Ministry of Foreign and Diaspora Affairs and Italian Space Agency regarding the implementation status of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on Luigi Broglio-Malindi Space Centre in Kenya.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/264: CONFIRMATION OF MINUTES.

The Agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/265: SUBMISSION BY THE CABINET SECRETARIES FOR DEFENCE AND FOREIGN AND DIASPORA AFFAIRS

The Principal Secretary, Hon. Patrick Mariru submitted the following in response to the implementation status of the Report of the Departmental Committee on Defence & Foreign Relations regarding the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre:

i) That, as a result of various engagements between the Ministry of Defence, Kenya Space Agency and Italian Space Agency, there are all in full agreement and they have signed Minutes of the Meeting and key resolutions were reached during the meeting without any reservations;
ii) There were some important developments during the meeting which signaled a renewed sense of commitment to implement the agreement. These developments include the following:
    a) Provision of office space for the deputy CEO;
    b) Availing some of the contracts with third parties for services offered at the Malindi Space Centre;

c) Completed rehabilitation of X-Band Earth Observation Antenna and its indoor equipment (antenna control unit) installed and functional;

d) Completed rehabilitation of building for Centre for Earth Observation and Remote Sensing and partitioning done;

e) Indoor equipment for data acquisition and processing at the Centre for EO and Remote Sensing scheduled to be shipped to Kenya by Nov 2023.

f) Demolition of the old building at Broglio Space Centre to pave way for construction of the International Centre for Space Education; and

g) There is currently running a 2-week long regional capacity building workshop on Space weather monitoring and sensitization ongoing at Malindi Space Centre. This was jointly conceived and organized by the Italian Space Agency, the Kenya Space Agency, Pwani University and other International Non-Governmental Agencies.

iii) The signing of the Minutes of the Joint Steering Committee meeting and the Joint Steering Committee Resolutions / Key decisions, has paved the way for convening of the Apex Joint Council of Ministers in the next few weeks (around Mid-November), to further strengthen the joint resolve to move forward;

MIN.NO.NA/DAAOSC/COI/2023/266: SUBMISSION BY THE PRESIDENT OF THE ITALIAN SPACE AGENCY

The President of the Italian Space Agency Mr. Teodoro Valente submitted the following in response to the implementation status of the Report of the Departmental Committee on Defence & Foreign Relations regarding the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre:

i) He informed the Committee that he was in agreement with the submissions by the Principal Secretary Ministry of Defence and noted that bilateral relations between ASI and Kenya Space Agency are now characterised by robust dialogue at all levels which are aimed at defining Kenya's space key priorities.
ii) He submitted that every decision and step forward have been made in full agreement with the Kenyan members of the Joint Management Board (JMB) and Joint Technical Working Group (JTWG).
iii) He further submitted that there are education projects that are currently ongoing at the Broglio Space Centre. These are:

a) The "*Earth Observation*", project for the development of a satellite data system for acquisition, archiving, processing, and distribution;
b) The "*Outer Space Law for International Cooperation*", project, which aims to identify international cooperation models between developed and emerging space countries;
c) The *"New Observatory for Real-time Ionospheric Sounding over Kenya*", a project for studying the relations Sun-Earth and the monitoring Space weather;

d) The *Copernicus Training for African Trainers* project in collaboration with the European Union, which is already started virtually on February 2023;
e) A Eastern Africa capacity building workshop on Space Weather and Low-latitude Ionosphere, co-sponsored by UNOOSA and ICTP, was held at the BSC from 3 to 12 October 2023 with the participation of 40 students from Africa and 17 teachers from Europe, Canada and USA; and
f) Three other training courses on Space product and Quality Standards, CubeSat and Earth Observation, are scheduled for the coming months.

iv) ASI finalized an agreement with Sapienza University of Rome to host 45 students for 3 years with ASI Ph.Ds. scholarships on Earth Observation.
v) ASI in collaboration with KSA and in accordance with one of the Implementing Arrangements will be building a Regional Center for Earth Observation. In particular, ASI has completed the necessary work to host the Center, including the procurement of the equipment for data acquisition, archiving and distribution.
vi) The activation of an antenna for data acquisition and a second antenna for meteorological data on the Kenyan area has been completed. Technical specifications for the Nairobi node are currently in progress.
vii) To address the obsolescence of some existing technical systems and better fulfill the obligations outlined in the Intergovernmental Agreement, ASI is procuring new antenna systems for data acquisition and tracking services.
viii) Additionally, an antenna system dedicated to scientific research and space exploration (Deep Space) for possible support also to lunar exploration (ex. NASA Artemis Program) from an equatorial site is being acquired.
ix) Finally, Kenya Space Agency is actively involved in the management of the Broglio Space Center through the Deputy CEO, and it receives regular updates on all activities taking place at the BSC through the JSC and JWC.

Committee Observations

1. Arising from the submissions by the Principal Secretary and the president of the Italian Space Agency, the Committee observed that implementation is ongoing.
2. There were various meetings between the Ministry of Defence, Kenya Space Agency and Italian Space Agency which resulted in full agreement by the parties and key resolutions reached. The outcome was signed Minutes of the meetings by both parties which signaled a renewed sense of commitment to implement the agreement

Committee Recommendations

The Committee recommended that the Ministry of Defense furnish the committee with a progress report every three months concerning the implementation status of the agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre in Kenya.

MIN. NO.NA/DAAOSC/COI/2023/267: ANY OTHER BUSSINESS

No other business arose.

MIN. NO.NA/DAAOSC/COI/2023/268: ADJOURNMENT

There being no other business, the meeting was adjourned at fifty-five minutes past eleven o'clock.

Signed.....

.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....28/11/23.....

MINUTES OF THE FORTY-FIFTH (45th) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON TUESDAY, 12TH SEPTEMBER, 2023 IN COMMITTEE ROOM 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. George Koimburi Ndung'u, M.P
3. The Hon Prof Guyo Waqo Jaldesa, M.P
4. The Hon. Siyoi Lillian, M.P
5. The Hon. Abdul Ebrahim Haro, M.P
6. The Hon. Cynthia Jepkosgei Muge, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. John Okwisia Makali, M.P
9. The Hon. Timothy Kipchumba Toroitich, M.P
10. The Hon. Hamisi Kakuta Maimai, M.P
11. The Hon. Mark Samuel Muriithi Mwenje, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Elijah Memusi Kanchory, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
7. The Hon. Hilary Arap Kosgei, M.P
8. The Hon. Rael Chepkemoi Kasiwai, M.P
9. The Hon. Stanley Muiruri Muthama, M.P
10. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Abdiaziz Shobay	-	Clerk Assistant II
2.	Mr. Abdimalik Ahmed	-	Clerk Assistant III
3.	Ms. Noel Amutabi	-	Legal Officer
4.	Mr. Danton Kimutai	-	Audio Officer III
5.	Mr. Joshua Lenambeti	-	Sergeant at Arms

KENYA REVENUE AUTHORITY

1.	Mr. Chege Macharia	-	Deputy Comm. Border Control & Management
2.	Ms. Josephine Manyasi	-	Deputy Comm. Cargo Scanning & Monitoring
3.	Mr. David Otwenka	-	Deputy Comm. Policy & international Affairs
4.	Mr. Josephat Omondi	-	Deputy Commissioner, Finance
5.	Mr. Paul Ogondi	-	Kenya Revenue Authority (KRA)
6.	Mr. Lerog Odede	-	Kenya Revenue Authority (KRA)
7.	Mr. Isaac Sichangi	-	The National Treasury

8. Mr. Francis Gitau - Special Economic Zones Authority

MIN. NO.NA/DAAOSC/COI/2023/243: PRELIMINARIES.

The Chairperson called the meeting to order at fifty minutes past ten o'clock and the Hon. Abdul Ebrahim Haro said a word of prayer.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretary National Treasury and Economic Planning and Kenya Revenue Authority (KRA) regarding implementation status of the report of the Departmental Committee on Finance and National Planning regarding the inspection visit s to KRA offices to ascertain the impact of revenue collection.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/244: CONFIRMATION OF MINUTES.

34th Sitting

Minutes of the 34th sitting held on 1st August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Mark Samuel Muriithi Mwenje, M.P and seconded by The Hon. Abdul Ebrahim Haro, M.P. There were no matters arising.

35th Sitting

Minutes of the 35th sitting held on 3rd August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Cynthia Jepkoskei Muge, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P. There were no matters arising.

36th Sitting

Minutes of the 36th sitting held on 3rd May, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. John Okwisia Makali, M.P and seconded by The Hon. Prof Guyo Waqo Jaldesa, M.P. There were no matters arising.

37th Sitting

Minutes of the 37th sitting held on 11th August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Abdul Ebrahim Haro, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P. There were no matters arising.

38th Sitting

Minutes of the 38th sitting held on 17th August, 2023 were read and confirmed as a true record of the proceedings as proposed by The Hon. Julius Taitumu M'Anaiba, M.P and seconded by The Hon. Hamisi Kakuta Maimai, M.P. There were no matters arising.

MIN.NO.NA/DAAOSC/COI/2023/245: SUBMISSIONS BY THE CABINET SECRETARY NATIONAL TREASURY AND KENYA REVENUE AUTHORITY (KRA) REGARDING IMPLEMENTATION STATUS OF THE REPORT BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.

The secretariat reported that they were in receipt of a letter from the Commissioner General, Kenya Revenue Authority (KRA), requesting the Committee to be represented by his Deputy Commissioners since he was away on official duties. However, the Committee expressed concerns about the Commissioner General's failure to honor its invitations on two subsequent occasions and adjourned the meeting. The Committee resolved to extend a third invitation to the Cabinet Secretary and the Commissioner General to a meeting to be held on **Tuesday, October 17, 2023, at 10 a.m.**

MIN. NO.NA/DAAOSC/COI/2023/246: ANY OTHER BUSSINESS

Foreign Visit: The secretariat reported that they were in receipt of a letter from the Communications Authority of Kenya (CAK) inviting the committee to participate in the Africa Internet Summit (AIS) to be held in Johannesburg, South Africa, from September **26–30, 2023**, and the 18th annual meeting of the Internet Governance Forum in Kyoto, Japan, from October **8–12, 2023.**

The Committee therefore nominated the following four Hon. Members to participate in the said two conferences: -

1. Johannesburg, South Africa
   i) The Hon. Rose Mumo Museo, M.P. **Vice Chairperson/Leader of Delegation**
   ii) The Hon. Timothy Kipchumba Toroitich, M.P, Member

2. Kyoto, Japan
   i) The Hon. The Hon. Johnson Manya Naicca, M.P., **Leader of Delegation**
   ii) The Hon. Hamisi Kakuta Maimai, M.P, Member

MIN. NO.NA/DAAOSC/COI/2023/247: ADJOURNMENT

There being no other business, the meeting was adjourned at fifty-five minutes past ten o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....21/11/23.....

MINUTES OF THE THIRTY-EIGHTH (38th) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 17th AUGUST 2023, AT 2nd FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Charles Gumini Gimose, M.P
6. The Hon. Siyoi Lillian, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. John Okwisia Makali, M.P
9. The Hon. Hamisi Kakuta Maimai, M.P
10. The Hon. Stanley Muiruri Muthama, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Johnson Manya Naicca, M.P
4. The Hon. Nicholas Ng'ikor Nixon Ngikilong M.P
5. The Hon Prof Guyo Waqo Jaldesa, M.P
6. The Hon. Timothy Kipchumba Toroitich, M.P
7. The Hon. Cynthia Jepkosgei Muge, M.P
8. The Hon. Abdul Ebrahim Haro, M.P
9. The Hon. Mark Samuel Muriithi Mwenje, M.P
10. The Hon. Zamzam Mohamed Chimba, M.P

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Kafuyai Wamae	-	Clerk Assistant III
2.	Mr. Abdimalik Ahmed	-	Clerk Assistant III
3.	Ms. Noel Amutabi	-	Legal Counsel
4.	Mr. Danton Kimtai	-	Audio Officer
5.	Ms. Winnie Kizia	-	Media Relations Officer
6.	Ms. Caroline Waweru	-	Hansard Officer

KENYA ELECTRICITY AND GENERATING COMPANY (KENGEN)

1.	Mr. Abraham Serem	-	Ag, Managing Director & CEO KENGEN
2.	Ms. Magdaline Wachira	-	Senior State Council State Department for Energy
3.	Eng. Ronoh Kibet	-	Technical Assistant, KENGEN
4.	Mr. George Ominde	-	Ag, Legal Manager, KENGEN

5. Mr. Joshua Were - Manager Sustainability Development, KENGEN

MIN. NO.NA/DAAOSC/COI/2023/196: PRELIMINARIES.

The Chairperson called the meeting to order at ten minutes past eleven o'clock and Hon. Elijah Memusi Kanchory, M.P said a word of prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Hilary Arap Kosgei, M.P and seconded by The Hon. George Koimburi Ndung'u, M.P

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Cabinet Secretary, Ministry of Energy and KENGEN regarding implementation status of the report of the departmental Committee on Energy on its consideration of a public petition regarding degradation of the environment along Sondu-Miriu Dam due to the failure by KENGEN to fully comply with the Environmental Impact Assessment of 1995.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/197: CONFIRMATON OF MINUTES.

The agenda item was differed to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/198: SUBMISSIONS BY KENGEN ON A PUBLIC PETITION REGARDING DEGREDATION OF ENVIRONMENT ALONG SONDU-MIRIU DAM DUE TO FAILURE BY KENGEN TO FULLY COMPLY WITH THE ENVIRONMENTAL IMPACT ASSESSMENT OF 1995.

The 12th parliament's Departmental Committee on Energy recommended that KENGEN should finalize the tender process for dredging the silt and eliminating all resulting hippo grass from the intake area and banks within 90 days of the tabling of their report.

Implementation status

Mr. Abraham Serem, the Managing Director submitted the following in response to the implementation status of the recommendations of the report by the 12th Parliament's Departmental Committee on Energy; -

i) In regards to the 1st Prayer, the Managing Director reported that they have made progress in implementing the recommendations from the meeting. On the first prayer, dredging work for phase I has been 60% completed after allocating a budget of Ksh 78 million, with a significant investment of Kshs 48 million;

ii) Additionally, the evaluation and award for phase II dredging works have been completed, and they are currently awaiting the contractor to sign the contract. These efforts aim to address the issues surrounding the dam's condition and its impact on the local communities;

iii) Sensitization of the local community on safety measures following ongoing dredging works at Sondu reservoir was done through public barazas for both right and left banks on 19th, 20th and 21st April 2023;

iv) Mapping of safe access points to the reservoir has been done. A total of eight access points, four on each bank, have been identified. Civil works for the safe access points to be done upon completion of phase 1 dredging works;

v) Construction safe access points to be done under the phase of dredging which where we have an allocation of Ksh.78 million;

vi) In regards to the 2nd prayer, the discharge channel referred to under clause 6.22 of the EIA report is the outlet channel as described in section 3 of the said report i.e "after passing through the power house, the water will be returned to the Sondu Miriu river along a 4.5 km long outlet channel".

vii) A total of seven (7) bridges were incorporated in the design of the outlet channel during construction of the Sang'oro Power Station. The bridges provided access to vehicles and human beings;

viii) KenGen will consider and repair the patches of untarmacked sections on the Kolweny-Nyamarimba-Adingó Opanga road subject to availability of funds;

ix) Tender for rehabilitation of Ramula-Intake Road (left Bank) and Intake - Jogoo centre in Andingo-Opanga (Right Bank) was awarded and the works undertaken in 2022;

x) In regards to the 3rd prayer, KenGen engaged REREC vide a letter dated 24th April 2023 to consider implementation of the last mile project on areas around KenGen installations;

xi) KenGen covers a wide area across the country and their CSR projects targets all the people living around their installation and consider all of them subject to availability of funds;

xii) The Titles to be processed in favour of Community Members are in two categories as follows: - Those for deceased cases where KenGen facilitated succession through the office of the Public Trustee. Each of the 59 households needs to appoint an administrator and are awaiting the families to appoint the administrators then we take it up to process.

xiii) In the 2nd category there are 12 titles that had errors and assisting those concerned to get titles. Unfortunately, the Awasi Lands Registry was razed down by a fire incident on 18th February 2023 and it was subsequently Gazetted as having been closed;

xiv) KenGen will activate contact with Lake Basin with the intention to implement the recommendation. The community and SCC were advised accordingly;

xv) ESIA license was issued by NEMA on 26th October 2022.

xvi) The ESIA report was given to the contractor awarded tender for dredging of Sondu Intake for implementation of the mitigation measures upon commencement of the works. The Chief Environment Officer – Western Region is a Project Implementation Team member and oversees the implementation of the mitigation measures.

Committee observation

The Committee examined the concerns surrounding the current state of the dam and its impact on the local communities residing in its vicinity. However, the Committee expressed dissatisfaction with the progress made thus far, especially considering the recommended

completion deadline of August 2022. There were concerns raised regarding the extent of due diligence carried out in the project planning phase.

Committee resolution

In light of the aforementioned observations, the Committee directed that KENGEN should reevaluate their approach, prepares a more comprehensive submission, and resolved to extend a second invitation to the management of KENGEN to a meeting on Tuesday, September 19, 2023.

MIN. NO.NA/DAAOSC/COI/2023/199: ANY OTHER BUSSINESS

Inspection Visit - The Committee proposed to conduct an inspection visit to the site in order to assess the current status of the dam, evaluate the progress of the ongoing dredging works and gain a first-hand understanding of the issues impacting the local communities living in the vicinity.

MIN. NO.NA/DAAOSC/COI/2023/200: ADJOURNMENT

There being no other business, the meeting was adjourned at forty minutes past eleven o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

MINUTES OF THE THIRTY-SEVENTH (37TH) SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON FRIDAY, 11TH AUGUST, 2023 IN THE CONFERENCE ROOM AT LUIGI BROGLIO-MALINDI SPACE CENTRE IN MALINDI, KILIFI COUNTY AT 1.00PM.

PRESENT

1. The Hon. Raphael Bitta Sauti Wanjala, M.P – **Chairperson**
2. The Hon. Elijah Memusi Kanchory, M.P
3. The Hon. Hilary Arap Kosgei, M.P
4. The Hon Prof Guyo Waqo Jaldesa, M.P
5. The Hon. Siyoi Lillian, M.P
6. The Hon. Abdul Ebrahim Haro, M.P
7. The Hon. Julius Taitumu M'Anaiba, M.P
8. The Hon. Timothy Kipchumba Toroitich, M.P
9. The Hon. Hamisi Kakuta Maimai, M.P
10. The Hon. Mark Samuel Muriithi Mwenje, M.P
11. The Hon. Rael Chepkemoi Kasiwai, M.P
12. The Hon. Stanley Muiruri Muthama, M.P
13. The Hon. Zamzam Mohamed Chimba, M.P

APOLOGIES

1. The Hon. Rose Museo Mumo, M.P – **Vice Chairperson**
2. The Hon. Mohamed Ali, M.P
3. The Hon. Nicholas Ngikor Nixon Ngikilong M.P
4. The Hon. George Koimburi Ndung'u, M.P
5. The Hon. Johnson Manya Naicca, M.P
6. The Hon. Charles Gumini Gimose, M.P
7. The Hon. John Okwisia Makali, M.P
8. The Hon. Cynthia Jepkosgei Muge, M.P

IN-ATTENDANCE

MINISTRY OF DEFENCE

1. Hon. Patrick Mariru – Principal Secretary
2. Mr. Bogita Ongeri, OGW - Director Public Communications
3. Lt Col Dickens Kombo - Commanding Officer Kenya Navy

MINISTRY OF FOREIGN AND DISAPORA AFFAIRS

1. Amb.Vungo Joseph
2. Cynthia Yator

LUIGI BROGLIO MALINDI SPACE CENTRE

1. Amb. Roberto Natali - Italian Ambassador to Kenya
2. Mr. Giancarlo Santilli - CEO Luigi Broglio Space Center

KENYA SPACE AGENCY

1. Maj. Gen. (Rtd.) James Aruasa - Chairperson, Kenya Space Agency

2. Brig. Hillary Kipkosgey - Director General, Kenya Space Agency

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Lucy Kimathi - Principal Clerk Assistant/HOD
2. Mr. Abdiaziz Shobay - Clerk Assistant II
3. Ms. Kafuyai Wamae - Clerk Assistant III
4. Mr. Abdimalik Ahmed - Clerk Assistant III
5. Ms. Noel Amutabi - Legal Counsel
6. Ms. Caroline Waweru - Hansard Officer
7. Mr. Danton Kimutai - Audio Officer III
8. Ms. Winnie Kiziah - Media Relations Officer

MIN. NO.NA/DAAOSC/COI/2023/191: PRELIMINARIES.

The Chairperson called the meeting to order at 1:00pm and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Lilian Siyoi, M.P and seconded by The Hon. Julius Taitumu M'Anaiba, M.P.

AGENDA

1. Prayers
2. Introduction
3. Confirmation of Minutes
4. Substantive agenda: **Meeting with the Ministry of Defence, Ministry of Foreign and Diaspora Affairs, Kenya Space Agency & Luigi Broglio-Malindi Space Centre to consider the implementation status of the Report of the Departmental Committee on Defence & Foreign Relations on the consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre.**
5. Any Other Business.

MIN. NO.NA/DAAOSC/COI/2023/192: CONFIRMATON OF MINUTES.

The agenda item was deferred to the next sitting.

MIN.NO.NA/DAAOSC/COI/2023/193: STAKEHOLDERS SUBMISSIONS REGARING THE IMPLEMENTATION STATUS OF THE AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND ITALY ON THE LUIGI BROGLIO-MALINDI SPACE CENTRE

1. The Kenya-Italy Bilateral Agreement on the Luigi Broglio Malindi Space Centre was ratified by the National Assembly on 15th October, 2020 and came into effect on 16th December, 2020 following the completion of exchange of diplomatic notes on the agreement between the two governments. The implementing parties are the Kenya Space Agency (KSA) and the Italian Space Agency (ASI).
2. Outlined in the agreement are key provisions and commitments aimed at fostering cooperation in the peaceful uses of outer space for scientific, technological, and

socioeconomic development of both Nations. It is however noted that there has been lack of significant progress in the implementation of these provisions and commitments that include: Support to the Kenya Space Agency; Access to Earth Observation and Space Science Data; Education and Training; Telemedicine; and the Establishment of a Centre for Earth Observation.

3. During a meeting held on 13th August, 2023 with the Ministry of Defence, the Committee noted that the Ministry has consistently raised concerns with the Italian Space Agency (ASI) through various correspondences, the most recent being letters addressed to the President of the Italian Space Agency in March, 2023 and the Italian Minister responsible for Space Matters in May, 2023. Regrettably, the responses received so far have neither addressed those concerns adequately nor have they demonstrated a genuine commitment to fulfilling the obligations stipulated in the agreement.
4. Arising from the meeting, the Committee resolved to undertake an inspection visit to the Luigi Broglio Malindi Space Centre from 10th – 13th August, 2013 to seek prompt responses from the implementing agencies.
5. The Committee convened a meeting with the implementing parties: the Ministry of Defence, Ministry of Foreign and Diaspora Affairs, the Kenya Space Agency, and the Italian Space Agency to address the continuous breach of the agreement between the Government of Kenya and the Italian Republic.
6. The Committee expressed concern over the absence of the CEO of the Italian Space Agency, who was to address various issues of concern to the Committee despite having been invited through the Ministries of Defence and Foreign and Diaspora Affairs. The presence of the CEO was crucial since he is the Chief Accounting Officer of the institution and was fit to fully answer the Committee and the state agencies present on the exact implementation status of the Agreement.

Committee resolution

The Committee resolved to extend a second invitation to the Chief Executive Officer and the Management of the Luigi Broglio-Malindi Space Centre, the Ministry of Defence, Ministry of Foreign & Diaspora Affairs, and the Kenya Space Agency to a meeting on **Thursday, 5th October, 2023,** to apprise the Committee on the implementation status of the said Agreement.

MIN. NO.NA/DAAOSC/COI/2023/194: ANY OTHER BUSSINESS

The Committee considered and acceded to the request by the Ministry of Youth Affairs, the Arts and Sports to reschedule the meeting with the Cabinet Secretary. The meeting will be held on Thursday, 3rd August, 2023.

MIN. NO.NA/DAAOSC/COI/2023/195: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past one o'clock.

Signed.....

Hon. Raphael Bitta Sauti Wanjala, M.P
(CHAIRPERSON)

Date.....

Annex 3

Submission by the National Social Security Fund on the implementation status of the Public Investments Committee, Twenty-Second Report on consideration of the Auditor General's Reports on Financial Statements of State Corporations

NSSF/FIN/1/15/ 29

11 October 2023

Clerk of the National Assembly
Main Parliament Buildings
P. O. B0x 41842 - 00200
NAIROBI

(Att: Serah M. Kioko, MBS)

Dear Sir,

MEETING WITH THE COMMITTEE ON IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS CONTAINED IN THE 22ND PIC REPORT ON AUDITED FINANCIAL STATEMENTS OF NATIONAL SOCIAL SECURITY FUND

Your letter Ref: NA/AA&OSC/COI/2023(81) dated 9th October 2023 on the above subject refers. We hereby confirm our attendance.

The Fund has prepared responses to the queries raised, which are detailed in the attached report.

Yours faithfully,

David Koross
CEO/MANAGING TRUSTEE

1.0 The Status on member contributions held in suspense accounts for FY 2013/14, 2014/15 and 2015/16.

Background

Suspense:
Suspense accounts are 'Contributions in Transit' received from employers, but with missing member particulars, i.e *NSSF Member Number* and *National Identification Number,* which are the only unique identifiers.

The Fund maintains an electronic record of all these contributions, to which individual member accounts are updated upon receipt of the two identifiers. This data has been maintained since 2006.

Contributions in transit are contributions received from employers and held by the Fund awaiting crediting to individual member accounts upon receipt of the member particulars. This is therefore not cash held in a suspense account as the contributions are immediately deployed for investments.

How Does Allocation in Transit impact benefits processing for member?

i. Members who apply for their Benefits are required to indicate their employment history in the application form for the purpose of ensuring that all their submitted contributions are reflected in their accounts and updated before the benefits payment is processed;
ii. The contributions that are updated are inclusive of the interest accrued over the years and the Members DO NOT lose out on their Contributions or the accrued interest; and
iii. The Fund has enabled online access to member statements via the NSSF Portal and USSD platform. Members are encouraged to check on their contributions regularly to ensure that their contributions are up to date and to correct any anomalies in time before they qualify for Benefit claim;

Recommendations of PIC

The 19th Report of the PIC recommended that the Fund publishes in the local media all the money held suspense accounts to allow members to come and clear their accounts.

Management Comments

The Fund finds this approach too expensive and practically not possible due to the huge amount of data involved. Further, the Data Protection Act now makes it legally impermissible to publish member identification data online or in the media. Instead, the Fund has chosen to deal directly with the employers and members through the following means:

i. The Fund has deployed Zonal Compliance Officers who routinely collect missing returns and particulars for uploading as they conduct Employer Record inspections.

ii. All field offices have a dedicated team that exclusively works on clearing the Contributions in Transit. In the Financial year 2022/2023, a clearance of **KES 245,882,722.35** was resolved and posted to Member accounts. In quarter one of FY 2023/2024, **KES 87,290,748.05** was cleared. This is a routine exercise undertaken on a daily basis.

The PIC further recommended that the Fund should not receipt any contributions not accompanied by a full receipt.

The Fund has progressively reduced the amount of data errors acceptable, from an initial 5% to the current 2%. Setting the limit to ZERO would trigger significant challenges to employers who have to deal with late joiners who would either have to be excluded from the payroll or would lead to delay in entire payrolls. The 2% limit allows one or two new entries per 100 to join the payroll and be processed as they go through the NSSF registration process. The Fund has deployed online and USSD registration processes to hasten that registration process.

Further the Fund receives contributions from Government entities with missing NSSF numbers. It was only until recently that the IPPD was amended to include the column for NSSF in County and Central Government payrolls. The Fund allows the amounts to be receipted under such exceptional circumstances to allow capture of the payments otherwise the amounts could end up being allocated to competing resource requirements. A process then follows that allocates these contributions to the individual members using data already held in the system. The changes in IPPD shall significantly improve on this.

In all cases, the Fund collects and holds sufficient data to identify the specific member when he comes to make a claim or when he finally completes the registration process.

Strategies to Halt and Reduce the Allocation in Transit

The following are the key strategies put in place to halt and reduce growth of the Contributions in Transit:

i. Automated the Member registration process where Members are able to register via their mobile phones and check their provisional contributions statements.

ii. Reduction of the Contributions in Transit by 30% by 30th June 2024 is a key performance indicator for the financial year 2023/2024.

iii. Enhance usage of the e-service in the processing and management of member returns and contributions to reduce data error and enhance efficiency in contributions processing and returns management.

Current Status

The amount in Contributions in transit for the financial years requested is as tabulated below:

S/No.	F/Y	Amount
1	2013/2014	2,890,818,877.00
2	2014/2015	2,869,532,227.00
3	2015/2016	767,591,375.83
4	2022/2023	942,134,660.52

2.0 Payment of the amount recommended by the State Department of Public Works concerning the completion of Hazina Trade Centre in the in the FYs 2014/2015 and 2015/2016

The Hazina Trade Center project was delayed for various reasons key being litigation by the sole tenant, Nakumatt Holdings which prevented the contractor from accessing portions of the site to carry out column strengthening. This long delay led to the Board of Trustees making a decision to restructure the project and reduce the scope to 15 floors. The State Department of Public Works (SDPW) was engaged to supervise the project

and estimate the cost of completing the building within the revised scope. The SDPW presented an estimate of **Kshs. 4,095,862,434.00** for the revised scope down from **Kshs. 6,715,218,188**. This was formalized in **Variation Order No. 1** which set the revised scope and cost.

The contractor presented a claim for cost of extended preliminaries due to the lost time. The SDPW was directed by the Public Investments Committee of the National Assembly to evaluate the claim and present a report which they did. In their report, the SDPW determined that **Kshs. 871,697,124.00** was contractually payable to cover the costs incurred by the contractor during the delays (extended preliminaries) up to that point in time, i.e. 15th March 2018. The Fund sought the opinion of the State Law Office on the legality of the claim and the AG responded that according to the contract, the contractor had the right to claim the amounts claimed under **compensation event clauses**. **Variation Order No. 2** was prepared and executed formalizing the amount that was agreed between the Fund and the Contractor and approved by the SDPW and Project Consultants. This amount was paid in four equal installments of **Kshs. 271,924,281.05** each vide **Certificates Nos. 14, 15, 16 and 18** (see copies attached).

In 2020, the project encountered further delays due to Covid19 Lockdown which led to disruptions to the global supply chains and working environment. The disruption in manufacturing and shipping led to significant delays in procurement of imported materials. The shortened workdays and reduced manning levels due to Social Distancing further delayed execution of the works.

The project was completed on 24th September 2021 and a **Certificate of Practical Completion** was dully issued. The Defects Liability period was concluded, and all the defects identified were attended to culminating in a **Certificate of Making Good Defects** being issued on 6th June, 2022. All certificates as approved

The project was completed on 24th September, 2021 and a **Certificate of Practical Completion** was dully issued. The Defects Liability period was concluded and all the defects identified were attended to culminating in a **Certificate of Making Good Defects** being issued on 6th June, 2022. A **Final Account** was prepared and approved by the State Department of Public Works and the **Final Certificate No. 25** was paid to the contractor at the conclusion of the contract.

As at end September 2023, the office tower has been 67% let with further commitments for most of the remaining space in various stages of completion. APPENDIX I

3.0 Refund by KRA of Kshs 904,904,000 overpaid by NSSF.

Background

The National Social Security Fund was exempt from income tax, a fact which was confirmed through Circular Ref: 1035/30/B/86 dated 30 June 1987 by the Commissioner of Income Tax. The income of NSSF was not subjected to income tax between 1965 and 1991. However, between 1992 and 1997, NSSF was subjected to income tax and a total of Kshs. 9,863,884,078 was paid to KRA in those 6 years.

With effect from 18 June 1996, NSSF became exempt from income tax as per paragraph 45 of the First Schedule to the Income Tax Act which provides that income of NSSF is exempt from income tax provided NSSF complies with the prescribed exemption rules. However, the said exemption rules came to be gazetted by the Minister for Finance on 13th June 2002 through Legal Notice No.97 and became operational with effect from 1 July 2002.

The resumption of the exemption affected the Fund in the following ways:

i. 12 days for the year of income 1996 were exempt and therefore, the tax that had been paid became refundable.

ii. The income tax amount already paid for the year 1997 became refundable in full.

Following this event, a joint tax liability reconciliation was carried out between NSSF and KRA for period 1992 to 1997 and it was established that the Fund had overpaid tax by Kshs. 1,488,463,436, out of which Kshs. 583,559,719 was refunded leaving an outstanding refund due of Kshs. 904,903,717 arrived as follows:-

Year	Tax Overpaid Kshs	Tax Refunded Kshs	Refund Due Kshs
1992	188,361,476	188,361,476	-
1993	1,780,247	1,780,247	-
1994	385,522,517	385,522,517	-
1995	7,895,479	7,895,479	-
1996	493,257,328	-	493,257,328
1997	411,646,389	-	411,646,389
Total	**1,488,463,436**	**583,559,719**	**904,903,717**

Efforts to secure the refund from KRA

NSSF has continued to pursue the refund, a matter which escalated to the High Court, and a ruling delivered in favour of NSSF 29th June 2016 (copy attached) but KRA is yet to honour the court ruling.

Though KRA confirmed in writing on 27 June 2013 and on 30 May a credit of Kshs.425, 518,277 in favour of NSSF, the authority is yet to honour the NSSF members with the refund and members continue to suffer loss from the continued holding on to the Kshs. 904,903,717 due to the Fund.

In 2017, the Fund received a letter from the Office of the Attorney General suggesting that the parties submit the matter to mediation to be conducted by the Nairobi Centre for International Arbitration. However, the Fund declined and maintained that there was no pending dispute as the matter had been determined by the High Court, and what was remaining is settlement of the owed funds. The matter has also been escalated by the Fund to National Treasury.

The Fund has even proposed to the Commissioner General an agreement to offset the debt against taxes owed (PAYE, VAT and other taxes) but the proposal has not been honoured.

In 2021, while pursuing the refund of Kshs. 904,903,717, KRA indicated that the Fund has outstanding tax liabilities arising from an appeal they had made to the Court of Appeal against the High Court decision. On 28th July 2021, KRA wrote to the Fund referring to the Honourable Attorney General's advisory that indicates that it is against public policy and prudent public financial management for government entities to institute legal action against

one another, strongly encouraging use of out of court settlement through alternative dispute resolution.

In keeping with this advisory, the Fund in 2021 subjected itself to an ADR process with KRA aimed at arriving at a win-win scenario, using the KRA's Alternative Dispute Resolution process. However, even with this effort, the matter was not resolved with the KRA Tax Dispute Resolution Decision writing on 17 January 2022 indicating closure of the ADR discussions for lapse of ADR timelines as per the Tax Procedures Act. The Tax Dispute Resolution Division further indicated that the Commissioner was carrying out internal consultations and upon finalization, the file will be reopened for discussion. No further communication has been received on the same to date. APPENDIX II.

4.0 Irregular disposal of undeveloped land in the FY 2015/2016 by the Ministry of Lands and National Land Commission.

The committee recommended that NSSF continues engaging the National Land Commission over the matter. (LR 209/11642)

In view of the above, the Fund wrote a letter on 9th March 2016 demanding the reinstatement of the title.

On 18th April 2016 the Chair of the National Land Commission (NLC) wrote to NSSF stating **"it was not possible to reinstate the land to NSSF as it was already allocated to the PS Treasury on 12th March, 2010 to hold in trust for the Judiciary for the development of Court facilities"**

The NSSF sued the Chief Land Registrar and Lekuna Limited for recovery of the purchase price and interest (HC Case No. HCC/ELC No. 153 of 2018). The case is yet to be determined. APPENDIX III

Annex 4

Submission by the Kenya Medical Supplies Agency (KEMSA) on the implementation status of the Public Investments Committee, Twenty-Second Report on consideration of the Auditor General's Reports on Financial Statements of State Corporations.

MEETING WITH THE PUBLIC INVESTMENTS COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS BY THE KENYA MEDICAL SUPPLIES AUTHORITY

The Chairman, Vice Chairman and Honorable members of the Committee on Implementation of House Resolutions,

In reference to correspondence dated 9th October 2023, Ref: NA/AA&OSC/COI/2023(083) the Kenya Medical Supplies Authority (KEMSA) respond as follows:

QUERY 1: *THE CURRENT STATUS OF OBTAINING OWNERSHIP DOCUMENTS OF VARIOUS PARCELS OF LAND OWNED ACROSS THE COUNTRY BY KEMSA INCLUDING THAT WHICH HAD BEEN TRANSFERRED BY THE MINISTRY OF HEALTH;*

The Kenya Medical Supplies Authority (KEMSA) has taken quick action to gather precise and verified information about the ownership status of its land.

The Authority instructed Ong'anda and Associates Advocates, who are on our panel, on 26th September 2023 to conduct searches on all our properties in order to gather accurate and verified information regarding the land ownership status. The Authority has managed to acquire most of the title deeds and the lawyer vide a letter dated 5th October 2023 provided their findings as follows:

A. PARCELS OF LAND WITH AVAILABLE DOCUMENTS OF OWNERSHIP

KEMSA currently has obtained documents of ownership for the following parcels of land (*See appendix (i) copies of title deeds);*

i. **KEMSA Supply Chain Centre (Embakasi)**

   a. **Registration:** LR NO 9042/176

   b. **Status:** KEMSA owns this property in Embakasi.

      The property was purchased from Kenya Airways Ltd, and the transfer was duly registered on 30th August 2016.

ii. KEMSA Head Office-Commercial Street, Industrial Area, Nairobi

   a. **Registration:** LR NO 209/7154/2

   b. **Status:** The property officially belongs to KEMSA under LR 209/20026.

      The lease has expired and is currently being reviewed. The

property was transferred to KEMSA from Government of Kenya (GoK).

iii. Nakuru Depot

a. **Registration:** 209163/A11

b. **Status:** The property was transferred to KEMSA by GoK. The Parcel Card(s) for this property is not available. The Lease, however, is in KEMSA's name.

iv. **Nyeri Depot**

a. **Registration:** 3/173/174 (merged to Nyeri Block 3/337)

b. **Status:** The property belongs to KEMSA, free from any encumbrances, confirming our rightful ownership. The property was transferred to KEMSA by GoK.

v. **Meru**

a. **Registration:** Meru Central/Ruiri Rwarera

b. **Status:** The property was allocated to KEMSA by the Meru County Government and is confirmed to be under the ownership of KEMSA, devoid of any encumbrances.

vi. **Isiolo**

a. **Registration:** Isiolo/Ngarema/2567

b. **Status:** The property was allocated to KEMSA by the Isiolo County Government and is confirmed to be under the ownership of KEMSA, devoid of any encumbrances.

B. PARCELS OF LAND WITHOUT DOCUMENTS OF OWNERSHIP

i. **Embakasi - Green Site**

a. **Registration:** LR NO.123525

b. **Status:** The title for this property was revoked by Gazette Notice No. 1547. The Gazette notice (*attached*) further recommended that both of the sub-leases for the parcels be issued under the Kenya Airport's Authority (KAA) overarching title deed.

ii. **Embakasi - Green Site**

a) **Registration:** LR NO. 123526

b) **Status:** Similar to the previous property, the title was revoked by Gazette Notice No. 1547. The Gazette notice ***(attached)*** further recommended that both of the sub-leases for the parcels be issued under the KAA overarching title deed.

iii. **Garissa green site**

a) **Registration:** N/A – PDP

b) **Status:** The Garissa green site is unregistered and KEMSA's proof of ownership is an unregistered Part Development Plan (PDP). KEMSA engaged the Ministry of Lands & Physical Planning through the Directorate of Survey who conducted a cadastral survey to be used in the conveyance of the property. This property was allocated to KEMSA by the Garissa County Government.

iv. **Eldoret depot: registration:** LOCK 10/156

a) **Registration:** BLOCK 10/156

b) **Status:** The Eldoret property was transferred to KEMSA by GoK. The Parcel Card(s) for this property is not available. The property lease exists but is not yet registered since no green / white cards exist on file.

v. **Kakamega Green site:**

KEMSA was allocated 3 acres by the County Government of Kakamega. The lease has been signed by KEMSA's and is currently awaiting signature by the County Government of Kakamega.

vi. **Kisumu Depot:**

a) **Registration:** 209163/IX

b) **Status:** the parcel was allocated to KEMSA by GoK and is currently registered under the National Treasury. KEMSA has initiated the transfer process by writing to request the Cabinet Secretary, Ministry of Health, to coordinate with the Cabinet Secretary, National Treasury, for the direct transfer of 209163/IX to KEMSA.

vii. Mombasa depot:

- Registration: N/A – Unsurvey land
- Status: The Mombasa property is held under an allotment letter and a Part Development Plan. This property was allocated to KEMSA by the GoK.

C. IMPLEMENTATION MATRIX STATUS -AD HOC COMMITTEE ON LAND

Based on the official search given to us through the letter from Ong'anda and Associates Advocates, KEMSA has developed a matrix to ensure a conclusion of the outstanding matters on Commercial Street, Nakuru, Eldoret, Kisumu, and Kakamega by 31st December 2023, and pursue titling of land for Garissa, Mombasa, and Embakasi Green-site 1&2, which will be obtained by the end of June 2024.

Please see the implementation matrix to actualize this below.

PROPERTY NAME	LOCATION	REGISTRATION	ACTION ITEMS	PROPOSED DATES OF COMPLETION
Commercial Street HQ	Industrial Area, Nairobi	LR NO 209/7154/2	The Land belongs to KEMSA, but the lease has expired. **Steps:** Initiate the renewal of lease	By end of December, 2023
Eldoret Depot	Eldoret	BLOCK 10/156	The Eldoret property was transferred to KEMSA by GoK. Register the property lease. Parcel Card(s) are not available. **Steps:** Engage a firm of lawyers to complete the conveyance process for Block	By end of December, 2023

PROPERTY NAME	LOCATION	REGISTRATION	ACTION ITEMS	PROPOSED DATES OF COMPLETION
			10/156	
Embakasi - Green Site	Embakasi, Nairobi	LR NO.123525	The title for this property was revoked by Gazette Notice No. 1547. Recommend sub-leases under KAA overarching title deed. **Steps:** Initiate the conveyancing process to pursue lease holding	June 2024
Embakasi - Green Site	Embakasi, Nairobi	LR NO. 123526	Similar to the previous property, the title was revoked by Gazette Notice No. 1547. Recommend sub-leases under KAA overarching title deed. **Steps:** Initiate the conveyancing process to pursue lease holding	By end of June 2024
Kisumu Depot	Kisumu	209163/IX	The parcel was allocated to KEMSA by GoK. Initiate the transfer process for 209163/IX. Write to request coordination with the Cabinet Secretary, National	Written, awaiting response from the Cabinet Secretary

PROPERTY NAME	LOCATION	REGISTRATION	ACTION ITEMS	PROPOSED DATES OF COMPLETION
			Treasury. Steps: Request the Cabinet Secretary, Ministry of Health to coordinate with the Cabinet Secretary, The National Treasury for the direct transfer of Block II/128 to KEMSA.	
Nakuru Depot	Nakuru	209163/A11	The Lease is in KEMSA's name, but the Parcel Card(s) are not available. **Steps:** Pursue registration of lease	By end of December, 2023
Nyeri Depot	Nyeri	3/173/174 (merged to Nyeri Block 3/337)	The property belongs to KEMSA, free from encumbrances. Property is in KEMSA ownership.	N/A
Meru	Meru	Meru Central/Ruiri Rwarera	The property was allocated to KEMSA by the Meru County Government and is confirmed to be under KEMSA ownership without *encumbrances. (See Annex 8).*	N/A

PROPERTY NAME	LOCATION	REGISTRATION	ACTION ITEMS	PROPOSED DATES OF COMPLETION
Isiolo	Isiolo	Isiolo/Ngarema/2567	The property was allocated to KEMSA by the Isiolo County Government and is confirmed to be under KEMSA ownership without encumbrances. *(See Annex 9).*	N/A
Garissa	Garissa	N/A - PDP	The Garissa green site is unregistered. Conduct a cadastral survey for conveyance. KEMSA engaged the Ministry of Lands & Physical Planning. Property was allocated to KEMSA by the Garissa County Government.**Steps:** Pursue titling of the property	By end of June, 2024
Mombasa	Mombasa	N/A - Un surveyed land	The Mombasa property is held under an allotment letter and a Part Development Plan. Property was allocated to KEMSA by the GoK.**Steps:** Pursue titling of the	By end of June, 2024

PROPERTY NAME	LOCATION	REGISTRATION	ACTION ITEMS	PROPOSED DATES OF COMPLETION
			property	
Kakamega	Kakamega	N/A	**Steps:** Pursue lease signature on the part of the County Government of Kakamega	By 31st December, 2023

QUERY 2: THE CURRENT BUDGETARY ALLOCATION BY THE NATIONAL TREASURY AND THE MINISTRY OF HEALTH FOR THE PURCHASE OF DRUGS;

The Current Budgetary Allocation by the National Treasury & Ministry of Health for the purchase of drugs for FY 23/24 is **Kshs, 6,303,033,902** – *refer to Appendix (II) KEMSA approved Budget for FY 2023/2024- Cost of Sales (Goods/Services)*

QUERY 3: THE STATUS OF RECEIVABLES FROM EXCHANGE TRANSACTIONS FOR FY 2015/16 AND 2016/17 SPECIFICALLY ON THE OUTSTANDING BALANCE OF KSHS, 1,708,524,634.

We confirm that all the debts adding up to **Kshs 1,708,524,634** have been settled. However, KEMSA's debts owed by the various stakeholders as at 30th September 2023 is Kshs 5,625,048,807 as detailed in *appendix (iii)*.

QUERY 4: DETAILED INFORMATION ON THE NATURE OF THE OUTSTANDING DEBTS, THE ENTITIES OR PERSONS THESE DEBTS ARE DUE AND THE STATUS OF ALL PENDING BILLS;

The current outstanding KEMSA debt is at **Kshs 5,625,048,807** as detailed in *Appendix (iv a)*. The outstanding pending bills (amount owed to various suppliers of Goods and Services) as at 30th **September 2023 are Kshs 4,427,754,912.12** as detailed in *Appendix (iv b)*

QUERY 5: STRATEGIES ADOPTED BY KEMSA TO PREVENT WASTAGE OF PUBLIC RESOURCES DUE TO DISPOSAL OF EXPIRED DRUG;

The following are measures that the KEMSA is taking to prevent the wastage of public resources due to the disposal of drugs with short shelf lives. KEMSA procures HPTs with more than 75% remaining shelf life to ensure sufficient utilization time. However, despite this and other measures in place, some HPTs may still end up expiring due to low consumption. The following are some strategies that KEMSA is implementing and will seek to further strengthen to prevent avoidable wastage.

For HPTs that are procured for sale to the counties:

i. KEMSA is advocating for the ringfencing of county budgets – this will ensure that counties have adequate resources to procure what is available at KEMSA.
ii. Support the training of county and other health facility staff on commodity management and quantification to enable the staff to accurately determine their needs.
iii. Support the provision of reliable data through reporting of consumption of products on the online platform.
iv. Distribute reporting tools (MOH 647) procured by Ministry of Health, Department of Health Products and Technologies (MOH-DHPT) to all facilities and encourage utilization of the same to capture logistics data
v. Procurement – improve supplier performance through implementation of supplier appraisal to increase the Order Fill Rate (OFR) and ensure efficiency in deliveries of supplies. This will ensure that health facilities and counties are able to order products that are available when they need them and will not need to procure elsewhere.

vi. Slow-moving HPTs – offer discounts and create awareness of the products.

vii. Short-dated HPTs – offer for donation.

viii. Improve the demand forecasting through the use of artificial intelligence and data analytics to more accurately predict the demand patterns that will inform the supply planning.

ix. Lobbying for timely debt settlements to avoid suspension of accounts that may lead to delays in processing repeat orders from Counties with overdue outstanding debts.

For the program HPTs, working with MOH strategic programs KEMSA will;

i. Support data management – improve reporting rates on the online KHIS platform which will provide better data for forecasting. Provide a link between the LMIS and KHIS to create an end-to-end visibility

ii. Improve Supplier performance – improved supplier performance to ensure timely deliveries and availability of HPTs when they are needed which will improve uptake

iii. Proper coordination of regimen changes to not only ensure minimal disruption to treatment but also reduce expiries due to the implementation of a phased approach in the introduction of new regimens

iv. Support data quality audits to ensure the quality of consumption data reported on the online platforms matches the actual consumption at the facility level

v. Carry out post-distribution and post-market surveillance to identify supply chain bottlenecks and address factors that would hinder the utilization of HPTs. This would also inform redistribution to areas that require supplies from those that are oversupplied.

(*See Appendix V -Communication for approval of short, dated commodities & request for donations*).

QUERY 6: THE STATUS OF KEMSA'S ENGAGEMENT WITH CIVIL SOCIETY GROUPS AND MEDICAL CAMPS TO UTILIZE DRUGS WITH SHORT SHELF LIVES;

Previously, KEMSA would provide Short-dated HPTs to any Medical camp upon request as a donation. This included Camps organized by Civil Societies, faith-based groups, and Political Leaders.

It was discovered that there was inadequate accountability for the donated HPTs, as some ended up in the wrong hands and posed a high risk of being repackaged and resold.

KEMSA took a different approach in handling donations of short-dated commodities to medical camps as follows;

- KEMSA supplies drugs to health facilities that are duly registered by the Medical Practitioners and Dentists Board.
- KEMSA does not engage directly with civil society groups on the utilization of short-shelf-life drugs, drugs are only issued to health facilities.
- We support medical camps as long as they are conducted within the Medical Practitioners and Dentists (Medical Camp) Rules, 2016 under the Medical Practitioners and Dentists Board Act (Cap. 253). KEMSA can support a medical camp being conducted outside of a medical facility, only if the medical camp is led by a medical practitioner who assumes overall responsibility for the medical camp.
- KEMSA systems routinely isolate all HPTs whose shelf life runs below six months from the normal sales stock. KEMSA does not issue for sale products with shelf life of 6 months and below.
- On a monthly basis the list of short shelf-life HPTs is shared by the sales and marketing team with the County, Sub-County & hospitals health managers.
- Based on their needs, the health managers formally request in writing for donation of short shelf-life HPTs.
- Once approval is granted by the Chief Executive Officer (CEO), the short shelf-life HPTs are processed and shipped out to the customers whose requests have been approved.
- Short shelf-life donation orders are managed centrally by the Customer service department at the Supply Chain Centre in Embakasi.



QUERY 7; DETAILED APPRAISAL ON HOW KEMSA MANAGES THE TRANSITION FROM OLD DRUG REGIMENS TO NEW ONES UNDER EXPIRED/DAMAGED DRUGS.

KEMSA procures, warehouses, and distributes HPTs on behalf of the MOH. The HPTs are managed under two streams;

i. KEMSA Capital – where KEMSA uses a revolving drug fund model to procure and sell HPTs to the counties, referral hospitals, mission and FBO facilities.
ii. Programs – where KEMSA procures or manages HPTs procured on behalf of the ministry by MOH and other strategic partners.

The stocking of HPTs is carried out under a demand driven **'PULL** 'system that is guided by the MOH policies key among these are the country's essential medicines, medical supplies and diagnostics lists i.e. The Kenya Essential Medical List (KEML) 2019, Kenya Essential Medical Supplies List (KEMSL) and Kenya Essential Drug List (KEDL). These lists are required to be reviewed regularly, ideally every two years, by the National Medicines and Therapeutics Committee (NMTC).

Medicines may be transitioned for various reasons, however key among these;

a) Toxicity – to a less toxic medicine with fewer side effects, less adverse drug reaction, better tolerated and improved adherence to treatment
b) Efficacy – to a more efficacious medicine offering better treatment outcomes
c) Cost-effectiveness – to a cheaper effective medicine, which may have a simpler dosing schedule.

The transition to a new drug regimen may be informed by a shift in policy which may be communicated via a revised KEML as happened in 2016 or a circular. The KEML 2016 deleted two medicines that were in use at facilities and stocked at KEMSA i.e., Chloramphenicol and Aminophylline injection leading to the reported expiries in the FY2016/17. The reason was a switch to safer more effective alternatives (***see attached KEML***).

When the reason to change is due to toxicity, then the result is a drastic shift to the new alternative. As no one would wish to be on a toxic medicine when there is a

safer alternative. However other reasons may offer an opportunity for a gradual approach to the shift.

KEMSA APPROACHES TO MANAGE CHANGE OF TREATMENT REGIMENS

1. Involvement of the users; county pharmacists and pharmacists from the referral hospitals through Technical Working Group (TWG) meetings to deliberate on items to be included or omitted from the procurement stock list. A key consideration is inclusion in the current KEML. If a medicine is no longer in use, not preferred in the various facilities or has been deleted from the KEML then a decision is made not to procure the same and KEMSA will no longer stock it. *(See Appendix vii)*
2. During Procurement if an item is no longer recommended after it had been previously used, it is no longer called off if under framework contracting and subsequently no additional stocks of the same are received.
3. For program medicines, the WHO may make a recommendation to countries to consider adoption of a new medicine over an existing one following research findings that support this. The Committee of Experts convened by the MOH may review the findings and recommend the adoption of the same. Following a policy directive, the Technical Working Groups at Program level may initiate the change. KEMSA ensures that the TWGs take into consideration the stocks of medicine held at KEMSA and at health facilities and also what is in the pipeline to inform the best decision. *(See Appendix vii- The GF- KEMSA Inventory Management and Last Mile Distribution Review May 2021 page 6, on expiries management recommendation)*
4. A phased approach (phase in/phase out) is adopted so that as utilization of the old regimen declines the facilities are supplied with stocks of the new regimen which ensures minimal disruption of treatment and expiries of the old regimen.
5. Donors and Partners may in most cases prefer to fund the procurement of the newer more effective regimen. The partners are approached to consider supporting the disposal of the old regimen.



DR. ANDREW MULWA
AG. CHIEF EXECUTIVE OFFICER



Annex 5

Submission by the National Cereals and Produce Board on the implementation status of the Public Investments Committee, Twenty-Second Report on consideration of the Auditor General's Reports on Financial Statements of State Corporations

NATIONAL CEREALS AND PRODUCE BOARD
Leaders in Trade & Management of Agricultural Commodities

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KENYA

OFFICE OF THE MANAGING DIRECTOR

OUR REF: NCPB/A/1/46/VOL.II/20

13th October 2023

Clerk of The National Assembly
The National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Attn: Serah M. Kioko

Dear Madam,

APPEARANCE BEFORE THE PUBLIC INVESTMENTS COMMITTEE REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

We are in receipt your letter Ref: NA/AA&OSC/COI/2023/(080), dated 9th October 2023 inviting us for a meeting to be held on Tuesday 17th October 2023 at a venue to be confirmed in Kisumu County.

The Committee's mandate is to scrutinize resolutions of the 22nd report of the Public Investment Committee on audited financial statements of State Corporations for the FY 2015/16 and 2016/17.

This is therefore to submit the 25 hard copies of the brief as per your letter. A soft copy has been emailed to the address provided.

Yours faithfully,

Samuel K. Ndung'u
For: MANAGING DIRECTOR

Encls.

NCPB'S OFFICIAL RESPONSES AND CURRENT STATUS OF RECOMMENDATIONS OF PIC FOR 2015/2016 AND 2016/2017 FY ACCOUNTS.

We have received recommendations from PIC on our NCPB accounts for 2015/2016 and 2016/2017 FY and the following is the current status of the PIC recommendations on the issues raised.

2.14 NATIONAL CEREALS AND PRODUCE BOARD (FY 2015/2016-2016/2017)

EXAMINATION OF AUDITED ACCOUNTS OF THE NATIONAL CEREALS AND PRODUCE BOARD FOR THE FY 2015/16 AND 2016/17

Mr. Albin Sang, the Ag. Managing Director of the National Cereals and Produce Board (NCPB) accompanied by Mr. John K. Ngetich (Company Secretary), Mr. Ernest Ogwora (Manager M& E), Mr. Japheth Gitua (ICT Manager) and Mr. Richard K. Limo (Ag. Finance Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Board for the financial year 2015/2016 and 2016/2017.

1) PROCUREMENT OF 40,000 METRIC TONS OF MAIZE - FY 2015/2016

The Committee head that the NCPB entered into a fixed sum contract sum of Kshs.730,968,000 for procurement of 40,000 MT of maize at USD 229 per MT on 26 November 2004but this contract was not executed. The supplier sought arbitration in July 2009 which awarded USD 3,106,000,an equivalent of Kshs.552,667,382. Thereafter the NCPB appealed but the award was increased to USD 6,140,859 equivalent to Kshs. 552,667,382 out of which Kshs.264,864,285 has been settled leaving the balance of Kshs.251,499,614. Although the case is pending in court, it was not possible to ascertain the liability that may result from the claim in question.

Management response

This matter was still pending in the Supreme Court.

Committee Observations

(i) This matter had been pending in court for inordinately long period of time.

(ii) The PIC Committee of the 12th Parliament tabled a Report on the matter of Erad Suppliers & General Contracts recommending investigations and prosecution of a number of individuals.

(iii) This matter had been addressed in the 21st PIC report in which the Committee recommended that the Managing Director ensures that the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to

the Board if the award is set aside.

(iv) **The recommendations of the 21st PIC report regarding the matter have been partially implemented.**

(v) **The case challenging arbitral award to Erald Suppliers Ltd is in Court**

(vi) **NCPB has proceeded to the Supreme Court to challenge the award.**

Committee Recommendation

The Committee recommends the fastracking of the implementation of the Previous PIC reports which provided that the Managing Director ensures the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The Board had established through investigations that the parties alleged to have been contracted by Erad to supply grains were not aware of the transaction. The report was submitted as part of the evidence adduced during the arbitration proceedings but was not considered during the proceedings.

From the recommendations contained in the 21st PIC report; EACC was directed to undertake investigations to confirm the Board's position and institute proceedings against Erad and its directors. Through mutual assistance, EACC was able to finalize investigations and confirm that parties claimed to have been contracted by Erad were not aware of the transaction.

Based on the investigations and findings, EACC instituted a case against Erad and its directors which culminated into conviction of Erad directors as well as the company.

In the matter at the Court of Appeal where the Board was seeking to set aside the arbitral award, EACC applied to be enjoined as an interested party and to adduce additional evidence which had been obtained through the investigations which were successfully used during the criminal proceedings.

The Court of Appeal heard and admitted the new evidence on 16th December 2022. The evidence adduced is the same which was used during the Criminal Court Case (Republic –vs- Grace Sarapei Warungu & 2 others) which ruled the conviction of the directors as well as fines for both the company and its directors.

It is expected that this matter will come to a close and probably the arbitral award may be set aside. NCPB is waiting for the court to invite the parties for a hearing.

The Management of the Board has always made a disclosure of this contingent liability in all proceeding financial statements.

2) CURRENT LIABILITIES FY 2015/2016 & 2016/2017

The Committee heard that as reported in the previous year, included in the current liabilities balance of Kshs. 10,826,182,855 as at 30th June 2016 was an amount of Kshs. 964,765,588 in respect of Value Added Tax arrears payable to Kenya Revenue Authority on provision of agencies services to the government. This figure included Kshs. 410,092,367 tax that had remained outstanding since 2002. This amount continued to attract penalties and interest that had not been assessed and incorporated in the financial statements.

Similarly, as previously reported, the Creditors and provisions balance of Kshs. 6,753,703,604 as disclosed under Note 13 to the financial statements included an amount of Kshs. 202,291,356 relating to trade creditors that had been outstanding since July 2012. No satisfactory reason had been given for the failure to settle the liabilities.

Further, the statement of financial position reflectd an amount of Kshs. 299,070,750 under Bank Overdraft. A review of bank reconciliation statement for the account maintained at KCB Kencom Branch A/C No. 1107-165-679 revealed amounts of Kshs. 4,169,757 and Kshs. 1,490,672 described as payments in bank not in cash book and receipts in the bank not in cash book respectively, that had been outstanding since June 2015. No explanation has been provided for the amounts. Consequently, the accuracy of the overdraft amount of Kshs. 299,940,489 as at 30th June 2016 could not be confirmed.

Management Response

- **Taxation**

Management concurred that an amount of Kshs. 410,092,367 included as current liabilities related to a long outstanding matter on the taxation of GoK agency services. During their routine tax audits, Kenya Revenue Authority (KRA) indicated that GoK agency services rendered by NCPB were subject to Value Added Tax (VAT) and the SGR Trustees were advised to either seek exemption from Treasury or budgetary provision to pay the tax amount.

Several attempts were made to seek exemption from Treasury and eventually the National Treasury through letter ref. DFN 415/411/01 dated 7th February 2013 clarified that agency services were subject to VAT and therefore NCPB should comply with the law. The parent ministry was advised to seek budgetary provision to cover the VAT arrears which amounted to Kshs.464,430,643.61 based on the tax audit conducted by KRA in 2012.

KRA subsequently demanded VAT arrears on GOK Agency services for the period 2002 to 2012 plus penalties and interest as follows:-

Tax Period	Principal	Proposed
	Kshs	Kshs
2002 to 2006	258,300,806.00	2016/2017

2007 to 2009	399,393,901.00	2017/2018
2010 to 2012	307,070,880.97	2018/2019
Total	**964,765,587.97**	

Following several appeals by NCPB for the matter to be resolved on one hand and efforts by KRA to enforce correction measures on the other hand that resulted into a Notice of distress detraining goods and chattels, the National Assembly Departmental Committee on Agriculture Livestock and Cooperatives seized the matter to find an amicable solution. The Committee in its sitting on 14th June 2016 directed the CS MOALF and CS the National Treasury to meet and find a solution to the matter. They reported back to the Committee on 30th June 2016 where it was agreed that the best option was abandonment of the tax due to difficulty in paying as the budget provision for SFR had reduced substantially.

As guided by Commissioner General (KRA), NCPB made a formal request for abandonment vide letter Ref: NCPB/CONF/1/2 dated 5th July 2016 to KRA. A follow up letter was done by PS MOALF vide letter Ref. MOA/LCD/9/4/2/VOL.1V dated 6th October 2016. Follow up letters have been done by the Board i.e. Ref: NCPB/C.31/1 dated 10th May 2017 and Ref: C.12/11 5th January 2018. NCPB has however not yet received the approval.

- **Trade Creditors – Kshs 443,536,381**

Management concurred with the Audit report that trade creditors that had been outstanding since July 2012 amounted to Kshs 202,291,*356*. These creditors arose from trading activities and were being reconciled in order to confirm those that were payable and appropriate action taken.

Committee Recommendation

The Accounting Officer should employ an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.

- **Bank Overdraft – KShs. 299,070,750**

As at 30th June 2017, the bank reconciliation for KCB Kencom Branch A/c No. 1107165679 included KShs.4,169,757.90 as payments in bank statement not in cash book and KShs.1,490,672 as receipts in bank statement not in cash book. The Board could not include these amounts in the bank balances because they were foreign entries in the bank statements that had been outstanding since 2005. The Board had been pursuing this matter with the bank with a view of clearing these pending items. The matter had been taken to the highest level at KCB with the Chief Executive giving his commitment vide letter dated 3rd January 2013 but to-date this has not been done.

Some of the issues have been sorted out while others were still being pursued. Correspondences on this matter are as per the attached were available such as a NCPB's last letter to KCB Ref. C.1/6 dated 20th February 2017 emails dated 11th September 2017, 6th November 2017 and 16th April 2018.

Committee Recommendations

(i) The management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft that will limit.

(ii) KCB should resolve the matter within 90 days or be surcharged for the difference in the amount on the cash book.

- **Payments In Bank Statement not in Cash Book of Kshs. 4,169,757.90**

The following are still outstanding and are being followed:-

DATE	DETAILS	BS NO.	KShs.	REMARKS
28.04.05	CHQ NO.....(no cheque number)	4098	3,005,400.00	KCB Issue
28.04.05	CHQ NO.....(no cheque number)	4098	201,400.00	KCB Issue
28.04.05	CHQ NO.241521-paid Twice-(BS.4083 & 4098)	4098	30,445.60	KCB Issue
07.03.06	CHQ NO.246818-paid Twice-(BS.4449)	4449	6,462.30	KCB Issue
11.05.06	Remittance	4520	926,050.00	KCB Issue
	Total		**4,169,757.90**	

- **Receipts in Bank Statement Not In Cash Book Kshs. 1,490,672.70**

An amount of Kshs.1,490,672.70 was still being followed with the bank to provide further clarification. They have since provided the details of **KShs 768,642.00** which has since been receipted while **KShs. 1,053,422.90** is being followed up. The details are as follows:-

(a) Resolved Cases

Date	Details	Amount (KShs)	Remarks
05.12.2016	Cash deposit -Issack Abdullahi Ibrahim	85,392.00	Received during 2017/2018 FY vide MR no. 52A4073318
16.03.2017	Cash deposit Fosca Osimbo	180,000.00	Received during 2017/2018 FY vide MR no. 52A4073310
06.06.2017	Transfer	66,000.00	Received during 2017/2018 FY vide MR no. 52A4092360
30.06.2017	Cash deposit	437,250.00	Received during 2016/2017 FY vide MR no. 52A4088013
	Total	**768,642.00**	

Copies of receipts and bank statement were available

(b) Items being followed up with KCB Bank

Date	Details	B/S NO	Amount (KShs)	Remarks
06.08.03	Error corrected	3815	334,410.00	KCB Issue
12.08.04	Standing order	4205	416,522.20	KCB Issue
05.08.05	Misc.Credit	4208	200.00	KCB Issue
10.08.05	Misc.Credit	4211	209,435.00	KCB Issue
11.08.05	Misc.Credit	5257	66,030.00	KCB Issue
21.08.08	cheque pay in	5289	26,145.70	KCB Issue
31.01.09	Inward clearing credit	410	680.00	KCB Issue
			1,053,422.90	

<u>Committee Observations</u>

(i) **On the VAT due to KRA, this should have been provided for in the budget before the NCPB undertook any project because that was what the law required. NCPB was negligent in their budget preparation on this matter. Further, the National Treasury has taken inordinately long time to grant a waiver of VAT to NCPB despite NCPB making several requests.**

(ii) On the matter of reconciliation, it was noted with concern that there was laxity by the Kenya Commercial Bank in reconciling the financial statement of NCPB leading to reported audit queries. Reconciliation should ordinarily be done on a monthly basis to avoid unnecessary queries.

(iii) The matter has been pending for inordinately long, which could be an indication of malpractices internally.

(iv) The current accounting system of the corporation seems to be inefficient.

Committee Recommendations

(i) The Kenya Revenue Authority should grant the NCPB waiver on taxes within 90 days.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

NCPB has done several follow up letters on the same issue the latest being letter Ref: NCPB/2/31/VOL.III/40 dated 16th February 2023 and Ref: NCPB/2/22/VOL.1/3 dated 23rd September 2019 to the PS – MOALF for which we are yet to receive response. ***(Annex 2.0(i)).***

The amount shall be reversed in NCPB's books of account as soon as NCPB receive the approval for abandonment. NCPB has sorted all other taxation issues with KRA and has always been granted Tax Compliance Certificate.

(ii) The Accounting Officer should employ an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The recommendations by PIC will be implemented upon Balance Sheet restructuring which is being sought from The Government through NCPB Board of Directors.

(iii) The management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The committee recommendations were adhered to and NCPB's Board put an overdraft facility limit based on it's commercial trading requirements.

(iv) KCB should resolve the matter within 90 days or be surcharged for the difference in the amount on the cash book.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The outstanding entries were resolved by KCB on 30th July 2018 and NCPB bank account credited with ***Kshs. 3,180,846.35*** *after netting off between payments and receipts as per attached bank statement* ***(Annex 2(iv))***

(v) The Management needs to adopt a more effective accounting system as the

current approach appears to be inefficient.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

NCPB upgraded new accounting system Navision 17 on 2017/2018 FY which has served the organization well with all necessary integrations for stocks and financial modules. Currently due to change in technology advancement the ERP system is being upgraded to Microsoft Dynamic Business Central Software in the Financial Year 2023/2024.

3) CURRENT ASSETS

a. Debtors and Prepayments

The Committee heard that Debtors and prepayments balance of Kshs. 545,036,971 as disclosed under Note 6 to the financial statements included trade debtors totaling Kshs. 1,046,873,031. However, included in the amount were debtors totaling to Kshs.753,589,267 representing 72% of trade debtors that have been outstanding for more than four (4)years. Although a cumulative bad debts provision of Kshs. 943,557,914 has been provided for in the financial statements, it has not been possible to confirm whether, and if so, when the Board will be able to recover the amounts. No action appears to have been taken to ensure recovery of these debts.

Management response

Management informed the Committee that the accounts receivable as at 30th June 2016 included debts totaling to KShs. 753,589,267.00 that were more than four (4) years old. Some of the debts were statutory barred that makes any chance of recovery remote. Notwithstanding this, NCPB had vigorously pursued payments of all debts including taking legal action against defaulters in which cases involving Kshs. 199 million were under litigation. In some instances goods and properties belonging to defaulters had been confiscated and the same would be sold to defray the arrears. So far Kshs 204.7 million had been recovered as shown itemized below:

CATEGORY OF DEBTORS	AMOUNT 30:06:2016 KSHS	AMOUNT MORE THAN 4 YEARS 30:06:2016 KSHS	RECOVERIES	AMOUNT 30:04:2018 KSHS
Trade Debtors	505,480,791.55	212,197,028.66	204,706,539.75	300,774,251.85
Export Debtors	53,663,363.25	53,663,363.25	-	53,663,363.25

Swap Debtors	360,483,433.05	360,483,433.05	-	360,483,433.05
Gunny Bags Debtors	127,245,443.15	127,245,443.15	-	127,245,443.15
TOTAL	**1,016,873,031.00**	**753,589,267.00**	**204,706,539.75**	**842,166,491.25**

The management had taken remedial action to ensure that the debt portfolio did not escalate. These include re-constitution of the Credit Committee and putting in place new guideline on issuance of credit. The Credit Policy that was approved by the Board of Directors in the year 2008 was under review to realign the same with friendly commercial business practices and at the same time safeguard the interest of the Board. The management was developing the corporate write off policy for approval by the Board of Directors and once approved it will be used to process debts that were un-recoverable. However as a prudent measure, NCPB had provided Kshs.943 million as provision for doubtful debts.

Committee Observations

i) **A provision of Kshs. 943 million for doubtful debts is a very huge figure indicating that debt recoverability policy of the NCPB has a problem.**

ii) **It was not clear on how the debt swap of Kshs 360,483,433.5 came about more than 15 years ago.**

iii) **The lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court.**

Committee Recommendation

The Auditor General should undertake a forensic audit of the 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment the lawyers to establish whether there has been fraud, corruption or other financial improprieties.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

A provision of Kshs. 943,557,914.

As recommended by PIC the forensic audit is yet to be undertaken; The Board of Directors approved the write-off of the debt subject to approval by The National Treasury.

That notwithstanding, NCPB has vigorously been pursuing payments of debts including taking legal action against defaulters and currently cases involving Kshs.56.9 million are under litigation. Goods and properties for other defaulters especially for rental have been confiscated and will be sold to defray the rental arrears.

The management has set up a Debts Recovery Unit (DRU) with the sole mandate to pursue all debts that are one year and above

However as a prudent measure, NCPB has provided Kshs.943 million as provision for doubtful debts.

i) The provision for bad and doubtful debts consist of 100% specific provision and 7.5% general provision on the balance tabulated below:-

CATEGORY	BALANCE AS AT 30.06.2017 (KSHS)	SPECIFIC PROVISION (KSHS)	BALANCE AFTER SPECIFIC PROVISION (KSHS)	7.5 % GENERAL PROVISION (KSHS)	PROVISIONS FOR 2016/2017 (KSHS)
(b)	(c)	(d)	(e)	(f)	(g)
Associated Company	160,077.50	160,077.50	0.00	0.00	160,077.50
Debtors for imported Wheat	35,933,463.80	35,933,463.80	0.00	0.00	35,933,463.80
Other Trade Debtors	1,019,091,083.01	725,339,216.15	291,966,357.38	21,897,476.80	749,022,202.36
Staff Debtors	124,912,936.11	106,897,244.98	18,008,491.13	1,350,636.83	108,247,881.52
Sundry Debtors	141,790,355.03	41,073,889.36	100,716,465.67	7,553,734.93	50,194,292.44
TOTAL	**1,321,887,915.45**	**909,403,891.79**	**410,691,314.18**	**30,801,848.75**	**943,557,917.63**

The provisions are therefore in line with the Boards policy and provisions

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

World Food Programme - Kshs. 360,483,433.05

As recommended by PIC the Forensic Audit is yet to undertaken however as explained by management the debt relates to World Food Programme for organizations that had swap arrangements under the co-ordination of government with NCPB for exchange of commodities in 1980s.

The balance of Kshs. 360,483,433.05 is broken down as follows;

SWAP DEBTORS

1	W.F.P A/C 1192 - Swap Account	CRWF007	20,343,093.75
2	W.F.P A/C 1261- Swap Account	CRWF004	2,656,319.65
3	W.F.P A/C 1398- Swap Account	CRWF006	830,561.15
4	W.F.P A/C UGANDA MAIZE - Swap Account	CRWF005	5,977,097.80
5	W.F.P. A/C 2502 - Swap Account	CRWF003	42,043,117.35
6	W.F.P. A/C 2502/3 - Swap Account	CRWF002	77,842,686.00
7	W.F.P. A/C 2669/01 GERMAN AGRO - Swap Ac	CRWF013	8,651,030.00
8	W.F.P A/C 4629 - Swap Account	CRWF008	10,281,788.75
9	W.F.P. A/C 3935 - Swap Account	CRWF009	31,051,147.25
10	W.F.P. A/C 4616 - Swap Account	CRWF012	29,903,465.40
11	W.F.P. A/C 4691 - Swap Account	CRWF011	27,745,145.35
12	W.F.P. A/C 4961 - Swap Account	CRWF001	2,148,058.95
13	W.F.P. A/C 5046 - Swap Account	CRWF010	90,348,688.80
14	W.F.P. A/C EXPORT - Swap Account	CRWF014	10,661,232.85
	TOTAL		**360,483,433.05**

Joint reconciliations were undertaken in the 90s to extract documents between WFP and the Board which further classified the debts as follows.

Value of un-supplied quantities with IDA documents retrieved between 1/7/1988 – 8/5/2000 (4,889.91 MT	*78,660,028.50*
Value of quantity lacking supporting Documents (4,094.00 MT)	*65,994,529.91*
Amounts arising from price differential on commodities supplied to WFP in Relation to agreed swap rations	*215,828,874.64*
Balance of outstanding debt due from WFP	***360,483,433.05***

NCPB has been pursuing the debt with the Government (Treasury) who were signatory to the commodities SWAP agreement. As indicated above there is an amount of Kshs. 65,994,529.91 that is unsupported and dating back to the 1980s. The likelihood of retrieving relevant supporting documents is remote.

Against this background, the Board of Directors approved the write-off the amount subject to approval by The National Treasury.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

Payment to lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court.

The background for these cases are as follows:

Gunny bag Debtors Kshs. 133,877,201.15

The outstanding amount of Kshs. 133,877,201.15 is related to two specific cases as summarized below:-

	Outstanding (Kshs)
Gunny bags losses involving non-supply of gunny bags by East African Bag & Cordage Ltd, Thika and Kensack Ltd prior to June 1988	*99,886,751.70*
Fraud case involving Irregular payment for non-delivery of gunny bags by some four (4) Debtors during the period 1986/87 Financial year	*33,990,449.45*
Total gunny bags debtors	*133,877,201.15*
Less recoveries	*6,631,758.00*
	127,245,443.15

Thika Gunny Bag Loses – Kshs. 99,886,751.70

The two companies were manufacturing gunny bags for the Board. They were placed under receivership and although the stock records indicated they were holding 4 million bags for the Board they could not be found.

The Board filed two cases one against East African Bag and Cordage Ltd and the other against its sister Company Kensack Ltd (in receivership).

The case against East African Bag and Cordage could not proceed because the company was placed under liquidation on 21st November 1997 by the court pursuant to winding up cause No.19 of 1996.

The Board filled notice of intention to appear in the Winding up cause and also lodged its proof of debt claim for the loss of Kshs.99,886,751.70 to be considered alongside other creditors when the company is finally wound-up.

The company was liquidated by the official Receiver and the Board has subsequently received Kshs.6,631,758 from the official receiver and liquidator being dividends in respect of the Board's claim.

Current status

On 14th March 2005 Justice Osiemo (as he then was) ordered the separation of the two matters HCCC No. 2947 of 1989 NCPB –V- KENSACK Ltd and HCCCC No. 2892 of 1989 NCPB –V- East African Bag & Cordage Company Ltd to be heard independently. The Board's Advocates successfully appealed against the orders and the two matters have been consolidated once again.

The Board has instructed its advocates to commence out of court settlement negotiations with the debenture holder Ms. National Bank. The negotiations will be with a view to sharing the proceeds of

the sale of various gunny bags found at the Kensack Ltd and East African Bag and Cordage and deposited in an interest earning account as per the court order.

The negotiations are on-going between the advocates.

Mombasa Fraud Case – Kshs. 33,990,449.45

With regard to Mombasa fraud case, beside criminal cases, which resulted in conviction of the culprits, the Board instituted Civil Suit No. HCCC No. 176 of 1994 against five (5) defendants for restitution of the amount of Kshs. 33,990,449.45.

Current status

The Board has obtained judgement against the fifth defendant Mombasa Development Ltd. An investigator was commissioned to identify attachable assets belonging to Mombasa Development Ltd and the location of such assets. The preliminary report indicated that the investigator had established the particulars of Mombasa Development Ltd and its directors. They are currently pursuing the assets of the company.

The matter is still proceeding in court with the other four defendants, where the Board has instructed its advocate to apply for summary judgement.

b. Government Debtors Agency Account

The Committee heard that as previously reported, Government Agency Account balance of Kshs. 2,961,873,689 as at 30th June 2016 included brought forward figures of Kshs. 342,341,936 and Kshs. 191,916,638 relating to Strategic Grain Reserve Programme – old account and GOK 17 selected depots for old account Famine Relief respectively, both of which had remained unpaid for 17 years. It had not been possible to confirm whether and is so, the Board will be able to recover the amounts. No provision for bad debts has been made in this regard.

Management Response

Management informed the Committee that outstanding debts are old debts amounting to Kshs.534.26 million as shown below.

	Old Debts	**Kshs**
i)	*Cost of Reserved Capacity & Wheat Market Intervention Account on SGR*	*342,341,936*
ii)	*17 G.O.K Depots reserved for Famine Relief Programme*	*191,916,638*
	Total	***534,258,574***

A Committee was constituted comprising officers from MOALF, MOD&P, Treasury and NCPB who went through all NCPB claim. However the final report was not issued to allow implementation of the recommendations. A proposal for formation of a joint committee to validate the claims had been communicated to MOALF vide NCPB's Letter Ref. C.12/11 dated 5th January, 2018. The matter will be finalized once a committee to relook at the claims is reconstituted. However as a prudent measure the management had provided Kshs 328.5 million as provision for doubtful debts.

Committee Observation

(i) The debt was still outstanding.
(ii) Management has formed a multiagency committee to resolve the matters relating to bad debts.

Committee Recommendation

The multiagency team formed by Management should resolve the matter of bad debts within three months of the adoption of this Report

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS:

The Management of the Board requested the Permanent Secretary (PS) of Ministry of Agriculture, Livestock and Fisheries to constitute a Committee to scrutinize the documents, authenticate the claim and make recommendations so that this matter can be concluded. This was done vide NCPB's letter dated 5th January 2018 which is yet to be responded ***(Annex 3(ii)).***

Yours faithfully,

Joseph M. Kimote, MBS
MANAGING DIRECTOR

NATIONAL CEREALS AND PRODUCE BOARD
Leaders in Trade & Management of Agricultural Commodities

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P.O. Box 30586-00100
NAIROBI
KENYA

OFFICE OF THE MANAGING DIRECTOR

OUR REF: NCPB/A/1/46/VOL.II/20

13th October 2023

Clerk of The National Assembly
The National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Attn: Serah M. Kioko

Dear Madam,

APPEARANCE BEFORE THE PUBLIC INVESTMENTS COMMITTEE REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

We are in receipt your letter Ref: NA/AA&OSC/COI/2023/(080), dated 9th October 2023 inviting us for a meeting to be held on Tuesday 17th October 2023 at a venue to be confirmed in Kisumu County.

The Committee's mandate is to scrutinize resolutions of the 22nd report of the Public Investment Committee on audited financial statements of State Corporations for the FY 2015/16 and 2016/17.

This is therefore to submit the 25 hard copies of the brief as per your letter. A soft copy has been emailed to the address provided.

Yours faithfully,

Samuel K. Ndung'u
For: MANAGING DIRECTOR

Encls.

NCPB'S OFFICIAL RESPONSES AND CURRENT STATUS OF RECOMMENDATIONS OF PIC FOR 2015/2016 AND 2016/2017 FY ACCOUNTS.

We have received recommendations from PIC on our NCPB accounts for 2015/2016 and 2016/2017 FY and the following is the current status of the PIC recommendations on the issues raised.

2.14 NATIONAL CEREALS AND PRODUCE BOARD (FY 2015/2016-2016/2017)

EXAMINATION OF AUDITED ACCOUNTS OF THE NATIONAL CEREALS AND PRODUCE BOARD FOR THE FY 2015/16 AND 2016/17

Mr. Albin Sang, the Ag. Managing Director of the National Cereals and Produce Board (NCPB) accompanied by Mr. John K. Ngetich (Company Secretary), Mr. Ernest Ogwora (Manager M& E), Mr. Japheth Gitua (ICT Manager) and Mr. Richard K. Limo (Ag. Finance Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Board for the financial year 2015/2016 and 2016/2017.

1) PROCUREMENT OF 40,000 METRIC TONS OF MAIZE - FY 2015/2016

The Committee head that the NCPB entered into a fixed sum contract sum of Kshs.730,968,000 for procurement of 40,000 MT of maize at USD 229 per MT on 26 November 2004but this contract was not executed. The supplier sought arbitration in July 2009 which awarded USD 3,106,000,an equivalent of Kshs.552,667,382. Thereafter the NCPB appealed but the award was increased to USD 6,140,859 equivalent to Kshs. 552,667,382 out of which Kshs.264,864,285 has been settled leaving the balance of Kshs.251,499,614. Although the case is pending in court, it was not possible to ascertain the liability that may result from the claim in question.

Management response

This matter was still pending in the Supreme Court.

Committee Observations

(i) **This matter had been pending in court for inordinately long period of time.**

(ii) **The PIC Committee of the 12th Parliament tabled a Report on the matter of Erad Suppliers & General Contracts recommending investigations and prosecution of a number of individuals.**

(iii) **This matter had been addressed in the 21st PIC report in which the Committee recommended that the Managing Director ensures that the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to**

the Board if the award is set aside.

(iv) The recommendations of the 21st PIC report regarding the matter have been partially implemented.

(v) The case challenging arbitral award to Erald Suppliers Ltd is in Court

(vi) NCPB has proceeded to the Supreme Court to challenge the award.

Committee Recommendation

The Committee recommends the fastracking of the implementation of the Previous PIC reports which provided that the Managing Director ensures the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The Board had established through investigations that the parties alleged to have been contracted by Erad to supply grains were not aware of the transaction. The report was submitted as part of the evidence adduced during the arbitration proceedings but was not considered during the proceedings.

From the recommendations contained in the 21st PIC report; EACC was directed to undertake investigations to confirm the Board's position and institute proceedings against Erad and its directors. Through mutual assistance, EACC was able to finalize investigations and confirm that parties claimed to have been contracted by Erad were not aware of the transaction.

Based on the investigations and findings, EACC instituted a case against Erad and its directors which culminated into conviction of Erad directors as well as the company.

In the matter at the Court of Appeal where the Board was seeking to set aside the arbitral award, EACC applied to be enjoined as an interested party and to adduce additional evidence which had been obtained through the investigations which were successfully used during the criminal proceedings.

The Court of Appeal heard and admitted the new evidence on 16th December 2022. The evidence adduced is the same which was used during the Criminal Court Case (Republic –vs- Grace Sarapei Warungu & 2 others) which ruled the conviction of the directors as well as fines for both the company and its directors.

It is expected that this matter will come to a close and probably the arbitral award may be set aside. NCPB is waiting for the court to invite the parties for a hearing.

The Management of the Board has always made a disclosure of this contingent liability in all proceeding financial statements.

2) CURRENT LIABILITIES FY 2015/2016 & 2016/2017

The Committee heard that as reported in the previous year, included in the current liabilities balance of Kshs. 10,826,182,855 as at 30th June 2016 was an amount of Kshs. 964,765,588 in respect of Value Added Tax arrears payable to Kenya Revenue Authority on provision of agencies services to the government. This figure included Kshs. 410,092,367 tax that had remained outstanding since 2002. This amount continued to attract penalties and interest that had not been assessed and incorporated in the financial statements.

Similarly, as previously reported, the Creditors and provisions balance of Kshs. 6,753,703,604 as disclosed under Note 13 to the financial statements included an amount of Kshs. 202,291,356 relating to trade creditors that had been outstanding since July 2012. No satisfactory reason had been given for the failure to settle the liabilities.

Further, the statement of financial position reflectd an amount of Kshs. 299,070,750 under Bank Overdraft. A review of bank reconciliation statement for the account maintained at KCB Kencom Branch A/C No. 1107-165-679 revealed amounts of Kshs. 4,169,757 and Kshs. 1,490,672 described as payments in bank not in cash book and receipts in the bank not in cash book respectively, that had been outstanding since June 2015. No explanation has been provided for the amounts. Consequently, the accuracy of the overdraft amount of Kshs. 299,940,489 as at 30th June 2016 could not be confirmed.

Management Response

- **Taxation**

Management concurred that an amount of Kshs. 410,092,367 included as current liabilities related to a long outstanding matter on the taxation of GoK agency services. During their routine tax audits, Kenya Revenue Authority (KRA) indicated that GoK agency services rendered by NCPB were subject to Value Added Tax (VAT) and the SGR Trustees were advised to either seek exemption from Treasury or budgetary provision to pay the tax amount.

Several attempts were made to seek exemption from Treasury and eventually the National Treasury through letter ref. DFN 415/411/01 dated 7th February 2013 clarified that agency services were subject to VAT and therefore NCPB should comply with the law. The parent ministry was advised to seek budgetary provision to cover the VAT arrears which amounted to Kshs.464,430,643.61 based on the tax audit conducted by KRA in 2012.

KRA subsequently demanded VAT arrears on GOK Agency services for the period 2002 to 2012 plus penalties and interest as follows:-

Tax Period	Principal	Proposed
	Kshs	Kshs
2002 to 2006	258,300,806.00	2016/2017

2007 to 2009	399,393,901.00	2017/2018
2010 to 2012	307,070,880.97	2018/2019
Total	**964,765,587.97**	

Following several appeals by NCPB for the matter to be resolved on one hand and efforts by KRA to enforce correction measures on the other hand that resulted into a Notice of distress detraining goods and chattels, the National Assembly Departmental Committee on Agriculture Livestock and Cooperatives seized the matter to find an amicable solution. The Committee in its sitting on 14th June 2016 directed the CS MOALF and CS the National Treasury to meet and find a solution to the matter. They reported back to the Committee on 30th June 2016 where it was agreed that the best option was abandonment of the tax due to difficulty in paying as the budget provision for SFR had reduced substantially.

As guided by Commissioner General (KRA), NCPB made a formal request for abandonment vide letter Ref: NCPB/CONF/1/2 dated 5th July 2016 to KRA. A follow up letter was done by PS MOALF vide letter Ref. MOA/LCD/9/4/2/VOL.1V dated 6th October 2016. Follow up letters have been done by the Board i.e. Ref: NCPB/C.31/1 dated 10th May 2017 and Ref: C.12/11 5th January 2018. NCPB has however not yet received the approval.

- **Trade Creditors – Kshs 443,536,381**

Management concurred with the Audit report that trade creditors that had been outstanding since July 2012 amounted to Kshs 202,291,*356*. These creditors arose from trading activities and were being reconciled in order to confirm those that were payable and appropriate action taken.

Committee Recommendation

The Accounting Officer should employ an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.

- **Bank Overdraft – KShs. 299,070,750**

As at 30th June 2017, the bank reconciliation for KCB Kencom Branch A/c No. 1107165679 included KShs.4,169,757.90 as payments in bank statement not in cash book and KShs.1,490,672 as receipts in bank statement not in cash book. The Board could not include these amounts in the bank balances because they were foreign entries in the bank statements that had been outstanding since 2005. The Board had been pursuing this matter with the bank with a view of clearing these pending items. The matter had been taken to the highest level at KCB with the Chief Executive giving his commitment vide letter dated 3rd January 2013 but to-date this has not been done.

Some of the issues have been sorted out while others were still being pursued. Correspondences on this matter are as per the attached were available such as a NCPB's last letter to KCB Ref. C.1/6 dated 20th February 2017 emails dated 11th September 2017, 6th November 2017 and 16th April 2018.

Committee Recommendations

(i) **The management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft that will limit.**

(ii) **KCB should resolve the matter within 90 days or be surcharged for the difference in the amount on the cash book.**

- **Payments In Bank Statement not in Cash Book of Kshs. 4,169,757.90**

The following are still outstanding and are being followed:-

DATE	DETAILS	BS NO.	KShs.	REMARKS
28.04.05	CHQ NO.....(no cheque number)	4098	3,005,400.00	KCB Issue
28.04.05	CHQ NO.....(no cheque number)	4098	201,400.00	KCB Issue
28.04.05	CHQ NO.241521-paid Twice-(BS.4083 & 4098)	4098	30,445.60	KCB Issue
07.03.06	CHQ NO.246818-paid Twice-(BS.4449)	4449	6,462.30	KCB Issue
11.05.06	Remittance	4520	926,050.00	KCB Issue
	Total		**4,169,757.90**	

- **Receipts in Bank Statement Not In Cash Book Kshs. 1,490,672.70**

An amount of Kshs.1,490,672.70 was still being followed with the bank to provide further clarification. They have since provided the details of **KShs 768,642.00** which has since been receipted while **KShs. 1,053,422.90** is being followed up. The details are as follows:-

(a) Resolved Cases

Date	Details	Amount (KShs)	Remarks
05.12.2016	Cash deposit -Issack Abdullahi Ibrahim	85,392.00	Received during 2017/2018 FY vide MR no. 52A4073318
16.03.2017	Cash deposit Fosca Osimbo	180,000.00	Received during 2017/2018 FY vide MR no. 52A4073310
06.06.2017	Transfer	66,000.00	Received during 2017/2018 FY vide MR no. 52A4092360
30.06.2017	Cash deposit	437,250.00	Received during 2016/2017 FY vide MR no. 52A4088013
	Total	**768,642.00**	

Copies of receipts and bank statement were available

(b) Items being followed up with KCB Bank

Date	Details	B/S NO	Amount (KShs)	Remarks
06.08.03	Error corrected	3815	334,410.00	KCB Issue
12.08.04	Standing order	4205	416,522.20	KCB Issue
05.08.05	Misc.Credit	4208	200.00	KCB Issue
10.08.05	Misc.Credit	4211	209,435.00	KCB Issue
11.08.05	Misc.Credit	5257	66,030.00	KCB Issue
21.08.08	cheque pay in	5289	26,145.70	KCB Issue
31.01.09	Inward clearing credit	410	680.00	KCB Issue
			1,053,422.90	

<u>Committee Observations</u>

(i) On the VAT due to KRA, this should have been provided for in the budget before the NCPB undertook any project because that was what the law required. NCPB was negligent in their budget preparation on this matter. Further, the National Treasury has taken inordinately long time to grant a waiver of VAT to NCPB despite NCPB making several requests.

(ii) On the matter of reconciliation, it was noted with concern that there was laxity by the Kenya Commercial Bank in reconciling the financial statement of NCPB leading to reported audit queries. Reconciliation should ordinarily be done on a monthly basis to avoid unnecessary queries.

(iii) The matter has been pending for inordinately long, which could be an indication of malpractices internally.

(iv) The current accounting system of the corporation seems to be inefficient.

Committee Recommendations

(i) The Kenya Revenue Authority should grant the NCPB waiver on taxes within 90 days.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

NCPB has done several follow up letters on the same issue the latest being letter Ref: NCPB/2/31/VOL.III/40 dated 16th February 2023 and Ref: NCPB/2/22/VOL.1/3 dated 23rd September 2019 to the PS – MOALF for which we are yet to receive response. ***(Annex 2.0(i)).***

The amount shall be reversed in NCPB's books of account as soon as NCPB receive the approval for abandonment. NCPB has sorted all other taxation issues with KRA and has always been granted Tax Compliance Certificate.

(ii) The Accounting Officer should employ an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The recommendations by PIC will be implemented upon Balance Sheet restructuring which is being sought from The Government through NCPB Board of Directors.

(iii) The management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The committee recommendations were adhered to and NCPB's Board put an overdraft facility limit based on it's commercial trading requirements.

(iv) KCB should resolve the matter within 90 days or be surcharged for the difference in the amount on the cash book.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

The outstanding entries were resolved by KCB on 30th July 2018 and NCPB bank account credited with ***Kshs. 3,180,846.35*** *after netting off between payments and receipts as per attached bank statement* ***(Annex 2(iv))***

(v) The Management needs to adopt a more effective accounting system as the

current approach appears to be inefficient.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

NCPB upgraded new accounting system Navision 17 on 2017/2018 FY which has served the organization well with all necessary integrations for stocks and financial modules. Currently due to change in technology advancement the ERP system is being upgraded to Microsoft Dynamic Business Central Software in the Financial Year 2023/2024.

3) CURRENT ASSETS

a. **Debtors and Prepayments**

The Committee heard that Debtors and prepayments balance of Kshs. 545,036,971 as disclosed under Note 6 to the financial statements included trade debtors totaling Kshs. 1,046,873,031. However, included in the amount were debtors totaling to Kshs.753,589,267 representing 72% of trade debtors that have been outstanding for more than four (4)years. Although a cumulative bad debts provision of Kshs. 943,557,914 has been provided for in the financial statements, it has not been possible to confirm whether, and if so, when the Board will be able to recover the amounts. No action appears to have been taken to ensure recovery of these debts.

Management response

Management informed the Committee that the accounts receivable as at 30th June 2016 included debts totaling to KShs. 753,589,267.00 that were more than four (4) years old. Some of the debts were statutory barred that makes any chance of recovery remote. Notwithstanding this, NCPB had vigorously pursued payments of all debts including taking legal action against defaulters in which cases involving Kshs. 199 million were under litigation. In some instances goods and properties belonging to defaulters had been confiscated and the same would be sold to defray the arrears. So far Kshs 204.7 million had been recovered as shown itemized below:

CATEGORY OF DEBTORS	AMOUNT 30:06:2016 KSHS	AMOUNT MORE THAN 4 YEARS 30:06:2016 KSHS	RECOVERIES	AMOUNT 30:04:2018 KSHS
Trade Debtors	505,480,791.55	212,197,028.66	204,706,539.75	300,774,251.85
Export Debtors	53,663,363.25	53,663,363.25	-	53,663,363.25

Swap Debtors	360,483,433.05	360,483,433.05	-	360,483,433.05
Gunny Bags Debtors	127,245,443.15	127,245,443.15	-	127,245,443.15
TOTAL	1,016,873,031.00	753,589,267.00	204,706,539.75	842,166,491.25

The management had taken remedial action to ensure that the debt portfolio did not escalate. These include re-constitution of the Credit Committee and putting in place new guideline on issuance of credit. The Credit Policy that was approved by the Board of Directors in the year 2008 was under review to realign the same with friendly commercial business practices and at the same time safeguard the interest of the Board. The management was developing the corporate write off policy for approval by the Board of Directors and once approved it will be used to process debts that were un-recoverable. However as a prudent measure, NCPB had provided Kshs.943 million as provision for doubtful debts.

Committee Observations

i) **A provision of Kshs. 943 million for doubtful debts is a very huge figure indicating that debt recoverability policy of the NCPB has a problem.**

ii) **It was not clear on how the debt swap of Kshs 360,483,433.5 came about more than 15 years ago.**

iii) **The lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court.**

Committee Recommendation

The Auditor General should undertake a forensic audit of the 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment the lawyers to establish whether there has been fraud, corruption or other financial improprieties.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

A provision of Kshs. 943,557,914.

As recommended by PIC the forensic audit is yet to be undertaken; The Board of Directors approved the write-off of the debt subject to approval by The National Treasury.

That notwithstanding, NCPB has vigorously been pursuing payments of debts including taking legal action against defaulters and currently cases involving Kshs.56.9 million are under litigation. Goods and properties for other defaulters especially for rental have been confiscated and will be sold to defray the rental arrears.

The management has set up a Debts Recovery Unit (DRU) with the sole mandate to pursue all debts that are one year and above

However as a prudent measure, NCPB has provided Kshs.943 million as provision for doubtful debts.

i) The provision for bad and doubtful debts consist of 100% specific provision and 7.5% general provision on the balance tabulated below:-

CATEGORY	BALANCE AS AT 30.06.2017 (KSHS)	SPECIFIC PROVISION (KSHS)	BALANCE AFTER SPECIFIC PROVISION (KSHS)	7.5 % GENERAL PROVISION (KSHS)	PROVISIONS FOR 2016/2017 (KSHS)
(b)	(c)	(d)	(e)	(f)	(g)
Associated Company	160,077.50	160,077.50	0.00	0.00	160,077.50
Debtors for imported Wheat	35,933,463.80	35,933,463.80	0.00	0.00	35,933,463.80
Other Trade Debtors	1,019,091,083.01	725,339,216.15	291,966,357.38	21,897,476.80	749,022,202.36
Staff Debtors	124,912,936.11	106,897,244.98	18,008,491.13	1,350,636.83	108,247,881.52
Sundry Debtors	141,790,355.03	41,073,889.36	100,716,465.67	7,553,734.93	50,194,292.44
TOTAL	**1,321,887,915.45**	**909,403,891.79**	**410,691,314.18**	**30,801,848.75**	**943,557,917.63**

The provisions are therefore in line with the Boards policy and provisions

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

World Food Programme - Kshs. 360,483,433.05

As recommended by PIC the Forensic Audit is yet to undertaken however as explained by management the debt relates to World Food Programme for organizations that had swap arrangements under the co-ordination of government with NCPB for exchange of commodities in 1980s.

The balance of Kshs. 360,483,433.05 is broken down as follows;

SWAP DEBTORS

1	W.F.P A/C 1192 - Swap Account	CRWF007	20,343,093.75
2	W.F.P A/C 1261- Swap Account	CRWF004	2,656,319.65
3	W.F.P A/C 1398- Swap Account	CRWF006	830,561.15
4	W.F.P A/C UGANDA MAIZE - Swap Account	CRWF005	5,977,097.80
5	W.F.P. A/C 2502 - Swap Account	CRWF003	42,043,117.35
6	W.F.P. A/C 2502/3 - Swap Account	CRWF002	77,842,686.00
7	W.F.P. A/C 2669/01 GERMAN AGRO - Swap Ac	CRWF013	8,651,030.00
8	W.F.P A/C 4629 - Swap Account	CRWF008	10,281,788.75
9	W.F.P. A/C 3935 - Swap Account	CRWF009	31,051,147.25
10	W.F.P. A/C 4616 - Swap Account	CRWF012	29,903,465.40
11	W.F.P. A/C 4691 - Swap Account	CRWF011	27,745,145.35
12	W.F.P. A/C 4961 - Swap Account	CRWF001	2,148,058.95
13	W.F.P. A/C 5046 - Swap Account	CRWF010	90,348,688.80
14	W.F.P. A/C EXPORT - Swap Account	CRWF014	10,661,232.85
	TOTAL		360,483,433.05

Joint reconciliations were undertaken in the 90s to extract documents between WFP and the Board which further classified the debts as follows.

Value of un-supplied quantities with IDA documents retrieved between 1/7/1988 – 8/5/2000 (4,889.91 MT	*78,660,028.50*
Value of quantity lacking supporting Documents (4,094.00 MT)	*65,994,529.91*
Amounts arising from price differential on commodities supplied to WFP in Relation to agreed swap rations	*215,828,874.64*
Balance of outstanding debt due from WFP	***360,483,433.05***

NCPB has been pursuing the debt with the Government (Treasury) who were signatory to the commodities SWAP agreement. As indicated above there is an amount of Kshs. 65,994,529.91 that is unsupported and dating back to the 1980s. The likelihood of retrieving relevant supporting documents is remote.

Against this background, the Board of Directors approved the write-off the amount subject to approval by The National Treasury.

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS

Payment to lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court.

The background for these cases are as follows:

Gunny bag Debtors Kshs. 133,877,201.15

The outstanding amount of Kshs. 133,877,201.15 is related to two specific cases as summarized below:-

	Outstanding (Kshs)
Gunny bags losses involving non-supply of gunny bags by East African Bag & Cordage Ltd, Thika and Kensack Ltd prior to June 1988	99,886,751.70
Fraud case involving Irregular payment for non-delivery of gunny bags by some four (4) Debtors during the period 1986/87 Financial year	33,990,449.45
Total gunny bags debtors	133,877,201.15
Less recoveries	6,631,758.00
	127,245,443.15

Thika Gunny Bag Loses – Kshs. 99,886,751.70

The two companies were manufacturing gunny bags for the Board. They were placed under receivership and although the stock records indicated they were holding 4 million bags for the Board they could not be found.

The Board filed two cases one against East African Bag and Cordage Ltd and the other against its sister Company Kensack Ltd (in receivership).

The case against East African Bag and Cordage could not proceed because the company was placed under liquidation on 21st November 1997 by the court pursuant to winding up cause No.19 of 1996.

The Board filled notice of intention to appear in the Winding up cause and also lodged its proof of debt claim for the loss of Kshs.99,886,751.70 to be considered alongside other creditors when the company is finally wound-up.

The company was liquidated by the official Receiver and the Board has subsequently received Kshs.6,631,758 from the official receiver and liquidator being dividends in respect of the Board's claim.

Current status

On 14th March 2005 Justice Osiemo (as he then was) ordered the separation of the two matters HCCC No. 2947 of 1989 NCPB –V- KENSACK Ltd and HCCCC No. 2892 of 1989 NCPB –V- East African Bag & Cordage Company Ltd to be heard independently. The Board's Advocates successfully appealed against the orders and the two matters have been consolidated once again.

The Board has instructed its advocates to commence out of court settlement negotiations with the debenture holder Ms. National Bank. The negotiations will be with a view to sharing the proceeds of

the sale of various gunny bags found at the Kensack Ltd and East African Bag and Cordage and deposited in an interest earning account as per the court order.

The negotiations are on-going between the advocates.

Mombasa Fraud Case – Kshs. 33,990,449.45

With regard to Mombasa fraud case, beside criminal cases, which resulted in conviction of the culprits, the Board instituted Civil Suit No. HCCC No. 176 of 1994 against five (5) defendants for restitution of the amount of Kshs. 33,990,449.45.

Current status

The Board has obtained judgement against the fifth defendant Mombasa Development Ltd. An investigator was commissioned to identify attachable assets belonging to Mombasa Development Ltd and the location of such assets. The preliminary report indicated that the investigator had established the particulars of Mombasa Development Ltd and its directors. They are currently pursuing the assets of the company.

The matter is still proceeding in court with the other four defendants, where the Board has instructed its advocate to apply for summary judgement.

b. Government Debtors Agency Account

The Committee heard that as previously reported, Government Agency Account balance of Kshs. 2,961,873,689 as at 30th June 2016 included brought forward figures of Kshs. 342,341,936 and Kshs. 191,916,638 relating to Strategic Grain Reserve Programme – old account and GOK 17 selected depots for old account Famine Relief respectively, both of which had remained unpaid for 17 years. It had not been possible to confirm whether and is so, the Board will be able to recover the amounts. No provision for bad debts has been made in this regard.

Management Response

Management informed the Committee that outstanding debts are old debts amounting to Kshs.534.26 million as shown below.

	Old Debts	***Kshs***
i)	*Cost of Reserved Capacity & Wheat Market Intervention Account on SGR*	*342,341,936*
ii)	*17 G.O.K Depots reserved for Famine Relief Programme*	*191,916,638*
	Total	***534,258,574***

A Committee was constituted comprising officers from MOALF, MOD&P, Treasury and NCPB who went through all NCPB claim. However the final report was not issued to allow implementation of the recommendations. A proposal for formation of a joint committee to validate the claims had been communicated to MOALF vide NCPB's Letter Ref. C.12/11 dated 5th January, 2018. The matter will be finalized once a committee to relook at the claims is reconstituted. However as a prudent measure the management had provided Kshs 328.5 million as provision for doubtful debts.

Committee Observation

(i) The debt was still outstanding.
(ii) Management has formed a multiagency committee to resolve the matters relating to bad debts.

Committee Recommendation

The multiagency team formed by Management should resolve the matter of bad debts within three months of the adoption of this Report

CURRENT STATUS ON IMPLEMENTATION OF RECOMMENDATIONS:

The Management of the Board requested the Permanent Secretary (PS) of Ministry of Agriculture, Livestock and Fisheries to constitute a Committee to scrutinize the documents, authenticate the claim and make recommendations so that this matter can be concluded. This was done vide NCPB's letter dated 5th January 2018 which is yet to be responded ***(Annex 3(ii)).***

Yours faithfully,

Joseph M. Kimote, MBS
MANAGING DIRECTOR

Annex 6

Submission by the Principal Secretary, State Department for Lands & Public Works on the implementation status of the Departmental Committee on Lands, Report on a Public Petition regarding the restoration of land belonging to Mrs. Teresia Wambui Kesi in Kilifi North Constituency

Annex 7

Submission by the Principal Secretary, State Department for Lands & Public Works on the implementation status of the Departmental Committee on Lands, Report on a Public Petition regarding securing land ownership rights of Mwanangu Vuze residents in Likoni Constituency

Annex 9

Submission by the stakeholders regarding the implementation status of the agreement between the Republic of Kenya and Italy on the Luigi Broglio-Malindi Space Centre

MINISTRY OF DEFENCE

BRIEF

TO

THE COMMITTEE ON IMPLEMENTATION OF THE NATIONAL ASSEMBLY

ON

THE STATUS OF IMPLEMENTATION OF THE KENYA-ITALY BILATERAL AGREEMENT ON THE LUIGI BROGLIO- MALINDI SPACE CENTRE

BY

CS DEFENCE, HON ADEN BARE DUALE, EGH

JULY 2023

TABLE OF LIST OF DOCUMENTS

SER	DOCUMENT DESCRIPTION	LABEL
1.	CS STATEMENT TO THE COMMITTEE ON IMPLEMENTATION OF THE NATIONAL ASSEMBLY	A
2.	DRAFT JOINT STEERING COMMITTEE RESOLUTIONS (KENYA VERSION)	B
3.	DRAFT JOINT STEERING COMMITTEE RESOLUTIONS (ITALY VERSION)	C
4.	PS DEFENCE LETTER TO ASI PRESIDENT, JUN 2023	D
5.	CS DEFENCE LETTER TO ITALIAN MINISTER FOR ENTERPRISES & MADE IN ITALY, MAY 2023	E
6.	CS DEFENCE LETTER TO ASI PRESIDENT, MAR 2023	F

STATEMENT BY CS DEFENCE, HON. ADEN BARE DUALE, EGH, TO THE COMMITTEE ON IMPLEMENTATION OF THE NATIONAL ASSEMBLY IN THE MATTER OF IMPLEMENTATION OF THE KENYA-ITALY BILATERAL AGREEMENT ON THE LUIGI BROGLIO - MALINDI SPACE CENTRE

Honourable Chair of the Committee on Implementation

Distinguished Members of the Committee on Implementation,

The Kenya-Italy Bilateral Agreement on the Luigi Broglio Malindi Space Centre was ratified by the Kenya National Assembly on 15 October 2020, and came into effect on 16 December 2020 following completion of exchange of diplomatic notes on the agreement between the two governments. The implementing parties are the Kenya Space Agency (KSA) and the Italian Space Agency (ASI). The Malindi Space Centre sits on 3.5Ha of MoD (KDF) land.

The Agreement provides the framework of collaboration between Kenya and Italy on peaceful uses of outer space for scientific, technological and socioeconomic development of both nations, among others. It also provides for joint management of the Luigi Broglio Malindi Space Centre. The cooperation framework is premised on five (5) Implementing Arrangements, as follows:

a. Support to the Kenya Space Agency;
b. Access to Earth Observation and Space Science Data;
c. Education and Training;
d. Telemedicine;
e. Establishment of a Centre for Earth Observation.

Mr. Chair,

The Government of Kenya is concerned about the slow pace of implementation of the Agreement and I would like to inform this Committee and our National Assembly that as a Ministry we have taken firm steps and positions that are targeted at realizing significant benefits to Kenya accruing from our strategic cooperation with the Government of the Italian Republic and the presence of the Luigi Broglio Space Centre in Malindi.

I have written firm letters expressing our discontent with the status of affairs in the implementation, the recent ones being a letter addressed to the President of the Italian Space Agency in March 2023 and another one addressed to the Italian Minister responsible for Space Matters in May 2023. Copies of these letters are attached.

Our nation seeks to leverage the presence of the Malindi facility in our country to build our own capacity as an emerging space faring nation and more importantly realize our aspirations in utilizing space capabilities for our national socioeconomic development. This was the spirit when we signed on to the current bilateral Agreement.

As a developing nation, our country contends with many challenges around agriculture and food security, natural resources management, land and physical planning, disaster management,

national security, and the adverse effects and impacts of climate change. We want to be able to better address these challenges with real capabilities leveraging on space technologies and applications. Unfortunately, with about 60 years of cooperation with a leading space faring nation on earth, Italy, **Kenya is yet to see significant tangible benefits of the cooperation**; and truth be told, **there is nothing much to show for it**, either at the national level, or even in the local community around the Space Centre in Ngomeni, Malindi.

The current activities at the Malindi Space Centre are exclusively benefitting only the Italian Space Agency and its Western partner agencies through tracking, telemetry and command (TT&C) services, and provision of space science and astronomical data to the western scientific community. The facility is currently undertaking a number of commercial activities in support of satellite launches and provision of telemetry, tracking and command (TT&C) services to a number of clients including the French ArianeSpace, European Space Agency, NASA, SpaceX, Chinese Aerospace Administration and other international clients, with no significant share of profits accruing to the Government of Kenya.

Three years into the New Agreement, there is no traction on implementation of the Agreement. The Italian side has made only token fulfilments on select obligations while avoiding the substantive ones. The key issues and concerns we have raised with Italian counterparts are as follows:

a. There is **no single capacity-building project or programme being undertaken jointly by the Italian Space Agency and the Kenyan Space Agency**. *The Implementing Arrangement on Support to the Kenya Space Agency* provides for assistance in the operationalization of the Kenya Space Agency. In accordance with **Article 2.1** of the Implementing Arrangement, the envisaged support activities **include capacity building, human and infrastructure resources development and technical assistance in terms of equipment and software, among others**. Through regular meetings at the Joint Technical Working Group level, KSA has requested for specific assistance on earth observation data processing and analytics and establishment of a Centre for Microsatellite Development, **but no firm commitments have been made by ASI to support these requests**.

b. Kenya is **yet to be granted access to earth observation data and other data,** expressly provided for in the *Implementing Arrangement on Access to Earth Observation and Space Science Data*. This is contrary to **Article 3.1 b)** of the Implementing Arrangement which provides for **access and use of data from past, ongoing and future space programs including but not limited to, COSMO-SkyMed, MODIS, Terra & Aqua, LANDSAT, ERS2, and ENVISAT.** This is useful data for decision support in Kenya's socioeconomic activities.

c. Under the *Implementing Arrangement on Education and Training*, the Italian Government is obligated under **Article 3 a)** to **provide fifteen (15) annual scholarships and fellowships to selected Kenyan nationals to undertake graduate and**

postgraduate degree programmes in Italian Institutions. In 2021, ASI cited the COVID 19 pandemic situation to set aside its obligation. Since the new Agreement came into effect, ASI has offered only 9 slots for academic year 2023. Even then, the students are **only doing the studies virtually** instead of full-time residential training contrary to **Article 3 h) of the Implementing Agreement** which states "*To provide Kenyan nationals accorded scholarship in Italy, full tuition including research fees, travelling expenses, medical insurance cover and adequate allowance for subsistence.*"

d. Under the *Implementing Arrangement on Telemedicine*, the Italian Government is obligated under **Article 2.1 to provide training for medical personnel in Kenya on telemedicine and assist in the development of ICT infrastructure and provision of equipment for telemedicine in Kenya.** Nothing has been implemented towards realization of this capability.

e. The Agreement expressly provides for **establishment of a Centre for Earth Observation** in accordance with **Article 2.1** of the *Implementing Arrangement on Establishment of a Regional Centre for Earth Observation*. Malindi Space Centre currently is not able to acquire and process earth observation data that would be useful for Kenya's space-derived data needs. The article further provides for **provision of requisite equipment and infrastructure**, and **knowledge and technology transfer in data management** to include acquisition, processing, analytics, dissemination and archiving among others. **There is little progress in realization of this capability**. Following our push, ASI has begun refurbishment of the Earth Observation Antenna **but no commitments have been made on delivery of requisite data processing equipment and infrastructure and completion timelines**.

f. There is **reluctance by ASI to provide full disclosure and information about current commercial contracts with third parties** entered into by the facility contrary to provisions of the agreement. **Article VIII Clause 5 f)** obligates the Government of the Italian Republic, through the Italian Space Agency to "*... remit to the Government of the Republic of Kenya 50% of the profits of contracts with Third Parties for commercial services provided by the Facility, including but not limited to launching services, satellite tracking and telemetry services, communication services, data acquisition, surveillance and navigation, with the exception of cooperation agreements in which there is no exchange of funds...*" ASI has kept the list of the Third Parties engaged on commercial contracts a closely guarded secret and despite several requests, including direction from the Joint Steering Committee, ASI has failed to provide the information. They have also failed to disclose the value of the contracts or avail copies of all the contracts to KSA. The GoK is therefore unable to determine its fair share of the profits and Authorization Fees due, owing to lack of full disclosure by ASI.

g. There is **lack of visibility in the operations of the Malindi Centre** to KSA and other GoK staff. The Agency has appointed a Deputy CEO, who is yet to fully settle down at the facility owing to reluctance to provide suitable office space. The CEO and other GoK staff are furnished with information on the Malindi Space Centre on a "need-to-know" basis.

The Deputy CEO has no access to has no access to operational information including commercial contracts, and does not participate in decision making on administrative and operational functions of the Centre. This is in contravention of provisions under **Article VII, Clause 4** of the Agreement which provides that *"the Deputy CEO shall deputize the CEO in **all** the functions provided in Article VII (2), with the exception of making financial commitments for the facility."*

h. ASI through the Malindi Space Centre has been **collaborating with other institutions or individuals in Kenya on space matters without the involvement and/or sanction by the Kenya Space Agency** as the local implementing partner and focal point. Some of the institutions do not have credible or accredited engineering programmes related to space sciences and technology, while the individuals have suspect credentials. For example:

(1) Experiment conducted by ASI and Malindi Space Centre in partnership with individual researchers from Machakos University to be conducted in the Chinese Space Station (Tian Gong);

(2) Project supposedly intended to track Kenya's endangered wildlife. No information has been shared with the Agency on the objectives, outcomes and monitoring mechanism of the project.

i. ASI is **yet to make payments for Annual Authorization Fees** in the amount of USD 50,000 for ALL 3rd Parties contracted on commercial services, as provided for in **Article VIII, Clause 5 (g)**. There are also some outstanding payments, which include the following:

(1) Land Rent for Yr 2022 in the amount of USD 250,000.

(2) 3rd Party Authorization Fee for ESA for 2021, in the amount of USD 50,000.

(3) 3rd Party Authorization Fees for TT&C support to *Chinese Human Space Flight Mission* and *NASA/SpaceX launch missions* for 2021 and 2022 yet to be paid.

Further, ASI has been underreporting on its commercial activities and has been very economical in declaring proceeds from the activities at the Malindi facility. Over the last two years, ASI declared Kenya's share of profits to be EUR 64,951.57 for 2021, and EUR 18,382.00 for 2022. No detailed and transparent explanation has been provided on how the amounts were arrived at. Our efforts to get our Italian counterparts to make full disclosure of the commercial contracts and commitments in implementation of some of the priorities in the Agreement have so far not borne much fruit.

Mr Chairman,

We have renewed our push for our country to have its rightful share of the benefits that derive from activities at the Malindi Space Centre. We are now advocating for realization of the above commitments and obligations to the letter.

Recently, on 15 June 2023, the Government of Kenya sent a delegation headed by the Principal Secretary in the Ministry of Defence, Mr. Patrick Mariru, to attend the 2nd Joint Steering Committee with the singular aim of addressing ssues around implementation of the Agreement. The meeting arrived at a raft of Resolutions and Recommendations to the Joint Council of Ministers, which included the above concerns. To our utter consternation, our Italian Counterparts declined to append their signature to the joint resolutions, preferring instead to table before the JCM a watered-down version of the Resolutions, with the bulk of Kenya demands omitted. The Draft JSC Resolutions (Kenya and Italian Versions) are attached for your information.

Mr. Chair,

In conclusion, the Italian Government has operated the Malindi Space Centre for over sixty (60) years now and despite our Bilateral Agreements and clear deliverables, our partners have not been genuine and have instead resorted to tokenism and time-delaying tactics in the implementation. There is very little to show for the presence of the facility in Kenya either in terms of impact to the local community or assistance in the development of Kenya's space sector.

From our recent engagements with our Italian counterparts, there has been no demonstrated goodwill and sincerity, beyond mere lip-service, in genuinely seeking to address Kenya's concerns in the implementation.

We have renewed our push for our country to have its rightful share of the benefits that derive from activities at the Malindi Space Centre. We are now advocating for realization of the following important provisions at the minimum:

a. Full disclosure and visibility into the commercial contracts entered into by the Malindi Space Centre with 3rd Parties.

b. Establishment of Centre for Earth Observation for access to crucial earth observation data as well as capacity building on development of applications.

c. More presence of Kenya GoK personnel and visibility into the operations of the facility, including the commercial contracts.

d. Tangible capacity building and support for the growth of Kenya's space sector.

e. Joint projects that are impactful and beneficial to Kenya.

We are seeking the National Assembly's voice in expressing our dissatisfaction to the Government of the Italian Republic in the implementation of the Bilateral Agreement.

Mr Chair, thank you for your attention.

Section 3 Sovereignty, Territorial Integrity

Section legal Council

HON. ADEN BARE DUALE, EGH
Cabinet Secretary
MINISTRY OF DEFENCE

REPUBBLICA ITALIANA

REPULIC OF KENYA

RESOLUTIONS

OF

THE JOINT STEERING COMMITTEE MEETING

ON THE

KENYA – ITALY BILATERAL AGREEMENT ON THE

LUIGI BROGLIO – MALINDI SPACE CENTRE

HELD

IN ROME, ITALY

ON

THURSDAY 15 JUNE 2023

16 June 2023

AGREED OUTCOMES OF JOINT STEERING COMMITTEE MEETING HELD AT THE ITALIAN SPACE AGENCY (ASI) HEADQUARTERS IN ROME, ITALY, ON 15 JUNE 2023

The Joint Steering Committee Meeting on implementation of the Kenya-Italy Bilateral Agreement on the Luigi Broglio-Malindi Space Centre between the Government of the Republic of Kenya and the Government of the Italian Republic, held in Rome, Italy on the 15th Day of June 2023, hereinafter called "the Parties":

ACKNOWLEDGING the strong diplomatic, economic, technical, cultural and political relations existing between the Parties;

ACKNOWLEDGING the strong historical bond and friendly ties between the Parties in the peaceful exploration and exploitation of outer space;

RECOGNIZING the strategic importance of the Luigi Broglio-Malindi Space Centre to the bilateral relationship and cooperation in the use of space and space activities between the Parties;

COMMITTED to strengthening the ties for joint use of space for technical, scientific and socio-economic development of both Parties;

COGNIZANT of the Parties' obligations under the Bilateral Agreement between Kenya and Italy on the Luigi Broglio-Malindi Space Centre, the attendant respective domestic legislation as well as international legal obligations on the peaceful use of outer space;

RESOLVE AND AGREE to accomplish their respective undertakings towards attainment of the objectives set out in the Kenya-Italy Bilateral Agreement on the Luigi Broglio-Malindi Space Centre as follows:

1. Establishment of Regional Centre for Earth Observation.

   a. Refurbishment of the S/X Band Antenna, currently ongoing, to be completed by end of June 2023.

   b. Importation and installation of associated Earth Observation data processing equipment to be completed by end of October 2023.

   c. ASI to develop capacity building training assistance program on earth observation data processing and analytics, data management and dissemination once the Centre for Earth Observation is operational.

   d. Discussions on establishing a Nairobi Node with direct access to the COSMO-SkyMed Constellation and PRISMA data to continue in the Joint Technical Working Group and a report submitted to the JSC during its next meeting.

2. Commercial Contracts with 3rd Parties.

a. ASI to make full disclosure on existing and past contracts entered into with third (3rd) Parties for use of services from the Malindi Space Centre. ASI to avail copies of all current contracts with 3rd parties to KSA for information and record.

b. KSA to be enjoined in all future contract negotiations with 3rd Parties.

c. ASI to furnish details of calculations for Share of Profits to both Parties.

d. Need to institute a management information system on 3rd party Contracts at the Malindi Space Centre for ease of tracking of the contracts.

e. Joint Management Board to review the 8% rate of determination of profits and the basis for the value, and provide report to the next JSC meeting.

3. Payment of Annual Authorization Fees for 3rd Parties.

a. ASI to provide details of all 3rd Parties contracted to utilize services provided by at the Malindi Space Centre.

b. KSA to avail banking details to ASI to facilitate payment for 3rd Party Authorization Fees for 2022.

c. ASI has requested for review of the Clause on Payment of Authorization Fees (Article VIII, Clause 5 (g), citing it as punitive for single-use 3rd party clients and rendering the services at the Malindi Space Centre uncompetitive. ASI requests that the Clause be amended to provide for a pro-rated payment structure. The JSC tasked the Joint Technical Working Group to review the practice globally on similar services provided by other TT&C (Telemetry, tracking and Command) service providers and make recommendations to the JSC in the next meeting.

4. Payment of Taxes; Tax and Duty Waivers.

a. ASI is paying high taxes for equipment imported for upgrade/maintenance of systems at the Malindi Space Centre. The equipment such as those for the Centre for Earth Observation are not meant for commercial purposes, therefore ASI requests for necessary waiver of taxes and duties. KSA to assist ASI in seeking necessary duty exemptions on case-by-case basis, and where there are issues, both Parties to jointly seek negotiated settlement with KRA.

b. The JSC noted that the Finance Bill 2023 has provisions for duty exemptions for aerospace and space equipment. KSA to assist in the application for necessary duty exemptions in respect of imported space equipment for use by the Malindi Space Centre.

5. Joint Projects

a. ASI to involve KSA in all capacity building projects to be conducted in collaboration with other institutions in Kenya without exception.

b. Joint projects between ASI and KSA need to be jointly conceived and implemented, taking into consideration Kenya's requirements as well. ASI to also consider projects involving support to agriculture, natural resources management and environmental monitoring.

c. ASI to ensure all its space programs and activities carried out in collaboration with other Kenyan institutions are in line with international legal and regulatory requirements, taking into account state responsibility and liability. This is to ensure Kenya does not unwittingly and unknowingly become liable for space activities conducted within its soil by ASI in concert with third party non-state actors in the country.

d. ASI offered to provide legal and technical support in the development of Kenya Space Policy and Space Legislation. KSA to formally request for the support from ASI.

6. Management of the Luigi Broglio-Malindi Space Centre

a. The Deputy CEO to be provided with office space and accommodation and to be fully involved in the day-to-day administrative and operational functions of the facility.

b. The Deputy CEO to have full visibility of all contracts in existence including technical and financial reports.

c. The Deputy CEO and other GoK technical staff to be considered part of the Staff of the Malindi Space Centre and to be entitled to privileges including allowances as has been the practice in the past. Associated labour costs to be borne by the Malindi Space Centre just like for other staff at the facility.

7. Education and Training

a. ASI to facilitate provision of the annual fifteen (15) postgraduate scholarship opportunities and ensure current batch of selected students continue with their residential phase of training at La Sapienza University in Rome.

b. Arrears of scholarship opportunities for 2021 and 2022 to be bridged by ASI.

c. ASI to consider establishment of a Centre for Micro-Satellite Development in Malindi to impart hands-on technical skills and competencies

in space systems engineering and development to trained professionals for Kenya's space sector.

d. ASI in collaboration with relevant institutions in the Italian Republic to consider support in the development of advanced curriculum on space science and technologies for Kenya's institutions of higher learning.

8. Local Community Support Projects. Initial disbursement of funds for the Malindi Social and Health Development Program Phase II, provided under a soft-loan facility by the Government of the Italian Republic have been received by the implementing Agency, the Coast Development Authority. The Government of Kenya will ensure proper supervision of the improvement of the Mjanaheri-Ngomeni access road to the Malindi Space Centre.

9. Schedule of JSC Meetings. To ensure adequate traction and momentum in the implementation of the Agreement, the Joint Steering Committee shall be meeting twice a year, alternately in-person and virtually. The JSC shall resume annual meetings thereafter. The next JSC meeting is scheduled to be held virtually in December 2023.

IN WITNESS whereof the undersigned Steering Committee Co-Chairs and duly authorized representatives of the parties to the Kenya-Italy Bilateral Agreement on the Luigi Broglio-Malindi Space Centre sign, acknowledge and commit to the foregoing resolutions:

Done in Rome, Italy on the ..... in two originals, both in English language, all texts being equally authentic.

For and on behalf of the Government of the Republic of Kenya

.....

MR. PATRICK MARIRU
Principal Secretary
Ministry of Defence

For and on behalf of the Government of the Italian Republic

.....

PROF. TEODORO VALENTE
Presidente
Agenzia Spaziale Italiana

Agenzia Spaziale Italiana

KENYA SPACE AGENCY
Possibilities beyond our skies

RECOMMENDATION

OF

THE JOINT STEERING COMMITTEE

TO

THE JOINT COUNCIL OF MINISTERS

on implementation of the Bilateral Agreement on the Luigi Broglio-Malindi Space Centre between the Government of the Republic of Kenya and the Government of the Italian Republic

The Joint Steering Committee (JSC) on the implementation of the Bilateral Agreement on the Luigi Broglio-Malindi Space Centre between the Government of the Republic of Kenya and the Government of the Italian Republic:

ACKNOWLEDGING the strong diplomatic, economic, technical, cultural and political relations existing between the Parties;

ACKNOWLEDGING the strong historical bond and friendly ties between the Parties in the peaceful exploration and exploitation of outer space;

RECOGNIZING the strategic importance of the Luigi Broglio-Malindi Space Centre to the bilateral relationship and cooperation in the use of space and space activities between the Parties;

COMMITTED to strengthening the ties for joint use of space for technical, scientific and socio-economic development of both Parties;

COGNIZANT of the Parties' obligations under the Bilateral Agreement between Kenya and Italy on the Luigi Broglio-Malindi Space Centre, the attendant respective domestic legislation as well as international legal obligations on the peaceful use of outer space;

CONSIDERING the JSC meeting held at the Italian Space Agency (ASI) headquarter in Rome, on June, 15th 2023 and the agreed outcomes therein as documented in the attached Minutes of Meeting (MoM);

RECOMMENDS to the Joint Council of Ministers the reviewing of the provisions of this Agreement as follows:

1. Commercial Contracts with 3rd Parties
   All future Third-Party contracts will be discussed jointly by ASI and KSA before their negotiation and signature.

2. VAT e custom duties
   a. ASI, its operations, services, assets, income and other property, when purchases or services are made or used by the Agency or on its behalf, shall be exempt from all direct taxes, whether national, provincial or municipal, as well as from indirect taxes (including excise duties and the Value Added Tax (VAT) or an equivalent tax), whether national, provincial or municipal.
   b. Goods imported or exported by ASI or on its behalf necessary for the BSC activities under this Agreement are entitled to the exemption at the source from import and export duties and taxes.

3. Request of modification of the art. VIII, 5, g
   a. partners should pay proportionally to the amount of times they use the Centre, so to increase the inflow of clients and the continuity of contracts;

b. the canon gets fixed as percentage of the Centre usage by third parties.

4. Office, Accommodation and Facilitation of Kenyan Personnel at the Facility
   a. Deputy CEO and other two GoK technical staff (as stated in the formal agreement) should be considered part of the Staff of the Malindi Space Centre and to be entitled to privileges including allowances as has been the practice in the past.
   b. Associated labour costs to be borne by the Malindi Space Centre just like for other staff at the facility.

IN WITNESS whereof the undersigned Steering Committee Co-Chairs and duly authorized representatives of the parties to the Kenya-Italy Bilateral Agreement on the Luigi Broglio-Malindi Space Centre sign, acknowledge and commit to the foregoing resolutions:

Done in Rome, Italy on the ..... in two originals, both in English language, all texts being equally authentic.

For and on behalf of the Government of the Republic of Kenya

.....

MR. PATRICK MARIRU
Principal Secretary
Ministry of Defence

For and on behalf of the Government of the Italian Republic

.....

PROF. TEODORO VALENTE
Presidente
Agenzia Spaziale Italiana

MINISTRY OF DEFENCE
OFFICE OF THE PRINCIPAL SECRETARY

Telegrams: "DEFENCE", Nairobi
Telephone: Nairobi 020 – 2721100
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Fax: 020 2723446

ULINZI HOUSE
P. O. Box 40668, 00100
NAIROBI, KENYA

MOD 12/19/5A **23 June 2023**

Prof. Teodoro Valente
Presidente, Agenzia Spaziale Italiana (ASI)
Via del Politechnico s.n.c.
00133 Roma, ITALIA

RESOLUTIONS DURING JSC MEETING HELD IN ROME, ITALY ON 15 JUNE 2023

Greetings from Kenya. I thank you, Mr. President, for the warm reception accorded to my delegation during the recent Joint Steering Committee meeting held in Rome, Italy, on 15 June 2023. My delegation also appreciates the frank, cordial and fruitful deliberations that took place during the meeting aimed at further solidifying and strengthening our bilateral cooperation on peaceful uses of outer space.

The meeting discussed and agreed on a number of critical issues, which have been captured in the Draft Minutes, and which will be circulated for our signature soon. For purposes of briefing back to our Principals at the level of Cabinet Secretaries / Ministers, the secretariat on the Kenyan side extracted the key decisions and action items in form of Draft JSC Resolutions, and promptly shared the same with yourselves on Friday 16 June 2023 for your review and further refinement.

In our view, the JSC Resolutions are the appropriate means to communicate JSC decisions to the JCM as we cannot present the JSC Minutes to the JCM. Please note that the JSC Resolutions are not meant to substitute the Minutes of the Meeting.

Unfortunately, despite several efforts and reminders to get feedback and/or amendments to the document, to-date we have not received any responses from the Italian side. This is rather disappointing and causing unnecessary friction, which could potentially impact on the conduct of the JCM scheduled to be held in a month's time. It is my hope that you will direct for the necessary review to be done to enable us finalize and sign the document in short order.

A copy of the Draft JSC Resolutions is attached for your consideration and review.

Patrick Mariru
PRINCIPAL SECRETARY

Encl.

Copy to: **Cabinet Secretary – Defence**

MINISTRY OF DEFENCE
Office of the Cabinet Secretary

Telegrams: "DEFENCE", Nairobi
Telephone: 2721100
Fax No: 254-2-2723446
Email: cs-secretary@mod.go.ke

DEFENCE HEADQUARTERS
ULINZI HOUSE
P O BOX 40668-00100
NAIROBI KENYA

When replying please quote:

Ref. No. MOD.12/19/5A

5th May 2023

Mr. Adolfo Urso
Minister for Enterprises and Made in Italy
Via Molise 2
00187 Rome, ITALY

Dear Urso,

CONVENING OF JOINT STEERING COMMITTEE – KENYA ITALY BILATERAL AGREEMENT ON THE LUIGI BROGLIO MALINDI SPACE CENTRE

Greetings from Kenya. I am writing this letter to you as my counterpart in the Joint Council of Ministers at the apex of the existing governance structure of the Kenya-Italy Bilateral Agreement on the Luigi Broglio Malindi Space Centre.

Kenya and Italy enjoy cordial relations which strengthened even more with the recent first ever State Visit to Kenya by the President of the Italian Republic, His Excellency Sergio Mattarella, from 13 to 17 March 2023. The President's visit to Kenya, and particularly to the Luigi Broglio Malindi Space Centre on 15 March 2023 demonstrated the important ties between our nations on space programmes. During the visit to the Malindi facility, both governments expressed commitment to further strengthen the relations and activities on space programmes on a win-win basis.

Prior to the visit, Kenya had expressed its concerns about implementation of the existing Kenya-Italy Bilateral Agreement on the Luigi Broglio Malindi Space Centre (hereinafter referred to as "the Agreement"), in a letter Ref. No. MOD.12/19/5A dated 9 March 2023 addressed to the President of ASI and copied to the Italian Embassy in Nairobi (copy attached). You may wish to

note that in response to the letter, the ASI President and the Italian Ambassador to Kenya promptly committed to holding of high level meetings between officials of both parties to the Agreement at the earliest convenience soon after the Italian President's visit, preferably in the April/May 2023 timeframe. Copies of ASI letter Registro Ufficia 0003322 dated 10 Mar 2023 and Italian Embassy letter Prot. 620 dated 10 March 2023 are attached.

Consequently, vide KSA letter Ref. No. KSA/MSC/Vol.1 dated 30 March 2023, the Ag. Director General Kenya Space Agency wrote to the ASI President requesting for convening of in-person Joint Steering Committee (JSC) in the first week of May, preferably on 3 May 2023, either in Rome or Nairobi. A proposed Agenda for the meeting was also shared in the letter (copy attached). ASI responded vide letter Registro Ufficia 0004681 dated 6 April 2023 confirming readiness to hold the meeting as requested and suggested that the meeting be held in Rome on 3 May 2023 (copy attached). Subsequent to this, and following developments on the Italian side, the JSC meeting was rescheduled to 10 May 2023, which the Kenyan side accepted.

It needs to be appreciated that holding of the JSC meeting is critical and needs to happen at the earliest instance considering the weighty issues that the Kenyan side raised over the implementation of the Agreement, which were communicated through my letter. It is important to also note that since the current Agreement came into effect on 16 December 2020, no Joint Council of Ministers (JCM) meeting has ever been held. The JSC meeting needs to happen very soon to pave the way for the inaugural JCM. This will facilitate making of critical decisions touching on the implementation of the Agreement that have been outstanding since the Agreement came into effect.

The last JSC meeting was held virtually on 23 February 2022. Several meetings have since been held between both parties at the subordinate Joint Management Board (JMB) and Joint Technical Working Group (JWG) levels. Issues that have been deliberated upon at these meetings are awaiting decision which can only be made at the JSC and JCM meetings. Any delays in holding the meetings means delays in decision making, which adversely affect implementation of the Agreement. The Kenyan side made necessary preparations to attend the JSC on the rescheduled date of 10 May 2023 with raised hopes of a new spirit of enhanced cooperation between both parties. These hopes have unfortunately been dashed by the unexplained decision to postpone the meeting at the last minute.

You will appreciate that the letter requesting for convening of the JSC was made in good time and with sufficient notice, having been sent on 30 March 2023. It is therefore disconcerting to us, and injurious to the goodwill that was being established, that ASI would postpone at the last minute a meeting that they had agreed to, for reasons that are not clear. We take great exception to this and request that a new date for holding of the JSC meeting

be set within the next two weeks. Any further delay would be detrimental to our collaboration under the Agreement.

I look forward to our holding of the inaugural Joint Council of Ministers meeting soon after the JSC meeting. In the meantime, I urge you to weigh in on this matter to ensure the JSC takes place at the earliest convenience.

Yours sincerely

HON. ADEN B. DUALE, EGH
CABINET SECRETARY

Copy to:

Dr. Alfred Mutua
Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
NAIROBI

Presidente, Agenzia Spaziale Italiana (ASI)
Via del Politechnico s.n.c.
00133 Roma, ITALIA

H.E. Roberto Natali
Ambassador of the Italian Republic
Embassy of the Italian Republic
NAIROBI, KENYA

MINISTRY OF DEFENCE
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NAIROBI,KENYA

Ref No. MOD.12/19/5A

9th March, 2023

Dr. Giorgio Saccoccia
Presidente, Agenzia Spaziale Italiana (ASI)
Via del Politechnico s.n.c.
00133 Roma, ITALIA

Dear Giorgio,

KENYA CONCERNS ON IMPLEMENTATION OF KENYA-ITALY BILATERAL AGREEMENT ON THE LUIGI-BROGLIO MALINDI SPACE CENTRE

INTRODUCTION

Kenya entered into an agreement with Italy on cooperation on space matters and management of the Luigi Broglio – Malindi Space Centre. The bilateral agreement was signed on 24 October 2016 in Trento, Italy, and ratified by the Kenyan National Assembly on 15 October 2020. It formally came into effect on 16 December 2020 with the completion of exchange of diplomatic communications on the ratification of the Agreement.

As you are well aware, the agreement has five Implementing Arrangements, namely:

a. Institutional capacity building support to the Kenya Space Agency.
b. Access to Earth Observation and Space Science Data.
c. Education and Training.
d. Telemedicine.
e. Establishment of a Regional Centre for Earth Observation.

It is noted and appreciated that the President of the Italian Republic, His Excellency Sergio Mattarella will be conducting the first ever State Visit by an Italian President to Kenya from 13 to 17 March 2023. Part of the President's itinerary includes a visit to the Malindi Space Centre on 15 March 2023. It is

important that critical issues in the implementation of the bilateral agreement are addressed through commitments by the Italian Space Agency ahead of the visit.

ACTIVITIES AT THE FACILITY

As you know, the current activities at the Luigi Broglio Malindi Space Centre are almost exclusively benefiting only western partner agencies of ASI through tracking, telemetry and command (TT&C) services, and provision of space science and astronomical data to the western scientific community.

There is no single capacity-building project or programme currently being undertaken jointly by the Italian Space Agency and the Kenyan Space Agency. As a matter of fact, and most unfortunately, **Kenya is yet to realize any tangible benefits from the services provided at the facility, and there is very little to show for the over 60 years of operation of the facility in Kenya,** despite existence of bilateral agreements with clear deliverables over the period.

IMPLEMENTATION EFFORTS

It is noted that since the first Joint Steering Committee meeting held in February 2022 under the new agreement, there have been meetings at the Joint Management Board (JMB) and Joint Technical Working Group (JWG) level aimed at gaining traction in implementation of the Agreement and to derive some benefits for Kenya. These unfortunately are yet to receive substantive decisions at the Joint Steering Committee (JSC) and the Joint Council of Ministers (JCM) levels for implementation, which as you know have not been held. There is therefore very little progress made even in addressing minor issues around access to the Malindi Space Centre by Kenyan partners in the agreement, owing to apparent deliberate efforts to frustrate the implementation.

There have been token efforts in the recent months to address some provisions in the Agreement. In particular, it is appreciated that the Italian Space Agency has provided nine (9) postgraduate scholarship opportunities in 2023 to Kenyan engineers in space systems engineering and related fields. But **a lot remains to be done to attain a win-win situation for the principal parties**.

KENYA PRIORITIES

Kenya wishes to see investment and engagement in joint programmes that are directly beneficial and address its needs, to include capacity building on space systems engineering; space data analytics and processing; and developing earth observation applications for decision support in socioeconomic sectors, to include:

a. Environmental monitoring;
b. Climate change monitoring and mitigation;
c. Agriculture and food security;
d. Natural resources management (water, forests, mining, blue economy);

e. Land and physical planning; and
f. Disaster risk management, among others.

There are also other priorities aimed at building national space capability that have been discussed at the Joint Management Board and Joint Technical Working Group levels, which we hope will receive appropriate attention and consideration during the subsequent JSC and JCM meetings to be called soon. From the engagements, there are a number of concerns that need urgent attention at the strategic level.

KEY CONCERNS

The following are some of our key concerns in implementation of the agreement:

a. The Agreement expressly provides for **establishment of a Centre for Earth Observation and access to earth observation data** as key deliverables in accordance with the Implementing Arrangements on *Establishment of a Regional Centre for Earth Observation*, and *Access to Earth Observation and Space Science Data*. These are critical for development of Kenya capacity in earth observation applications to provide decision support, early forecasting and predictions around agriculture and food security, climate change mitigation, disaster risk management and natural resources management, among others. There is very little progress in realization of this capability.

b. There is **lack of full visibility in the operations of the Centre** to KSA and other GoK staff. The Agency has appointed a Deputy CEO, who is yet to fully settle down at the facility owing to reluctance to provide a suitable office space; and GoK technicians who have been present at the facility over the years have had their access to the facility terminated, in clear contravention of provisions under Article VII, Clause 6 of the Agreement which provides for secondment by Kenya of professional staff to the Facility.

c. There is **reluctance to provide information about current commercial contracts with third parties** entered into by the facility in accordance with the provisions of the agreement. This has a bearing on what is due and declared to Kenya as shareable profits from commercial activities, in accordance with provisions in Article VIII, Clause 5 (f).

d. The facility has been **engaging in collaborations with other institutions or individuals in Kenya on space matters without the involvement and/or sanction by the Kenya Space Agency** as the local implementing partner and focal point. Some of the institutions do not have credible or accredited engineering programmes related to space sciences and technology, while the individuals have suspect credentials. For example:

    i. Experiment conducted by Italian Space Agency (ASI) and Malindi Space Centre in partnership with individual researchers from

Machakos University to be conducted in the Chinese Space Station (Tian Gong);

ii. Project supposedly intended on tracking of Kenya's endangered wildlife, but with no clear outcomes and monitoring mechanism.

e. ASI is **yet to make payments for Annual Authorization Fees** in the amount for each third party contracted on commercial services, which is clearly provided for Article VIII, Clause 5 (g).

It is also noted that a combined advance protocol team comprising Italian and Kenya Government officials jointly visited Malindi Space Centre on a recce and planning mission on Friday 17 February 2023. This was in preparation for the impending visit to the facility by the Italian President on 15 March 2023. The Kenyan team was kept away from the proceedings and discussions conducted between the Italian team and the facility management for reasons not known, a clear indication that there is information that was not for Kenyan consumption.

CONCLUSION

Implementation of the Kenya-Italy Agreement on the Luigi Broglio Malindi Space Centre is slow and is also beset with deliberate frustration attempts by the management of the Malindi Space Centre. Even as the facility provides services for the needs of its customers in Europe and around the world, there is also need to consider the needs of its local partner and host nation so that there is a win-win situation for all.

WAY FORWARD

The above issues are weighty and need urgent attention and/or resolution ahead of the impending visit with specific commitments on the following:

a. The outstanding Joint Steering Committee and Joint Council of Ministers meetings be scheduled and held soon to deliberate on priorities for both parties in the agreement on win-win basis.
b. Malindi Space Centre to prioritize the establishment of the Centre for Earth Observation and access to space data to support socioeconomic activities in Kenya.
c. Malindi Space Centre to allow full access and full visibility into the operations of the facility to the Deputy CEO and his team in line with the Agreement.
d. Malindi Space Centre should provide for establishment and furnishing of the Office of the Deputy CEO just like other offices for other key staff at the facility.
e. In the interest of transparency, the JMB members and Deputy CEO be allowed access to commercial contracts entered into with third parties.

f. Malindi Space Centre to allow for GoK representatives as staff at the facility.
g. The Malindi Space Centre seeks concurrence of KSA prior to engaging with other Kenyan entities in joint projects on space matters.
h. ASI pays the relevant Authorization Fees and other dues to GoK in respect of commercial activities with third parties contracted by the facility.

I am not happy with the current arrangement in the implementation of the agreement. I look forward to timely resolution of the above concerns and realization of a true win-win situation for all the parties.

Yours

HON. ADEN B. DUALE, EGH
CABINET SECRETARY

Copy to:

Mr. Felix K. Koskei
Chief of Staff and Head of Public Service
Executive Office of the President
NAIROBI, KENYA

Hon Alfred N. Mutua, EGH
Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
NAIROBI, KENYA

Hon. Justin B.N. Muturi, EGH
Attorney General
State Law Office
NAIROBI, KENYA

Dr. Korir Sing'oei
Principal Secretary
State Department for Foreign Affairs
NAIROBI, KENYA

Patrick Mariru
Principal Secretary
Ministry of Defence
NAIROBI, KENYA

Annex 8

Submission by the Principal Secretary, State Department for Lands & Public Works on the implementation status of the Departmental Committee on Lands, Report on a Public Petition regarding the irregular annexation and fencing of private land by Greatcom Limited in Matuga Constituency in Kwale County

Annex 10

Submission by the Cabinet Secretary, Ministry of Education Hon. Ezekiel Machogu on the implementation status of a motion by Hon. Gathoni Wamuchomba, HSC regarding the standardization and production of school uniforms

Annex 11

Submission by the Principal Secretary, State Department of Dr. Juma Mukhwana, PhD on the implementation status of the resolution on payment of terminal dues to former employees of Pan Paper Mills Company Limited

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
State Department for Industry

Office of the Principal Secretary

Telephone: 020-2731531-9
0704097021/23, 0788484840/41
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When replying please quote:

Social Security House BLK 'A'
Bishops Road, Capital Hill
P.O. Box 30418 - 00100
NAIROBI

REF: MITI/SDI/1/10

Date: 28th March 2024

Mr Jeremiah Ndombi MBS
Clerk of The National Assembly
P.O BOX 41842-00100
Main Parliament Buildings
NAIROBI, KENYA

MEETING WITH THE COMMITTEE ON IMPLEMENTATION OF THE NATIONAL ASSEMBLY REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Reference is made to your letter, Ref:NA/AA&GPC/CO1/2024(015) of 25th March 2024 on the above matter addressed to this office and The Principal Secretary, The National Treasury, copied to the Cabinet Secretary Ministry of Investments, Trade and Industry among other offices on the payment dues for former employees of Pan African Paper Mills.

Attached herein, please find the responses to the information requested as follows;

- The statement in response to the respective questions.
- Annexures on the list of the Pan African Paper Mills employees and the various correspondences between the National Treasury and The Ministry of Investments Trade and industry on the subject matter.

Submitted for your information.

Juma Mukhwana, PhD, CBS
PRINCIPAL SECRETARY

Copy to: Hon. Rebecca Miano, EGH
Cabinet Secretary
Ministry of Investments, Trade and Industry
NAIROBI

Dr. Chris Kiptoo, CBS
Principal Secretary
The national Treasury
NAIROBI

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
STATE DEPARTMENT FOR INDUSTRY

MEETING WITH THE COMMITTEE ON IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

1. **QUESTION NO. i)**
   Whether the Ministries of Trade, Industry and Investment and the National Treasury compiled a list of all the former employees of Pan Paper Mills Company Limited;

   Mr. Chairman and Hon Members, I wish to respond as follows

   The Ministry was not involved in the valuation of assets and liabilities of Pan African Paper Mills.
   This was done by the Joint Receiver/ Manager Messrs Muniu Thoithi and Kuria Muchiru and the Ministry of Finance. However, for the purpose of paying their terminal dues, the Ministry in conjunction with the Ministry of Finance was directed by the National

Assembly through the Implementation Committee to undertake verification of all former employees of Pan African Paper Mills.

The Ministry immediately engaged the Receiver Manager Muniu Thoithi requesting for the necessary and relevant documents and information regarding pending payments to the former employees. It is worth noting that on behalf of the GOK, the Joint Receiver Muniu Thoithi and Kuria Muchiri c/o PWC undertook a verification exercise of former employees of Pan African Paper Mills with the details and records availed to them by the former senior employees of Pan African Paper Mills.

The List of 1349 employees developed by the receiver managers and verified by the ministry is attached herewith, Annexe I.

2. QUESTION NO. ii)

The status of payment of the former employees of Pan Paper Mills Company Limited provided for under Section 66 of the Employment Act 2012 and other related legislations;

I wish to respond as follows;

Due to budgetary limitation/constraints, the Ministry has not been able to pay the former employees of Pan African Paper Mills as provided under section 66 of the Employment Act. However, the Ministry has continuously been engaging with the National Treasury, with the view of availing funds to settle the terminal dues of the former employees of Pan African Paper Mills. Copies of correspondences between the Ministry of Investments, Trade and Industry are herein annexed for ease of reference.

The Ministry Investment, Trade and Industry is desirous of ensuring that this matter is brought to rest and is working closing with the National Treasury to ensure that the matter is settled.

QUESTION NO.(iii)

Compliance by The National Treasury in availing funds in 2017/2018 Financial Year for payment of terminal dues to former employees of the Pan Paper Mills Company Limited

I wish to respond as follows;

As indicated in the response to Question above, The National Treasury is yet to provide funds for settlement of the former employees' dues. However, the two Ministries are in consultation with a view of resolving the matter. The correspondences between the Ministry of Investments, Trade and Industry, specifically The State Department for Industry and the National Treasury suffixes.

Hon Chair, I submit.

Annex 13

Submissions by the Principal Secretary, State Department for Irrigation - Ministry of Water, Sanitation and Irrigation, Mr. Ephantus K. Kimani, CBS in response to the Public Petition Public Petition Committee Reports in the Petition No. 8 of 2022 by Pastor Ochieng Odindo, regarding the EACC Investigations of West Kano Irrigation Scheme for their action

National Irrigation Authority

ISO 9001 : 2015 CERTIFIED

Our Ref: NIA/HQ/P1/51 Vol. II **Date:** 1st March, 2024

The Clerk
National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Attn. Dear Sir,

RE: MEETING WITH THE COMMITTEE ON IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

We refers to your letter Ref. No. NA/AA&GPC/COI/2024/(009) dated 26th February, 2024 on petition regarding Ethics and Anti- Corruption Commission (EACC) graft investigation of the West Kano Irrigation scheme inviting us to appear before your committee on Thursday, 7th March, 2024.

Kindly find attached our submission prior to the meeting.

Yours Sincerely,

Eng. CHARLES MUASYA, *MBS*
CHIEF EXECUTIVE OFFICER

Irrigation House, Lenana Road. P. O. Box 30372 - 00100 Nairobi, Kenya
Tel: +254 711 061 000
Email: ceo@irrigation.go.ke Website: www.irrigation.go.ke

REPUBLIC OF KENYA

MINISTRY OF WATER, SANITATION AND IRRIGATION

STATE DEPARTMENT FOR IRRIGATION

SUBMISSIONS TO THE COMMITTEE ON IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE PUBLIC PETITION REPORT ON PETITION NO.8 OF 2022 BY PASTOR OCHIENG ODINDO, REGARDING EACC INVESTIGATIONS OF WEST KANO IRRIGATION SCHEME

This refers to a letter from the Clerk of the National Assembly Ref. No. NA/AA&GPC/SCA/CO1/2024/(009) dated 26th February, 2024 regarding the above petition.

Hon. Chair, The National Assembly Committee on implementation has invited the State Department for Irrigation to apprise the Committee on the status of implementation of the house resolutions regarding the Ethics and Anti- Corruption Commission (EACC) graft investigation of the West Kano Irrigation scheme.

Hon. Chair, West Kano Irrigation Scheme is located in the Kano plains between Nandi escarpment and Nyabondo plateau on the shores of Lake Victoria in Kisumu County. The scheme was constructed in the year 1974 and became operational in 1976. It has 837 farmers with a total area of 4,396 acres and a gross farm land area of 2,230 acres. The average farm size is 2-4 acres per farmer. Irrigation water is abstracted by pumping from Lake Victoria and water drainage is by pumping back water to the Lake.

Hon. Chair, West Kano Irrigation scheme is managed under Participatory Irrigation Management where the farmers through their elected

representatives participate in day to day running of the scheme activities. The scheme has Irrigation Water Users Association, West Kano Farmers' Cooperative Society, Dispute Resolution Committee and the Scheme Management Committee. All these committees are formed by the farmers as anchored in the Irrigation Act of 2019.

Hon. Chair, on ***West Kano Irrigation scheme revolving funds:*** **-** in the financial year 2009/10 the Government of Kenya initiated the Economic Stimulus Program (ESP) which was an economic recovery plan started to boost economic growth and address some of the key economic challenges. One of the project component was food production whose aim was to increase availability and accessibility of maize/rice crop in the National irrigation schemes. The lead players for this component were, the Ministry of Agriculture and Livestock Development, Ministry of Water and Irrigation, Ministry of Regional Development and the Ministry of Youth Affairs. The Ministry of Agriculture and Livestock Development was to provide farm inputs which included, fertilizers, seed and pest control chemicals while the Ministry of Water through the then National Irrigation Board was to offer operation and maintenance services such as: provision of irrigation water, rehabilitation of infrastructure and co-ordinate farmers. This support was structured to be a **one off grant** to the farmers and thus **they were not required to payback**.

Hon. Chair, the then National Irrigation Board (NIB), currently National Irrigation Authority (NIA) coordinated the provision of seeds, fertilizers, ploughing (Rotavation) and offered operation and maintenance (O&M) services which included, water, electricity, puddling, and transplanting. Though the support had been given as grant, the joint management of the scheme comprising of the NIB scheme Management and West Kano Farmers recommended that this support be recovered at the end of the growing season and be converted into a revolving fund that will be used to ensure sustainability of scheme production and operation activities. All the records have been provided to the EACC as requested. The West Kano revolving fund was formed by farmers to manage the funds and an account opened in 2010. The model of establishing and running a

revolving fund collapsed as farmers resisted to pay back due to lack of a binding obligation to recover and contribute to the revolving fund.

As per our records; the following funds were disbursed to the farmers;

Schedule		**Farmers disbursed**	**Admin expenses**
1	Land preparation & rotavation	10,962,302.00	
2	Nursery advances	5,360, 100.00	
3	Transplanting & paddling	5,806,895.00	
4	Spraying	72,400.00	
5	Harvesting	2,052,430.00	
6	Gunny/Harvesting Bags	I 19,720.00	
7	Loading & offloading	27,965.80	27,965.80
	Sub-total	**25,601,812.80**	**27,965.80**
	Inputs disbursed		
1	Rice seeds	6,971,400.00	
2	SA Fertilizer	8, 155,350.00	
3	Chemicals	1,911,695.00	
4	3212 Acres@3640.OO	11,691,680.00	
	Sub-total	**28,730,125.00**	
	Grand Total	**54,331,937.80**	**27,965.80**

Hon. Chair, the petitioner moved ahead to report the matter to the EACC Western Region, and upon the invitation by the investigators, all the required documentation to support the position of the fund was provided. There was no misappropriation of the fund as alleged by the petitioner. All records were presented to the EACC.

Hon. Chair, On ***Misappropriation of 13 Tractors and Accessories granted to the Cooperative society*** - Ahero and West Kano Irrigation Schemes through the Farmer's Cooperative Societies received various farm machinery from JICA and Ministry of Agriculture and Livestock Development through the 2KR project in the year 2015 to help farmers improve production by enhancing mechanization of their operations, mainly rice production. The machinery issued to the farmers cooperative in West Kano are in operation under the management of the society. National Irrigation Authority (NIA) has not been involved in the management of the tractors. Information on management of the same is under the Kisumu County Government; department of Cooperatives Development.

Hon. Chair, I submit



Ephantus K. Kimani, CBS
PRINCIPAL SECRETARY

ETHICS AND ANTI-CORRUPTION COMMISSION

REPORT SUBMITTED BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE COMMITTEE ON IMPLEMENTATION REGARDING STATUS OF THE INVESTIGATION ON WEST KANO IRRIGATION SCHEME

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Thursday, 11th April, 2024
Parliament Building
Nairobi

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REPORT SUBMITTED BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE COMMITTEE ON IMPLEMENTATION REGARDING STATUS OF THE INVESTIGATION ON WEST KANO IRRIGATION SCHEME

1. Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under **section 3** of the Ethics and Anti-Corruption Commission Act, 2011 pursuant to the requirement under **Article 79** of the Constitution of Kenya, 2010.

- The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity and ethics.

- This report is submitted to the Committee on Implementation regarding status of the investigations on West Kano Irrigation Scheme as requested vide a letter **Ref: NA/AA&GPC/COI/2024/ (016)** dated **25th March, 2024.**

2. Allegations

The Commission received the following allegations in 2015 from a member of the public;

i. An alleged embezzlement of public funds, which had been released to the West Kano Irrigation Scheme by the Government through the then Ministries of Agriculture and Water & Irrigation under the Economic Stimulus Program (ESP) in 2009/2010 Financial Year of Kshs. 64 million and a further alleged misappropriation of Kshs. 18 Million for a revolving fund.

ii. Allegation regarding mismanagement of tractors

iii. Allegation on suspected misappropriation of rice purchase funds.

3. Findings and Status of the Investigations

1) Embezzlement of West Kano Economic Stimulus Funds

i. The West Kano Irrigation Scheme was established in the year 1974 and became operational in 1976. The Scheme is owned by **837 rice farmers**, organized into 59 groups. The total acreage of the Scheme is **2,230** acres.

ii. The Scheme received a grant of **Kshs. 54,331,938.00/=** under the **Economic Stimulus Programme (ESP)** in the Financial Year 2009/2010 to be advanced to farmers to improve rice production. The money was accounted as indicated in **Table 1**:-

Table 1: Expenditure of the ESP Grant

No.	Activities	Amount (Kshs.)
1.	Cash advances (tilling, seed-bed preparation and transplanting; spraying, harvesting, post-harvest activities-drying of rice, packaging & storage)	25,573,847.00
2.	Inputs (chemicals, rice, seeds and fertilizer)	17,038,445.00
3.	Operation and maintenance (piping, pumping of water, dykes, water-pans, electricity, canals and access roads)	11,691,680.00
4.	Loading and off-loading of farm-inputs.	27,966.00
5.	**TOTALS**	**54,331,938.00**

Status: The investigation has been completed and did not disclose loss of public funds under the ESP grant.

2) Embezzlement of Revolving Fund

i. On **31st December 2010**, the Scheme members formed a Revolving Fund which they named West Kano Irrigation Farmers Revolving Fund (WKIFRF).

ii. The Commission established that the WKIFRF (the Fund) was not registered. The Fund had no policies, structures or any governance instruments for accountability.

iii. The farmers elected officials on 31st December, 2010 to manage the Fund. The Officials opened a bank **account number 1124565752**, at the Kenya Commercial Bank Kisumu Branch with four signatories. The signatories included Chairperson (an official from the National Irrigation Board), Vice Chairperson, Secretary and Treasurer.

iv. On 31st December 2012, the Revolving Fund received a grant of **Kshs. 18,468,752.20** through the Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing.

v. The Funds received were disbursed/expended by the Fund as shown in **Table 2**.

Table 2: Disbursement /Expenditure

No	Institution	Amount (Kshs.)
1.	National Irrigation Board	2,124,860.00
2.	Mwea Irrigation Agriculture	975,000.00
3.	Ahero Irrigation Scheme	495,000.00
4.	Kenya Women Microfinance	145,000.00
5.	National Cereals and Produce Board	130,000.00
6.	Unaccounted	14,598,882.00
Total		**18,468,752.00**

vi. An amount of **Kshs. 14, 598,882** was unaccounted for.

Status: The investigation has been concluded with recommendations to **Kshs. 14, 598,882** from three officials. NB: The former Secretary is deceased.

3) Allegation of mismanagement of Tractors

i. The Commission established that in 2015, West Kano Irrigation Co-operative Society received **13** tractors and farm implements from Japan International Corporation Agency (JICA) and the Ministry of Agriculture, Livestock and Fisheries at subsidized rates. The machinery was partially paid by the County Government of Kisumu at **Kshs. 32.1 million** on February, 2022 and a total of **Kshs. 47.9 million** which was supposed to be paid by the two Cooperatives society was still outstanding.

ii. The Commission observed that the 13 tractors were **not serviceable** as at April, 2023.

iii. The Commission has established that the Kisumu County Government has initiated an audit to assess the status of the tractors and farm machinery for West Kano Irrigation Co-operative Society to inform remedial action.

Status: Investigations are complete and Commission is in concurrence with action taken by the County Government of Kisumu.

4) Alleged Misappropriation of Rice Purchase Funds

i. Between 2020 and 2021, the Government of Kenya, through Kenya National Trading Corporation (KNTC) resolved to buy milled rice from farmers in Mwea, Ahero, West Kano and Bunyala Irrigation Schemes.

ii. The Government set aside funds for the said rice purchases. The rice purchases were to be executed through Farmers' Co-operatives within the rice schemes.

iii. West Kano Farmers were paid **Kshs. 60,516,750.00** for rice deliveries.

Status: Investigations are complete with no evidence of financial loss.

Dated this **Thursday 11th** Day of **April, 2024**

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Twalib Mbarak, MGH, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)

Annex 14

Submissions by the Principal Secretary PS State Department for Youth Affairs and the Creative Economy on behalf of the Cabinet Secretary Ministry of Youth Affairs and the Creative Economy regarding the implementation status of the recommendations contained in the Report of The Public Investments Committee Special Report on the inquiry into allegations of fraud and financial mismanagement at The Youth Enterprise Development Fund



REPUBLIC OF KENYA

MINISTRY OF YOUTH AFFAIRS, CREATIVE ECONOMY AND SPORTS

PRESENTATION BY THE CABINET SECRETARY FOR

YOUTH AFFAIRS, CREATIVE ECONOMY AND SPORTS BEFORE THE NATIONAL ASSEMBLY COMMITTEE ON IMPLEMENTATION

18TH MAY 2024

Preamble

Hon. Chairman, the Ministry of Youth Affairs, Creative Economy and Sports acknowledges the powers of the Committee on Implementation under Standing Order No. 209 of the National Assembly Standing Orders.

Hon. Chairman, let me take this opportunity to thank you and Members of the Committee on Implementation for extending your invitation to my Ministry to discuss the implementation of recommendations of the Public Investments Committee during the 4th Session of the Eleventh Parliament, as contained in the *Special Report on the Inquiry into Allegations of Fraud and Financial Mismanagement at the Youth Enterprise Development Fund*, dated May 2016.

Given the above **Hon. Chairman**, I am deeply honored to appear before this committee. The response of the Ministry is aligned to the recommendations as outlined in Chapter 5, and I submit as follows: -

5.1 Recommendations to Government Entities and Agencies

Recommendation No. 1

THAT, The National Treasury to constitute a multi-government agency team composed of the responsible State Departments and the Inspectorate of State Corporations to review the corporate governance issues at YEDF, performance of the various projects undertaken by YEDF since its inception and to undertake a value for money audit of the Fund since inception to date.

Key Respondent: ***The Cabinet Secretary for the National Treasury***

Ministry Response:

Arising from this recommendation several agencies contacted the Youth Enterprise Development Fund (YEDF) to carry out investigations. In particular the following agencies carried out investigations as evidenced by the annexed correspondence:

i. *Ethics and Anti-Corruption Commission* ***(Annex 1(a), 1(b), 1(c)***
ii. *Directorate of Criminal Investigations* ***(Annex 2(a), 2(b)***
iii. *Inspectorate of State Corporations* ***(Annex 3(a), 3(b))***
iv. *Office of the Auditor General* ***(Annex 4(a), 4(b)***
v. *Public Procurement Regulatory Authority* ***(Annex 5)***

Further, YEDF provided all documents that were requested by these agencies.

Recommendation No. 2

THAT, there is need to amend Sections 23,24 and 44 of the Proceeds of Crime and the Anti-Money Laundering Act 2009 to give the Financial Reporting Centre more powers to act on suspicious bank transactions and accounts. The Committee shall propose an amendment to this section to ensure that the FRC can mitigate on funds especially originating from government institutions.

Key Respondent: ***The Public Investments Committee***

Ministry Response:

The FRC plays an important role in identification of the proceeds of crime and combating money laundering, terrorism financing and proliferation. The Ministry appreciates this recommendation to give FRC more powers to act on suspicious bank transactions and accounts and looks forward to the enactment of the envisaged amendments to strengthen internal controls and deter similar incidences in future.

Recommendation No. 3

THAT, the Cabinet Secretary, Ministry of Public Service, Youth and Gender Affairs should expedite the appointment of a substantive Chief Executive Officer of the Youth Enterprise Development Fund. The YEDF has operated without a substantive CEO since 2013.

Key Respondent: ***The Cabinet Secretary, Youth Affairs, Creative Economy and Sports***

Ministry Response:

Under the Ministry's guidance, the Board of the Youth Enterprise Development Fund advertised the position of the CEO in July 2016. The Board subsequently recruited and appointed the substantive CEO with effect from 1st November 2016. **(Annex 6(a), 6(b))**

Recommendation No. 4

THAT, there is need to amend Sections 23 and 24 of the POCAML Act 2009 to enable the tracking of proceeds of crime especially to the real estate sector in Kenya. There are indications that the real estate sector in Kenya is used for money laundering especially proceeds of corruption.

Key Respondent: ***The Attorney-General***

Ministry Response:

POCAMLA Act 2009 grants powers to investigative bodies to trace, preserve and recover illegally acquired assets through financial investigations. The Ministry appreciates that POCAML Act 2009 needs to be amended to give investigative agencies more power to trace, preserve and recover illegally acquired assets.

Recommendation No. 5

THAT, the Auditor-General to undertake a forensic audit of all the funds that have been appropriated by the National Assembly to YEDF from inception to date.

Key Respondent: ***The Auditor General***

Ministry Response:

The Auditor General contacted the Youth Enterprise Development Fund (YEDF) to carry out investigations. The Ministry is therefore aware that Auditor General carried out a special audit on YEDF. The YEDF provided all available documents requested by the Auditor General. ***((Annex 4(a), 4(b))***

Recommendation No. 6

THAT, the Financial Reporting Centre (FRC)and the Asset Recovery Agency(ARA),the two crucial institutions established under the POCAML Act 2009 to deal with matters of proceeds of crime and money-laundering are under-funded by the Government and have never been fully operationalized. The National Treasury and the Attorney General should ensure that the FRC and ARA are adequately funded and fully operationalized to enable the two institutions adequately fulfil their legal mandate.

Key Respondents: ***The National Treasury and Attorney General***

Ministry Response:

The FRC plays an important role in identification of the proceeds of crime and combating money laundering, terrorism financing and proliferation while ARA is instrumental in combating money laundering, terrorist financing, and proliferation financing through identification, tracing, freezing, seizure, and confiscation of proceeds of crime. The Ministry therefore appreciates this recommendation that will fully operationalize and strengthen these institutions.

Recommendation No. 8

THAT, the National Treasury enhances budgetary allocation to the Inspectorate of State Corporations to facilitate effective inspection of state corporations.

Key Respondent: ***The National Treasury***

Ministry Response:

The Inspector of State Corporations plays a significant role in advising the Government on matters affecting the effective running of state corporations. The Ministry therefore welcomes an enhanced budget for the office.

Recommendation No. 9

THAT, the circumstances surrounding the death of the Fund's driver, Mr. Simon Mwangi who at the time of his death on 18th October, 2015 was on duty during unofficial hours in Diani Beach Mombasa, are suspect. The death allegedly occurred at a private party attended by former YEDF Board director Mr. Clement Ayungo on invitation by his friend, Mr. Babu Owino. The Director, Directorate of Criminal Investigation should extend his investigation to include possible involvement of Mr. Clement Ayungo and Mr. Babu Owino in the death of Mr. Simon Mwangi and establish if his death is linked to the financial mismanagement at the YEDF.

Key Respondents: ***The Director, Directorate of Criminal Investigation and Secretary, EACC***

Ministry Response:

The deceased was a hardworking officer and had a very young family at the point of his death. The Ministry is aware that the DCI carried investigations on this matter. YEDF provided all requested documents and equipment. The outcome of the investigations would be very useful for the Ministry's closure as the deceased was part of our family. ***(Annex 7(a), 7(b))***

Recommendation No. 10

THAT, the Circular dated 18th July, 2007 issued by the former Head of Civil Service and Secretary to the Cabinet, Ambassador Francis Muthaura, barring the Inspectorate of State Corporations from sitting in Board meetings of State Corporations unless invited by the Board was in contravention of Section 18(2) (c) of the State Corporations Act which gives the Inspectorate the mandate to attend Board meetings as deemed necessary.

Key Respondent: ***The Chief of Staff and Head of Public Service***

Recommendation No. 7

THAT, Chase Bank (K) Ltd did not fully conduct due diligence in accordance with prudential guideline 5.6.6 of the Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism-CBK/PG/08 in acting on instructions of Ms. Catherine A. Namuye, the suspended CEO, YEDF to transfer funds from YEDF account to Quorandum Ltd. The Central Bank of Kenya should investigate Chase Bank (K) Ltd for possible violations of the Banking Act Cap 488, POCAML Act 2009 and the Prudential Guidelines.

Key Respondent: ***The Central Bank of Kenya***

Ministry Response:

The youth of Kenya lost money through the transaction that was the subject of these investigations by the PIC. The Ministry therefore looks forward to the outcome of this investigation as it would be useful in pursuing the lost funds. On its part YEDF has instituted civil proceedings against Chase Bank with a view to recovering the money. ***(Annex 7)***

Ministry Response:

The Inspector of State Corporations plays a significant role in advising the Government on matters affecting the effective running of state corporations, and advising Boards on best practices. The Inspectorate of State Corporations has appointed an officer who sits in the meetings of the Youth Enterprise Development Fund Board, and is very helpful during Board deliberations. ***(Annex 8)***

Recommendation No. 11

THAT, the Chief of Staff and the Head of Public Service should as a matter of priority ensure that the recommendations of the Presidential Taskforce on Parastatal Reforms on the merger of the YEDF, Women Fund, Uwezo Fund, Micro and Small Enterprises Authority (MSEA) and the Kenya Industrial Estates (KIE) to create Biashara Kenya are implemented. This merger is expected: to pool the scattered financial resources estimated at approximately Kshs. 30 Billion per financial year; harness the potential of youth, women and men; build synergies among the various government agencies; and leverage on economies of scale. Further there is duplication of roles of some state organs, hence the need to implement the Mwongozo so as to remove duplication of duties and create clarity on the same.

Key Respondent: ***The Chief of Staff and Head of Public Service***

Ministry Response:

The process to merge some of the agencies was initiated by the National Treasury but later halted. However the Ministry is in receipt of invitation to participate in fresh discussions on the merger of the Youth Enterprise Development Fund, Uwezo Fund and the Women Enterprise Fund. ***(Annex 9(a), 9(b), 9(c))***

Recommendation No. 12

THAT, the Chief of Staff and Head of Public Service should ensure that the appointment of persons to serve as Board Chairpersons and Board Members of State Corporations is done in-accordance with the Mwongozo-Code-of- Governance -for-State-Corporations- which requires that appointment of persons to serve as Board Chairpersons and Board Members have the following minimum qualifications:

i. Holds a minimum of a degree in the relevant field from a university recognized in Kenya;
ii. Proven business management or other relevant professional experience;
iii. (iii)Served in a position of senior management for at least six years;
iv. Has not served in the same entity as employee in the preceding five years;
v. Meets the requirements of Chapter Six of the Constitution; and
vi. Meets the requirements of the fit and proper test.

Key Respondent: ***The Chief of Staff and Head of Public Service***

Ministry Response:

A Board of directors is responsible for protecting shareholders' interests, establishing management policies, overseeing the governance of the corporation or organization, and making critical business decisions. Appointment of Board members should therefore be done as per the laid out procedure. Appointment of members to the Board of the Youth Enterprise Development Fund adheres to this recommendation and the legal instruments establishing the YEDF.

Recommendation No. 13

THAT, further, Alternate Directors of respective Ministries seconded to parastatal Boards should be individuals well versed in the affairs and operations of the respective Boards and should have unfettered access to Board meetings and ensure that they submit regular reports to their respective Principal Secretaries on the operations of the Boards in which they sit in.

Key Respondent: *Line Ministries*

Ministry Response:

The Ministry is in receipt of communication OP/CAB.9/ 1A dated October 18, 2019 which gives guidelines on alternate directors representing government agencies in State Corporations. Alternate Directors representing the National Treasury and the Ministry of Youth Affairs, Creative Economy and Sports who sit in the Board of YEDF are individuals well versed in the affairs and operations of the Board and have unfettered access to Board meetings. In addition they submit regular reports to their respective Principal Secretaries on the operations of the Board. ***(Annex 10(a), 10(b))***

Recommendation No. 14

THAT, the Director, Directorate of Criminal Investigations should :- (i) Engage the services of a forensic examiner to authenticate all YEDF documents used in the fraudulent transfer of funds from YEDF account at Chase Bank (K) Ltd, including Board Minutes and correspondences. (ii) Engage the services of a graphology expert to analyses signatures on all correspondences that were purportedly signed by the then Ag. CEO Ms. Catherine Namuye and other Fund officials that may have resulted in the loss of funds at YEDF. The Director, Directorate of Criminal Investigations to report back to the National Assembly not later than two (2) months after the adoption of this Report on the status of implementation of this recommendation.

Key Respondent: ***Director, DCI***

Ministry Response:

The Ministry confirms that the Directorate of Criminal Investigations contacted YEDF with a request for documents which the Fund provided. The DCI shared the status report of the investigations with YEDF. ***(Annex 2(a), 2(b))***

5.2 Specific Recommendations on various Persons of Interest

Committee recommended investigation and prosecution of:

5.2.1 Catherine A. Namuye, Suspended Ag. CEO, YEDF

5.2.2 Mr. Bruce Dominic Odhiambo, Former YEDF Board Chairman

5.2.3 Mr. Mukuria Ngamau, Director and Shareholder, Quorandum Ltd

5.2.4 Other Persons of Interest (to be investigated)

i. Mr. Ezekiel Owuor – be investigated and surrender outstanding balance of payment owed to Mr. Mukuria Ngamau to the Asset Recovery Agency

ii. Industries D'Amico Ltd

iii. Mr. Yogesh Kumar Bhadwarj

iv. Mr. Dilshad S. Mohammed

v. Ms. Doreen Waithera Ng'ang'a

vi. Directors of Rock Plant Ltd

Key Respondents: ***The Director, DCI and Secretary, EACC***

Ministry Response:

The following were investigated, charged and prosecuted for conspiracy to defraud the YEDF:

i. *Ms. Catherine Namuye (deceased)*
ii. *Mr. Bruce Odhiambo (deceased)*
iii. *Mr. Mukuria Ngamau*
iv. *Ms. Doreen W. Nganga*
v. *Quorandum Limited*

Judgement of Anti-corruption Case No. 13 of 2016, Republic VS Catherine Akello Namuye and 4 others is attached. However it was noted the first two accused passed on as the case proceeded and the proceedings against them were marked as abated. ***(Annex 11)***

Further the Committee recommended, that the Inspector-General of State Corporations and the Chief Executive Officer of YEDF should surcharge Mr. Bruce Odhiambo a sum ofKshs.1, 034,014.65 for the misuse of vehicle, Toyota Land Cruiser VXL, Registration No. KBZ 753D. The Inspectorate of State Corporations to liaise with the Asset Recovery Agency to ensure a recovery of this amount and appurtenant costs with immediate effect.

Key Respondents: ***The Inspector-General of State Corporations and the Chief Executive Officer, YEDF***

Ministry Response:

The Inspector-General of State Corporations, through the representative in the YEDF Board, guided the Fund that the institution had put in motion the process of surcharging Mr. Bruce Odhiambo who passed on before the process was complete.

Hon. Chairman, I submit and thank you.

REPUBLIC OF KENYA

ARA
ASSETS RECOVERY AGENCY

SUBMISSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS BY PUBLIC INVESTMENTS COMMITTEE ON THE INQUIRY INTO THE ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND

A. Introduction

The Assets Recovery Agency is established under section 53 of the Proceeds of Crime and Anti-Money Laundering Act(POCAMLA) with the mandate of identifying, tracing, freezing, seizing and recovery of proceeds of crime. In the discharge of its mandate, the Agency has instituted several court proceedings for recovery of proceeds of crime and has successfully obtained forfeiture orders for recovery of proceeds of crime such as; cash, motor vehicles, developed and undeveloped land.

B. Implementation of recommendations by the Public Investments Committee

In respect to the implementation of the recommendations by the Public Investments Committee Special report on the Inquiry into the allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund vide letter dated 7th May 2024, Ref: NA/AA&GPC/COI/2024(027), the Agency's responses to the respective recommendations are shown in the table below;

	RECOMMENDATIONS		STATUS OF IMPLEMENTATION OF THE RECOMMENDATIONS
1	**Recommendations to Government Entities and Agencies**	The Public Investments Committee recommended that the Assets Recovery Agency (ARA), established under POCAMLA to deal with matters of proceeds of crime and money laundering is under-funded by the Government and has never been fully operationalized. The National Treasury and the Attorney General should ensure that the Agency is adequately funded and fully operationalized to enable the institution adequately fulfil its legal mandate.	The operationalization of the Assets Recovery Agency is still ongoing. The Agency requires more funds to be fully operational.
		The Public Investments Committee recommended the need to amend sections 23 and 24 of the Proceeds of Crime and Anti-Money Laundering Act to enable the tracking of proceeds of crime	• The real estate agencies are categorized as part of the designated non-financial businesses or professions and are reporting institution under POCAMLA.

		especially to the real estate sector in Kenya.	• Reporting institutions are obligated under POCAMLA to report suspicious or unusual transaction to Financial Reporting Centre.
2.	**Specific recommendations on various persons of interest namely;** **i) Mr. Mukuria Ngamau, Director and shareholder of Quorandum LTD**	The Committee recommended that the Director Assets Recovery Agency to obtain an injunction against transfer of duplex apartment number C16 at Duchess Park apartments located along Hatheru road, Lavington Nairobi. The Said property having been purchased by Quorandum Ltd from Duchess park Ltd using of Ksh 180,364,789 from YEDF	• The investigations conducted established that Kshs. 180,364,789 was unlawfully transferred from the Youth Enterprise Development Fund (YEDF) Bank account to (Quorandum Ltd) bank account. • The unlawful transfer of Ksh. 180,364,789 was facilitated by Ms. Catherine A. Namuye (now deceased), former acting Chief Executive Officer of YEDF, who unlawfully contracted Quorandum Ltd to provide consultancies services without the complying with procurement laws. • Quorandum Ltd used part of the Ksh. 180,364,789M to purchase the duplex apartment No. C16 at a cost of *Ksh 48,500,000* from Duchess park development Company Ltd. • Following the findings of the investigations the, Agency instituted recovery proceedings in *NRB Misc. App No 4 of 2017 Assets Recovery*

			Agency –Vs- Quorandum Ltd & Ezekiel Owuor for recovery of the duplex apartment No. C16. • The matter was determined and on 21st September 2018, the High Court rendered its judgement and declared the Apartment Number C16 as proceeds of crime and the same to be forfeited to the State. • The Agency has also instituted recovery proceedings in *NRB Misc. App No. E021 OF 2023 Assets Recovery Agency –vs- Quorandum Ltd* seeking forfeiture of Ksh 1,075,083 traced in Quorandum Ltd bank's account. The said amount is part of the funds fraudulently transferred from YEDF. The matter is pending determination in Court. • Mr. Mukuria Ngamau was charged with several counts in *Criminal Case No. ACC 13 of 2016* namely; 1. Unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of the Anti-corruption and Economic Crimes Act

			2. Conspiracy to commit an economic crime contrary to section 47A (3) as read with section 48(1) of the Anti-corruption and Economic Crimes Act. 3. Making of false document contrary to section 347(a) as read together with section 349 of the Penal Code. • The court found Mr. Mukuria culpable for the above offences and he was convicted.
	ii) **Ms. Catherine A. Namuye suspended AG CEO, YEDF**	The Committee recommended that Ms. Catherine A. Namuye should be investigated , charged and prosecuted for violations of provisions of public Procurement and Disposal Act, Public Finance and Management Act	Ms. Catherine A. Namuye was charged with several counts namely; i. Conspiracy to commit an economic crime contrary to section 47A as read with section 48(1) of the Anti-corruption and Economic Crimes Act; ii. Abuse of office contrary to section 46 as read with section 48(1) of Anti-corruption and Economic Crimes Act; iii. Fraudulent making payment contrary to section 45(2)(a)(iii) as read with section 48(1) of the Anti-corruption and Economic Crimes Act;

			iv. Making of false document contrary to section 347(a) as read together with section 349 of the Penal Code v. Dealing with suspect property contrary to section 47(1) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act; • During the investigations, no assets in the name Ms. Catherine A. Namuye's were traced.
	iii) **Mr. Bruce Dominic Odhiambo, former YEDF Board Chairperson**	The Committee recommended that Mr. Bruce Dominic Odhiambo to be investigated, charged and prosecuted for conspiracy to defraud YEDF. The Inspectorate of State Corporation was required to liaise with the Assets Recovery Agency to ensure recovery of Ksh. 1,034,014.65	• Mr. Bruce Dominic Odhiambo (now deceased) was charged with several counts namely: i. Making of false document contrary to section 347(a) as read together with section 349 of the Penal Code; ii. Abuse of Office contrary to section 46 as read with section 48(1) of Anti-corruption and Economic Crimes Act; iii. Dealing with suspect property contrary to section 47(1) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act; • During the investigations, no funds were traced in Mr. Bruce Dominic Odhiambo's accounts.
3.	**Other Persons of Interest**	The Committee recommended that Mr. Ezekiel Owuor to	• The investigations established that Mr. Mukuria Ngamau transferred Ksh. 8,800,000 to Mr.

		surrender the outstanding balance owed to Mr. Mukuria Ngamau to the Assets Recovery Agency.	Ezekiel Owuor purportedly as a loan. Mr Ezekiel confirmed receiving the Ksh. 8,800,000 which he claimed was a loan to be paid back to Mr. Mukuria Ngamau. • The Agency instituted recovery proceedings in *NRB Misc. App No 4 Of 2017 Assets Recovery Agency –Vs- Quorandum Ltd & Ezekiel Owuor* for recovery of the Ksh. 8,800,000 from Mr. Ezekiel. • The matter was determined and the Court ordered that the Ksh 8,800,000 should be forfeited to the State. The Agency has recovered Ksh 1.1million out of the Ksh 8.8 and is pursuing recovery of the outstanding balance.

Encl: A copy of the Judgement in NRB Misc. App No 4 Of 2017 Assets Recovery Agency –Vs- Quorandum Ltd & Ezekiel Owuor



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

THE PRESENTATION ON INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND.

TO

PUBLIC INVESTMENT COMMITTEE

By
Renson M. Ingonga, OGW
Director of Public Prosecutions

INTRODUCTION

Mr Chairman,

I wish to begin by sincerely thanking the Public Investment Committee for extending an invitation to the Office of the Director of Public Prosecutions (ODPP) to discuss presentation on inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund (YEDF).

1.0 The Office of the Director of Public Prosecutions (ODPP)

The ODPP is established under Article 157 of the Constitution of Kenya. The mandate of the ODPP is to exercise state powers of prosecutions. In exercising prosecutorial authority, the ODPP has due regard to public interest, interests of administration of justice and the need to prevent and avoid abuse of the legal process. The ODPP strives to provide quality, impartial and timely services in a manner that is professional, efficient and fair.

The functions of ODPP include: -

i To institute and undertake criminal proceedings against any person before any court of law other than a court martial in respect of any offences alleged to have been committed by that person;

ii. To direct investigation and supervise the conduct of criminal investigations;

iii. To handle matters relating to international relations including extradition and Mutual Legal Assistance (MLA);

iv. To advise Government Ministries, Departments and State Corporations on matters pertaining to the application and development of criminal law;

v. To appoint, train, monitor and gazette public prosecutors;

vi. To facilitate victims of crime and witnesses during prosecution; and

vii. To contribute, develop and implement policy, procedure and law reform.

1.1 The DPP's Strategic Agenda

I have embarked on implementing my Strategic Agenda which outlines my vision, mission, and strategic commitments to the Office. This agenda is a roadmap towards achieving a responsive prosecutorial service. It not only provides direction, but also outlines critical components that will guide the office in resource mobilization and utilization.

In this strategic framework, I took into consideration new developments in the administration of justice arising from constitutional requirements, new laws, human rights considerations, technology, and the diversity in crimes against rapidly changing global needs. By aligning our strategies with these realities, we ensure that the ODPP remains adaptable and responsive to the dynamic challenges of our times. This approach allows us to effectively navigate the complexities of the legal landscape while upholding the principles of justice and fairness. Through this Strategic Agenda, I aim to lead the ODPP towards a future where our prosecutorial service is not only effective but also compassionate and just, meeting the needs of our society while upholding the highest ethical standards. The agenda identifies 3 strategic commitments/approaches as follows:

1. People's Centered Prosecution Service
2. Innovative Prosecutions Performance Framework
3. Prosecutions as an Enabler to National Development

1.1.1 People's Centered Prosecution Service

I aim to enhance collaboration with other state and non-state actors by strengthening partnerships in order to address crime-related activities. In addition, this approach ensures active public awareness through engaging and sensitizing the community on the criminal justice matters. As part of this approach, I am dedicated to promoting staff wellness programs and human resource capacity and enhancement programs in a bid to ensure professionalism and accountability. Having established and operationalized the Prosecutions Training Institute (PTI), I am committed to ensuring continuous professional development of staff and officers from other criminal justice agencies and stakeholders both in Kenya and the region. The development of infrastructure at the Institute is currently in progress.

1.1.2 Innovative Prosecutions Performance Framework

My primary goal is to reduce case backlog by promoting alternatives to trial. This will be achieved by prioritizing restorative justice as opposed to retributive justice.

Further to achieve this agenda, we will optimize the use of technology and strategic communication to enhance criminal prosecution and service delivery by the dedicated staff of the ODPP. By leveraging technology, we aim to streamline the legal process and make it more efficient, allowing us to serve the public better. Strategic communication is essential to ensuring that the public is aware of their rights and the services available to them.

We are currently in the process of rolling out the Uadilifu case management system at the ODPP. Uadilifu represents a significant step forward in our efforts to automate the criminal justice system. It serves as a centralized electronic repository designed to capture, store, and update case information, including case documents, proceedings, and records related to suspects. All of these are accessible through a unified user application.

The implementation of Uadilifu case management system has far-reaching implications. It not only streamlines our internal processes but provides valuable insights into the trends and prevalence of crime across the country. By actively pursuing these reforms and embracing modern technology like Uadilifu, we are taking a significant step forward in our mission to ensure a fair and efficient criminal justice system that serves the best interests of the public and aligns overall goal for economic turnaround and inclusive growth for Kenya.

1.1.3 Prosecution as an Enabler of National Development

I am committed to use prosecutions as an enabler of national development. This is will be achieved through continuous policy analysis and development; establishment of specialized multi-agency teams that will be tasked with collaborating, coordinating and cooperating during investigation, analysis and prosecution process.

In addition, I believe that the role of a 21st prosecutor extends beyond criminal litigation. We have seen the dire effects of climate change on our nation. As such, the ODPP will develop a sustainable and green plan policy.

Further, Corruption is a major threat to the Country's ambition in meetings its development agenda. My goal is to the strengthen the ODPP institutional capacity to fight corruption.
Lastly, the objective of these commitments is to facilitate the realization of our strategic focus by infusing accountability, transparency, public confidence and quality control in all our operations. The overall aim of the Strategic Agenda is to transform the ODPP into a prosecution service which is more responsive to the Mwananchi's needs.

1.1.4 The strategic Agenda will focus on the following aspects:

1. The fight against corruption.
2. Public awareness; community engagement and sensitization.
3. Enhancing quality prosecutions.
4. Construction and continuous development of the prosecution training institute.
5. Enhancing integrity through the internal compliance unit.
6. Capacity building of ODPP staff.
7. Criminal justice policy reforms.
8. Research and development.
9. Green plan policy

Status Update on The Implementation of The Public Investments Committee Special Report on The Inquiry into Allegations of Fraud and Financial Mismanagement at The Youth Enterprise Development.

Response to the recommendations contained in the Public Investments Committee (PIC) Special Report on the inquiry into allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund.

The ODPP recognizes the significance of this matter and has been diligently working to implement the recommendations in the report and has undertaken the following actions to date:
Under the specific recommendations on various persons of interest, the committee recommended the investigation, charging, and prosecution of the following for various offences.

1. Catherine Akello Namuye
2. Bruce Odhiambo,
3. Mukuria Ngamau
4. Doreen W. Ng'ang'a,
5. Quorandum Limited
6. Hillary Kiprono Yegon

The DPP independently reviewed the inquiry file and made the decision to charge the above-mentioned persons and legal person were charged with various offences as follows:

1. Count I Conspiracy to commit an economic crime contrary to section 47(a) (3) as read with section 48(1) of ACECA.
2. Count II Unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of ACECA..
3. Count III providing false information to the Committee.

Following the demise of the first and second accused persons the DPP withdrew Counts V, VI, VII, VIII, IX, XII, XIII, and XIV. Eventually, R vs Catherine Akello Namuye (CEO) (Deceased), Bruce Odhiambo (Deceased), Mukuria Ngamau & Quorandum Limited was prosecuted by SPPC Evah Kanyuira- Head, Voi County in which a conviction was secured.

It is our submission that ODPP implemented the Committee's Report by the prosecution of the accused persons and subsequently secured a conviction. We hereby attach the requisite charge sheets, judgment, and sentence.
While the DPP found no evidence of money laundering aspect in the National Youth Council case and therefore did not prefer charges under the Proceeds of Crime and Money Laundering Act (POCAMLA), the office has recorded the following cases with charges under the Proceeds of Crime and Money Laundering Act (POCAMLA). The following are some of the notable ones:

1 ACC No. E011 of 2024 Republic -VS- Mzalendo Kibunja & 6 others.
2. ACC No. E012 of 2024 Republic -Vs- Mwangi Wa Iria & 9 others.
3. ACC No. E029 of 2021 Republic -Vs- Dunstone Indimuli & 5 others.
4. ACC No. 22 of 2019 Republic -vs- Ferdinand Waititu Babayao.

The office has also implemented the following measures under POCAMLA

a) Trainings

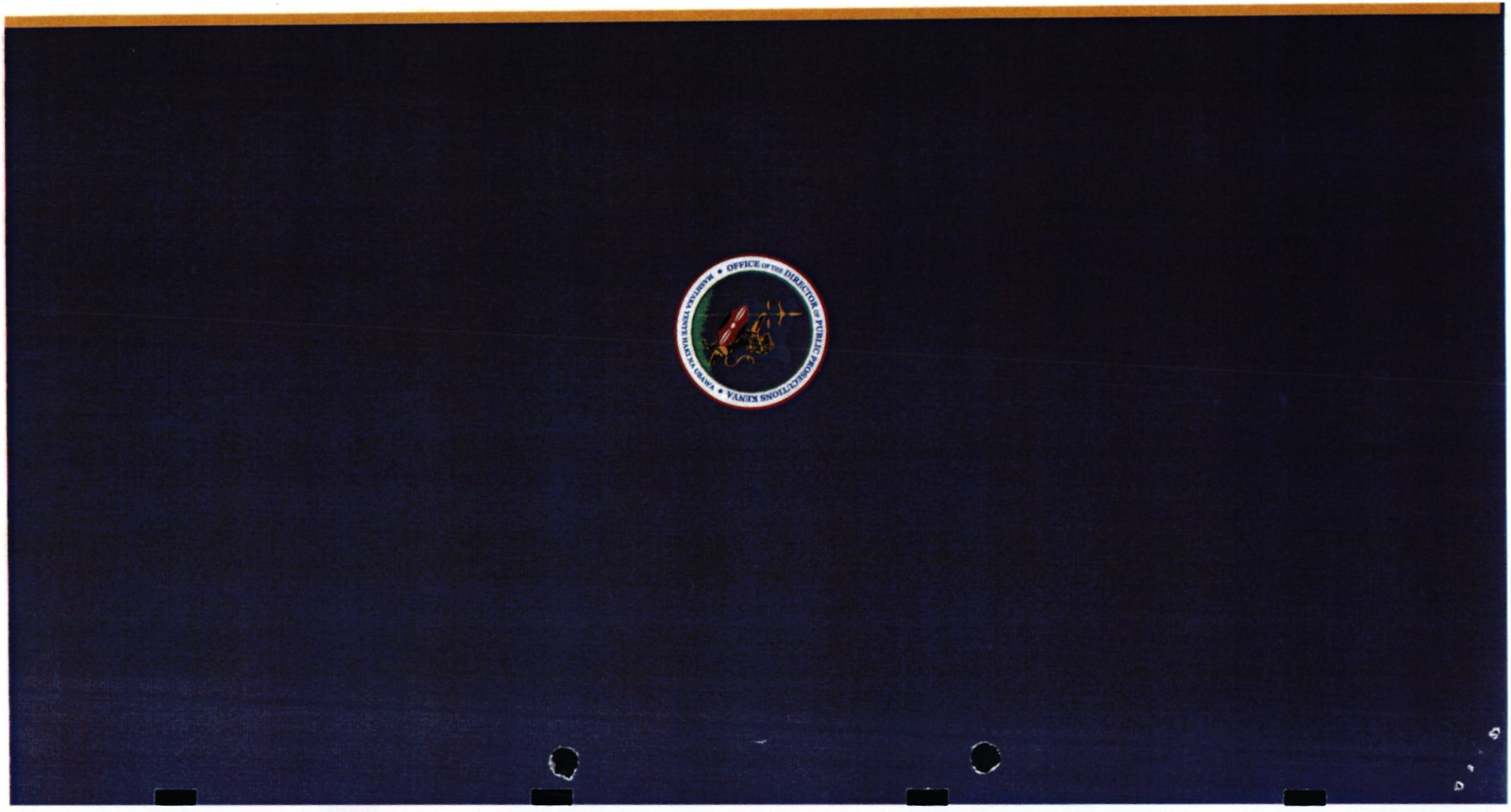
The office in collaboration with stakeholders and development partners has organized several trainings on proceeds of crime and money laundering to enhance capacity. These are some of the trainings attended:

• Training on the Prosecution of Economic Crimes, Anti-Corruption and Money Laundering held at Movenpick Hotel, Nairobi on 12th to 15th March, 2024. The training fully sponsored by USDOJ.
• Training on the Prosecution of Economic Crimes, Anti-Corruption and Money Laundering held in Kisumu on 12th -15th September, 2023.
• Training on the Prosecution of Economic Crimes, Anti-Corruption and Money Laundering held at Nakuru on 30th July 2023, sponsored by USDOJ
• Training of Trainers on The Prosecution Economic Crimes Anti-Corruption, Money Laundering, Tax Related Offences and Asset Recovery, Great Rift Valley Lodge -Naivasha from 13th -17th February, 2023 sponsored by USDOJ
• Training on the Prosecution of Economic, Anti-Corruption and Money Laundering Held at Sarova Woodlands Hotel, Nakuru from 31st Jul to 3rd Aug 2023

Mr. Chairman,
Finally, I wish to sincerely thank the Committee for the continued support.

Dated 15th May, 2024
Renson Ingonga, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS



REPUBLIC OF KENYA

EXECUTIVE OFFICE OF THE PRESIDENT
INSPECTORATE OF STATE CORPORATIONS

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P. O. Box 54457 - 00200
NAIROBI, KENYA

Ref No: ISC/INS/ADM/27/VII/97

16th May, 2024

Clerk of the National Assembly
P O Box 41842-00100
Main Parliament Buildings
NAIROBI

Dear Sir,

IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENTS COMMITTEE SPECIAL REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MANAGEMENT AT THE YOUTH ENTERPRISE FUND (YEDF)

Reference is made to your letter Ref: NA/A&GPC/COI/2024(27) dated 7th May, 2024, inviting the Inspector-General (Corporations) to a meeting with the Committee on Implementation of House Rules to apprise it on the implementation status of the Public Investments Committee (PIC) Special Report on the Inquiry into the Allegations of Fraud and Financial Mismanagement at the Youth Enterprise Development Fund (YEDF).

From the evidence submitted by witnesses representing various agencies, PIC made the following observations: -

1. The Board and Management of YEDF did not obtain approval from the National Treasury to invest Kes. 400Million into a fixed/call deposit account at Chase Bank.

2. YEDF did not have any surplus funds as at 30th June, 2014 to invest Kes. 400Million in a fixed/call deposit account. It was established that this money was appropriated by the National Assembly for disbursement to the youth.

3. The YEDF procured consultancy services for the development of an Information, Communication and Technology (ICT) Strategic Plan and Enterprise Resource Planning (ERP) System despite the fund having an existing ICT Strategic Plan. The procurement of the service was neither

planned for nor approved by the Board. As a result, the Fund lost Kes. 180, 364, 789 through the non-existent consultancy service scheme.

4. The Ag. CEO, Ms. Catherine A. Namuye, and the Board Chairman, Mr. Bruce Odhiambo, forged Board Minutes extract to confirm the change of signatories with an intent to defraud the Fund.

5. On 11th February, 2015 and 27th April, 2015, Ms. Catherine A. Namuye, Ag. CEO, solely instructed Chase Bank (K) to pay Kes. 115,710,000 and Kes. 64,654,789 respectively to Quorandum Ltd, which were to be paid from the Fund's fixed deposit account.

6. The Ag. CEO, Ms. Catherine A. Namuye, and the Board Chairman, Mr. Bruce Odhiambo, took over the running of the Funds investment account, and suspended Mr. Benedict Atavachi; thereby making the department redundant.

7. The Ag. CEO, Ms. Catherine A. Namuye, allowed the Board Chairman, Mr. Bruce Odhiambo, unfettered access to the use of YEDF facilities including office and a motor vehicle. Further, he was irregularly issued an advance of Kes. 500,000 interest free contrary to Section 17 of the State Corporations Act.

8. The YEDF lost approximately Kes. 44.7Million to Mr. Hillary Kiprono Yegon, Director of M/S K-Susu, in the aborted YEDF 8th Anniversary event.

9. The exclusion of Inspectorate of State Corporations from attendance of Board meetings may have contributed to the loss of funds and financial mismanagement at YEDF.

Arising from the above observations, the Committee made the following recommendations to the Inspector-General (Corporations): -

i. The Inspectorate of State Corporations to form part of a multi-government agency team constituted by the National Treasury to review corporate governance issues at YEDF, performance of the various projects and to undertake a value for money audit of the Fund since inception.

ii. Surcharge Mr. Bruce Odhiambo a sum of Kes. 1,034,014.65 for misuse of the company vehicle, Toyota Land cruiser VXL earlier purchased in 2014. The Inspectorate of State Corporations was to liaise with the Asset Recovery Agency to ensure a recovery of this amount.

In view of the above, and pursuant to Section 18 of the State Corporations Act, the Inspector-General (Corporations) constituted an Audit team to conduct a Management Audit of the Youth Enterprise Development Fund Board. The Cabinet Secretary of the Ministry of Public Service, Youth and Gender Affairs, Ms. Sicily K. Kariuki, in a letter dated 24th February, 2016, communicated to the Chairman, Mr.

Bruce Odhiambo, informing him of the audit *(Annex 1)*. The terms of reference were; examine policies and practices relating to human resource, procurement, financial management and any other pertinent issues relating to the affairs of the fund.

The audit of YEDF was to be carried out two-fold. Part 1 was to cover Governance practices; Financial Management and Human Resource practices. Part II was to cover procurement matters and visits to 8No. Counties where YEDF had reportedly disbursed over Kes. 11.5Billion to 840,727 youth beneficiaries since inception.

In a letter, Ref. No. ISC/INS/POL/151/VOL II/ (26), dated 14th April, 2016, the Ag. Inspector-General (Corporations) forwarded part I of the report to the Cabinet Secretary of the Ministry of Public Service, Youth and Gender Affairs. *(Annex 2).* However, the Inspectorate of State Corporations, put on hold the finalization of Part II of the report due to exigencies of work and other emerging issues facing the Department. This information was communicated to Ms. Lillian Mbogo-Omollo, the then Principal Secretary, Ministry of Public Service, Youth and Gender Affairs who had earlier requested the Inspector-General (Corporations) through a letter, Ref. No. MPYG/1/4/129 dated 10th November, 2016 for a copy of Part II of the report *(Annex 3,4)*.

In the course of the Audit, the Inspector-General (Corporations) was also invited to the Public Investments Committee of the National Assembly vide letter Ref: KNA/PIC/CORR/2016/ (011) dated 2nd March, 2016, to respond to matters relating to YEDF *(Annex 5)*.

In an effort to stream-line the affairs of the Youth Enterprise Development Fund, and in response to the aforementioned letter from the Clerk of the National Assembly, this Inspectorate wishes to report as follows:

1. The Inspector-General (Corporations), in his letter, Ref. ISC/INS/POL/151/44, dated 28th April, 2017, appointed a representative to the YEDF Board as provided by Section 18 (2) (c) of the State Corporations Act, Cap 446 *(Annex 6a, b)*. The officer has been attending Board meetings of the YEDF and preparing briefs.

2. His Excellency the President, revoked the appointment of the YEDF Chairman, Mr. Bruce Odhiambo, who the Inspector-General (Corporations) had found unfit to hold public office *(Annex 7).*
3. Appropriate action was also taken against the YEDF Board members by causing their removal to pave way for the commencement of investigations to establish criminal liabilities and improprieties on the part of the Chairman, and Board members *(Annex 8).*

4. Following the recommendations of PIC and the Management Audit report of the Inspector-General (Corporations), the Inspectorate of State Corporations commenced the surcharge process of the then Chairman of the Board, Mr. Bruce Odhiambo. The surcharge-able sums were as follows: -

S/No.	Finding	Amount (Kes.)
1.	Misuse of the company vehicle, Toyota Land cruiser VXL earlier purchased in 2014, leading the Fund to incur cost on Fuel and general maintenance.	1,034,014.65
2.	Toyota Land cruiser Prado, VX was being used beyond the official working hours. This necessitated payment of overtime to the bodyguard and the driver.	757, 523
3.	Irregular Issuance of Imprest that he failed to surrender of Kes. 500,000.	365,600
4.	Embezzlement of Funds in collusion with the Ag. CEO, Ms. Catherine A. Namuye.	180,364,789

However, the above cases were closed following the demise of Mr. Bruce Odhiambo on 07th January, 2019.

5. The then Ag. CEO, Ms. Catherine A. Namuye, was suspended by the Board on 23rd October, 2015. She was also charged in a court of law for siphoning Kes. 180,364,789 from the Fund. However, she died on 4th October, 2017.

6. As recommended in the Management Audit report of the Inspector-General (Corporations), the Director of Quorandum Limited, Mr. Ngamau Mukuria was charged and convicted in a Court of Law for among others, receiving Kes. 180, 364, 789 against falsified documents *(Annex 9).*

Submitted for your information and further guidance.

Yours Sincerely,

James Mungai Warui, 'ndc' (K)
Ag. INSPECTOR-GENERAL (CORPORATIONS)

ETHICS AND ANTI-CORRUPTION COMMISSION

SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON IMPLEMENTATION

REPORT ON THE IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE SPECIAL REPORT ON THE INQUIRY INTO ALLEGATIONS OF FRAUD AND FINANCIAL MISMANAGEMENT AT THE YOUTH ENTERPRISE DEVELOPMENT FUND OF MAY, 2016

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Saturday, 18th May 2024

Mombasa

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SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON IMPLEMENTATION

1. Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under **section 3** of the Ethics and Anti-Corruption Commission Act, 2011 and pursuant to **Article 79** of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crimes in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption.
- This report is submitted to the National Assembly Standing Committee on Implementation as requested vide a letter **Ref: NA/AA& GPC/COI/2024 (027)** dated **7th May, 2024.**

2. Allegation that the CEO of Youth Enterprise Development Fund (YEDF) one Catherine Namuye in collusion with a senior Board member and other senior managers are said to be deeply involved in the scheme to defraud the fund of Kshs. 180.9 Million in FY 2013/2014

- The **Youth Enterprise Development Fund (YEDF)** had a need for the provision of consultancy on the ICT Strategy and Enterprise Resource Planning in the Financial Year (FY) 2012/2013 and a budget was approved. This procurement for provision of consultancy on the ICT Strategy and Enterprise Resource Planning services was to run for a period of five (5) years 2012 to 2017.
- Microflex Business Solution Africa Ltd (Microflex) emerged as the successful bidder. The Fund formally entered into a written contract with Microflex to provide the services for the period 2012 to 2017.

3. Findings of the Criminal Investigation

i. The then CEO of the YEDF, Catherine Namuye single-handedly engaged Mukuria Ngamau and Quorandum Ltd for similar services that Microflex was already undertaking without following any procurement process.

ii. On 11th February 2015 and 27th April, 2015, Catherine Namuye irregularly and unlawfully authorized payment from the YEDF amounting to Kshs. 115,710,000 and Kshs 65,184,946 respectively to Quorandum Ltd for services not rendered.

iii. Upon an inquiry by the Bank on the alleged payment, the Chair of the YEDF Board, Bruce Odhiambo and Catherine Namuye indicated that the YEDF Board

had authorized Ms. Namuye to effect any payment from the YEDF account, a fact that was false.

iv. Catherine Namuye presented forged contracts between the YEDF and Quorandum Limited for provision of consultancy on the ICT Strategy and Enterprise Resource Planning services in support of the payment to Quorandum Limited.

v. Quorandum Limited unlawfully received a total of Kshs. 180,364,789 from the YEDF for services not rendered.

vi. Bruce Odhiambo, Catherine Namuye and the Directors of Quorandum Limited conspired to defraud the YEDF of Kshs 180,364,789.

Status of the Investigation:

- Upon conclusion of investigations, the Commission recommended charges against the following:
  1. Catherine Namuye Akelo (CEO YEDF)
  2. Bruce Odhiambo (Chairman YEDF)
  3. Mukuria Ngamau and Doreen Ng'ang'a (Directors of Quorandum Limited)
  4. Quorandum Limited

- The ODPP concurred with the Commission and suspects were charged in Milimani Anti-Corruption Court No. 13 of 2016. Catherine Namuye Akelo and Bruce Odhiambo passed away in the course of the criminal proceedings, while Doreen Nganga was acquitted under Section 210 of the Criminal Procedure Code.

- The Case was concluded and Mukuria Ngamau, Quorandum Limited were convicted and sentenced on 30th September, 2021 with the following counts:

  Count 1: Mukuria Ngamau and Quorandum Limited; Conspiracy to commit an economic crime contrary to section 47A (3) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. Sentenced to 7 years' imprisonment with no option of a fine.

  Count 2: Mukuria Ngamau and Quorandum Limited; Unlawful acquisition of Public Property Contrary to Section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act. Sentenced to pay a mandatory fine of Kshs 442,840,000 in default 7 years' imprisonment.

  Count 3: Mukuria Ngamau, Doreen Ng'ang'a and Quorandum Limited; Unlawful acquisition of Public Property Contrary to Section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act. Sentenced to pay a mandatory fine of Kshs 258,629,156 in default 7 years' imprisonment.

Count 10: Mukuria Ngamau; Making of false document contrary section 347 (a) as read with section 349 of the Penal Code. Sentenced to 3 years' imprisonment with no option of a fine.

Count 11: Mukuria Ngamau; Making of false document contrary section 347 (a) as read with section 349 of the Penal Code. Sentenced to 3 years' imprisonment with no option of a fine.

Count 2 and Count 3 are to run concurrently while Count 1, 10 and 11 are to run consecutively.

- Cumulatively, the accused persons were fined Kshs 701,469,156 or in default serve 7 years' imprisonment. Further, the accused persons were to serve a mandatory 13 years' imprisonment.
- In addition, the Court invoked section 51 and 54 of ACECA and ordered Mukuria Ngamau to pay the Youth Enterprise Development Fund Kshs. 180,364,789 in compensation.
- The accused filed an appeal, however the High Court upheld the convictions and Mr. Mukuria Ngamau is currently serving the prison sentence.
- The prisoner is yet to pay compensation of Kshs 180,364,789 ordered by the court. Since this is a conviction based recovery, the Commission is in the process of putting mechanisms for recovery of the said funds.

Dated this **Saturday, 18th** day of **May, 2024**



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Twalib Mbarak, MGH, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)

Annex 19

Submissions by the Managing Director AFC on Reports of the Auditor-General relating to the Financial Statements of Agricultural Finance Corporation (AFC) for the financial years 2003/2004 to 2011/2012

AGRICULTURAL FINANCE CORPORATION

IMPLEMENTATION STATUS OF THE NATIONAL ASSEMBLY NINETEENTH (19TH) REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE FINANCIAL STATEMENTS OF AFC FOR THE FINANCIAL YEARS 2003/04 TO 2011/12

SUBMITTED TO

COMMITTEE ON IMPLIMENTATION OF HOUSE RESOLUTIONS

APRIL 2024.

Reports of the Auditor General on the Financial Statements of Agricultural Finance Corporation (AFC) for the Financial years 2003/2004 to 2011/2012

The Managing Director, AFC, Mr. Lucas Meso accompanied by General Manager Finance, Mr. Ismail Guyo; Chief Accountant Mr. Akeno Tom; Accountant Mr. Michael Kwachi; Personal Assistant to the Managing Director Mr. Bonano Bulla and Assistant Director of Agriculture Mr. Eliud Kamau representing the Ministryof Agriculture, Livestock and Fisheries appeared before the Committee to adduce evidence on accounts of the Corporation for 2003/2004 to 2011/2012 Financial Years.

48.1 Consultancy Services: FY 2003/2004 Accounts

The Committee heard that in October 2003, the former Managing Director (Mr. George Omari Nyamweya) without Board's approval hired an ex-employee of the Corporation as a consultant to carry out a recruitment exercise at a cost of Kshs 1,546,000.00 to the Board. It is not clear how the consultant was identified and the fee determined without competitive tendering. Though the Corporation indicated that they had asked the Office of the President to assist in the recovery of the money, no evidence of the request was seen.

Management Response

The Managing Director, Agricultural Finance Corporation (AFC) informed the Committee that the Corporation has requested the Office of the President vide letter ref. AFC/MD/9.1.1 dated 13th June 2005 to assist in the recovery of Kshs 1,546,000.00 from the former Managing Director.

Committee Observation

The Committee observed that the recovery of the money paid to the consultant had taken too long.

Committee Recommendation

The Committee recommends that the Managing Director pursues the recoverability of the debt and report status of recovery to Parliament within six months after adoption of this Report.

Response on Current Status

In line with the Committee's recommendations, the Corporation has undertaken several measures to recover funds from the former Managing Director. These measures include:

equesting assistance from the Office of the President via our letter referenced: FC/MD/9.1.1 dated June 13, 2005.

ii. n April 2016, the former Managing Director Mr. Lucas Meso and the Board Chair r. Frankline Bett jointly met with Mr. George Omari Nyamweya and discussed the atter with him. However, Mr. Nyamweya denied the allegations as per his letter ated April 7, 2016, attached herewith **and labelled PIC 48.1 (a).**

urther, the Corporation has reported him to the Credit Reference Bureau for tion.

Sinc s matter remains active with the inspectorate, we have once again requested for an u e, recognizing its prolonged duration. Copy of the referenced letter are attached for reference, labelled as **PIC 48.1 (b)**

Overpayment of the Former Chief Executive: FY 2003/2004 Accounts

Th mittee heard that the former Managing Director (Mr. George Omari Nyamweya) rece a salary of Kshs 1,166,120 per month instead of the approved gross of Kshs. 347 00 resulting to an overpayment of Kshs 3,273,600.00 in 2003/2004 under review and covery so far has been made.

M ment Response

Th ging Director, AFC informed the Committee that the Corporation sought the assis e of the Inspectorate of State Corporations to surcharge the irregular payme s to the former Managing Director Mr. George Omari Nyamweya.

Co tee Observation

T mittee observed that:-

i Corporation and Inspectorate of State Corporations had taken too lo g to recover the money.

ii T e was no evidence of any effort by the management to recover money.

C tee Recommendation

Th mittee recommends that the Corporation and the Inspectorate of State rporations pursues the recoverability of the debt and report status ry to Parliament in six months after adoption of this Report.

P e on Current Status

our previous correspondence herein resting with our letters dated 20th May th June 2005, 16th January 2008, 22nd September 2010 and the letter from the

inspectorate dated 14th July 2005, we have once again through our letter ref: AFC/MD/9.1.1 reminded the inspectorate of the need to bring the matter to closure and sought any progress made on the matter noting that it had been outstanding for long. Copies of the cited letters are attached for ease of reference labelled **PIC 48.2 (a) to (h).**

48.3 Loan to Farmers: FYs 2004/2005 to 2005/2006 & 2009/2010 to 2011/2012 Accounts:

The Committee heard that recovery of large and small-scale loans has not significantly improved. The non-recovery of the loans has resulted in a very high bad and doubtful debts provision of Kshs 4,536,086,000.00.

The Managing Director, AFC informed the Committee that old loans that were advanced to farmers prior to January 2003 were waived by the Government. In order to recover the outstanding arrears, the Corporation established a Debt recovery unit to specifically follow up the non performing portfolio.

Committee Observation

The Committee observed that in spite the establishment of the Debt Recovery Unit little progress had been realized in the recovery of debts leading to a high bad and doubtful debts provision.

Committee Recommendations

The Committee recommends that:-

(i) The Corporation puts in place measures to recover the debts and report status of recovery to Parliament in six months after adoption of this Report.

(ii) Debt recovery should be a target in the Performance Contract of the Managing Director for the Corporation so as to reduce the high debt portfolio and improve the performance of the Corporation.

Response on Current Status

i) Earlier reports shared with the Committee indicated that the recovery of both large and small-scale loans issued before January 2003 had not shown improvement, resulting in the substantial loan provisions of Kshs 4,536,086,000 for bad and doubtful debts.

nsequently, to address this issue, AFC established a dedicated debt recovery unit ponsible for handling non-performing loan portfolios.

ar recovery targets were outlined in performance contracts as recommended ed at reducing the high debt levels and enhancing portfolio performance. Copy erformance contract for the unit is attached labelled PIC **48.3 (a).**

ditional measures have been implemented to recover the outstanding balances, luding the engagement of a reputable debt collector to bolster recovery efforts. opy of the framework contract is attached labelled PIC **48.3 (b).** As a result of e initiatives, AFC has seen a significant reduction in outstanding debts and ciated loan provisions.

rch 31, 2024, delinquency levels had dropped to 17%. The trend analysis from ted accounts over the past five years is outlined below: -

on Loan Provisioning					
Y	2011/12 (B/f)	2019/20	2020/21	2021/22	2022/23
	Kshs '000'	Kshs '000'	Kshs '000'	Kshs '000'	Kshs '000'
Size	6,657,542	9,347,368	9,783,128	9,892,054	10,323,339
	4,536,086	455,409	475,964	447,530	334,584

ns

of the audited financial statements are attached for ease of reference labelled 3 (c)

performance contract signed between the Government of Kenya through the ent ministry and the Board of Directors has targets for the Managing Director on recovery from non-performing loans. See copy attached labelled PIC **48.3 (d).**

ceivables and Repayments: FY 2004/2005 Accounts

mittee heard that included in the receivables and prepayments balance of Kshs 000.00 is an amount of Kshs 51,150,596.00 in respect of auctioneers fees and ment charges which has remained outstanding for a long time. Also, included crual of Kshs 40,018,000.00 in respect of Development House out of which Kshs 00.00 relate to the year 1999 and earlier. It's not clear why management has adequate measures to recover.

Management Response

The Managing Director, AFC informed the Committee that the Corporation made a provision in respect to the outstanding auctioneer's fees and advertising charges given that the recoverability was doubtful. The rent arrears for Development House amounting to Kshs 40 million consisted of arrears which related to the period prior to the 1998 bomb blast when most of the tenants vacated the building without clearing their debts. The Committee was further informed that the rent collector M/s Lustman & Company Ltd owned by Esther Mathenge and Natalie Njanja Mathenge defaulted in remitting rent to the Corporation to the tune of Kshs.6 million as at the time of termination of contract. The Corporation sued the agent for recovery of the unremitted rent. The Corporation has since engaged the firm of Nyaencha & Company Advocates to take over the matter to its logical conclusion. A new property manager has since been employed.

Committee Observation

The Committee observed that the unremitted rent by Ms. Esther Mathenge and Ms. Natalie Nyanja Mathenge is still outstanding and that the matter is currently in Court.

Committee Recommendations

The Committee recommends that:-

(i) **The Corporation should recover fully the unremitted rent from Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge including identifying their properties/estate for attachment in the clearance of the debt.**

(ii) **Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge and their associated companies be barred from transacting any business with any State Corporation as a result of their conduct in the management of AFC Development House Property.**

(iii) **The Chief Executive Officer of the Board should give the status report of the Court case to the Committee within three months of adoption of this Report.**

Response on Current Status

As previously reported, the receivables balance included rent arrears totaling Kshs 6,586,753 for Development House Building, pertaining to the period prior to the 1998 bomb blast, during which period many tenants vacated the premises while owing outstanding debts.

In e with the committee's recommendations, AFC instituted a legal suit against the a t to recover the unremitted rent, with the assistance of Nyaencha and Company A s. Subsequently, the defendant filed an application seeking arbitration, which w considered and our application ultimately dismissed.

D ed with this decision, AFC instructed the aforementioned law firm to review the c filed another application for reinstatement of the suit. Unfortunately, this ar ati n was equally dismissed on 29th May, 2015.

A herewith, please find a copy of the ruling and other correspondence on the r your perusal labelled PIC **48.4 (a)** & **(b).**

4 d and Buildings: FYs 2008/2009 to 2011/2012 Accounts

T or ittee heard that the land and buildings includes 20 developed plots all of which t sp tive title deeds were not availed for audit review. It was further noted that 5 d veloped and unvalued plots had been re-allocated to third parties. In the a of ownership documents for the land as indicated above, it has not been possible t n the accuracy of the land and buildings balances of Kshs 356,129,000.00

T ing Director, AFC informed the Committee that the Corporation has with the s t the Board intensified its efforts in pursuing the ownership documents, and c the title deeds have been obtained for land in Bungoma, Garsen, Iten, Meru a et. The Corporation has written letters to respective counties and the National L mmission to follow up on the land irregularly re-allocated to third parties.

C tee Observation

T **Committee observed that the Corporation did not have ownership d nts for some of its properties (land) and that some of the pieces of l d been irregularly allocated to private developers.**

C tee Recommendations

T ittee recommends that:-

1. **Corporation liaises with the National Land Commission for the e itious issuance of title documents and the revocation of titles g larly allocated to third parties.**
2. **Ethics and Anti-Corruption Commission investigates the c stances surrounding the irregular allocation of Public Land g ing to the Corporation to third parties.**

Response on Current Status

Substantial progress has been made in pursuit for the AFC titles as evidenced by the attached correspondence from the National Land Commission labelled **PIC 48.5 (a)** to **(d)**.

The Corporation has since secured the title deeds for Iten town, parcel no 176, Bungoma, Kisumu and Molo. We have also extended the lease for Bomet Parcel LR No 8939/32 which had expired in January 1990. The lease was extended for a term of 66 years. Refer to the attached copies labelled **PIC 48.5 (e) to (j).**

Further, we are in communication with the National Land Commission and the Ministry of Lands with a view of getting title deeds for Kimilili and Busia plots. Copies of the correspondence are attached labelled **PIC 48.5 (k)** to **(l)**

As previously explained, the Nanyuki and Kerugoya plots were repossessed by the respective County Governments due to failure by the Corporation to develop them within the stipulated time. The Kerugoya Plot has since been developed by the Judiciary. Similarly, the Chogoria plot has been developed by Meru South Co-operative Union, with a building named Mwalimu Sacco Plaza.

To facilitate investigation by the EACC, the Corporation through various correspondence followed up on the matter as recommended by the committee. In addition, the Corporation lodged a caution against the said parcel of land to forestall unauthorized access as may be confirmed from the attached correspondence on the matter labelled **PIC 48.5 (m)** to **(q).**

48.6 Budgetary Control: FYs 2008/2009 to 2010/2011 Accounts

The Committee heard that during the year under review, the Corporation incurred an expenditure of Kshs.32,127,000.00 over and above the budgetary provisions for the year in nine expenditure items. Although the Management has explained that the over expenditure was subsequently considered and approved by the Ministry of Agriculture, Livestock and Fisheries and the Treasury together with the 2009/2010 FY estimates, no evidence supporting this was produced for audit verification.

Management Response

The Managing Director admitted that the payment was un-procedurally done and that Treasury and Parent Ministry approval should have been sought.

Committee Observation

The Committee observed that the Corporation incurred an over-expenditure of Kshs.32,127,000.00 without Parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446

Committee Recommendations

The Committee recommends that:-

1. **The EACC investigates the circumstances surrounding the over-expenditure of Kshs.32,127,000.00 by the Corporation without Parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**
2. **The Director of Public Prosecutions institutes criminal proceedings against the then Managing Director, Mr. Omurende Iyadi and the then Manager Finance, Mr. Lawrence Bokoro who authorized the irregular expenditure for:**
   i) **Over-expenditure of Kshs. 32,127,000.00 without Parent Ministry and Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446;**
   ii) **Abuse of office contrary to Section 101 of the Penal Code and Section 12 of the Public Officer Ethics Act, 2003**

Response on Current Status

The Corporation incurred expenditure over and above the budgetary provisions after review and was in breach of the law. We however commit to adhere to approved budget estimates henceforth in order to comply with the law.

3. Head Office and Branch Collection Accounts: FYs 2009/2010 to 2011/2012

It was heard that branch collection account balance includes long outstanding items relating to remittances and receipts which have been outstanding since 2009. Kisumu, Narok and Kisumu collection accounts contained an un-reconciled balance of Kshs 234,000.00, Kshs 1,860,000.00 and Kshs 672,000.00 respectively, which were committed by employees. A banker's order of Kshs 410,600.00 during the year (2009) was also fraudulently channeled to an ineligible account in Kisumu.

The Managing Director, AFC informed the Committee that the long outstanding un-reconciled items relating to remittances and receipts have since been identified and cleared.

The un-receipted credits in Thika, Kisumu and Narok branches have since been receipted to clients' accounts. The ex-staff who was responsible for the fraudulent transaction was reported to the police and after investigations were completed criminal proceedings commenced.

The case was determined and the accused acquitted. The Corporation also managed to recover Kshs 213,500.00 from the client.

Committee Observation

The Committee observed that the Corporation did not have in-house fraud prevention, detection and handling mechanisms thereby resulting in loss of public funds.

Committee Recommendations

The Committee recommends that:

(i) **The Corporation puts in place stringent mechanisms to prevent, detect and handle fraud.**

(ii) **The EACC investigates the circumstances surrounding the fraud and the conduct of the then Managing Director, Mr. Omurende Iyadi, and General Manager –Finance, Mr. Lawrence Bokoro, that resulted in the loss of public funds in the accounts department and recommend prosecution for those found culpable.**

Response on Current Status

The Committee observed that the Corporation did not have adequate in house fraud prevention, detection and cash handling mechanism that resulted to the loss of public funds. On the basis of this observation, the committee recommended that stringent mechanisms to avert similar frauds and other related risks be put in place. Consequently, the Corporation in accordance with the recommendations of the committee instituted the following measures: -

i. Establishment of a controls and compliance section in charge of treasury management and internal controls.
ii. Procurement of a robust banking system with higher capabilities on cash handling.

tional areas within our operations were segregated to facilitate maker checker action oversight.

A ...e find copies of the restructured departmental organogram, Job d... and a copy of the newly acquired banking system labelled PIC **48.7 (a)** to (

4 ... to Staff: FYs 2009/2010 to 2011/2012 Accounts

T... heard that Kshs. 40,241,000.00 owed by ex-staff, is in respect of house loans, ... and staff advances. The Corporation has not however clarified why the a... uld not be offset against the final dues of the affected staff.

T... irector, AFC informed the Committee that the Corporation has instituted v... measures including repossessing and disposal of motor vehicles, tracing ... their current employers to recover the money and as a last resort taking ... n where other recovery measures have failed.

C... e Observation

T... e **observed that the recovery of loans to staff had taken long and l... been undertaken by the management to recover the loans as i... e low level of recovery.**

C... e Recommendation

T... e **recommends that the management recovers the loans to staff ... ths of the adoption of this report failure to which the then Ag. ... ctor, Mr. Lawrence Bokoro and the Chief Accountant, Mr. ... im are held accountable for the debt.**

... urrent Status

A... lace mechanisms to recover loans advanced to staff. The outstanding ... ances as at 30th June 2012 was Kshs 40,241,104.60 held by 32 ex-... recovery efforts put in place have seen outstanding balance reduce ... s 9,506,125.14 to date. The outstanding balances are made up of the ... 's which the Corporation continues to pursue. The list of the accounts ... balances are as indicated below

Name	Loan Type	Balances as at 30.06.2012 Kshs	Balances as at 23.04.2024 Kshs	Status	Reference
Paul Muthini Kisio	House Loans	838,547.85	0.00	Repaid	**PIC 48.8 (a)**
Cyril Wayongo	Car Loans	244,031.00	315,636.79	Matter in court, case no. Milimani MCCC/6193/2009. The security already disposed	
Michael Goa	Car Loans	424,971.15	575,223.16	Case handed over to an external debt collector	**PIC 48.8 (b)**
Michael Goa	House Loans	5,577,747.15	7,928,597.51	The security was sold but it did not fetch enough money. Case handed over to an external debt collector	**PIC 48.8 (b)**
Cyril Wayongo	Personal Advances	254,088.20	255,315.93	Matter in court, case no. Milimani MCCC/6193/2009. The security already disposed	
Mary Onyango	Car Loans	1,154,592.10	0.00	Account closed	
David Wekesa Khaemba	House Loans	1,729,147.20	0.00	Repaid	**PIC 48.8 (c)**
Francis Nyomboi Kigen	House Loans	1,885,450.10	0.00	Repaid	**PIC 48.8 (d)**
Wangui Mwaniki	Personal Advances	271,816.95	199,682.96	There is an active suit in court. Case number SCCCOMM/E6365/2023 Citation: AFC Vs Wangui Mwaniki. "	
George O Nyamweya	Personal Advances	224,292.50	231,668.79	Case handed over to an external debt collector	**PIC 48.8 (b)**
Total		**12,604,684.20**	**9,506,125.14**		

48.9 Loan to farmers: Short Term Loans to 13 Farmers: FYs 2009/2010 to 2011/2012 Accounts:

The Committee heard that the balance of short term loans to customers' of Kshs.2,980,347.00 includes an amount of Kshs.22,661,000.00 advanced to 13 farmers in Kapsabet. The Corporation advanced the amount against various collaterals in form of title deeds which appeared to be fraudulent.

Response

The M... Director, AFC informed the Committee that the Corporation disbursed l... ...ers in Kapsabet in accordance with the AFC policies. Farmers provided t... ... were, on the face of it genuine and confirmed through official searches i... ...try. The Corporation later learnt that the titles given as security were f... ...fraud was perpetuated with the connivance of the officials at the local l... ...Kapsabet. This matter was reported to the CID office at Kapsabet for i...

...servations

... observed that:-

...ration failed to undertake proper due diligence and did not ...e measures to ensure loans advanced were properly secured. ... probable collusion between the farmers, employees of AFC ...d registry to defraud the Corporation.

...ommendations

... recommends that:-

... investigates the circumstances and the process of loan ...o the farmers including the role of the officers of the ... and the Land Ministry with a view to recommending t... of those found culpable.

...s of the Corporation and Kapsabet Land Registry implicated ... should be surcharged or money recovered from them and ... holding public office.

...rrent Status

...ed six (6) cases against the fraudsters, namely Eldoret HCC No 100, 102, ...6 of 2011. Judgment was entered in favor of the Corporation and decrees a... ...ed.

... issued and the process of execution initiated. The Corporation is pursuing t... ...the 6 fraudsters for attachments and recovery The Corporation has fully r... ... cases in our accounts.

... ...s been seeking to enforce the judgement relying heavily on the Director of

Criminal Investigations (DCI) because they have the machinery to pursue and apprehend the fraudsters. This being an active matter with the office of the Director of Criminal Investigation, the Corporation vide a letter dated 28th November, 2022 sought the investigation report from the DCI detailing the current status which has not been responded to. Attached is our letter to DCI labelled **PIC 48.9 (a)** to **(c)** for your reference.

48.10 Payables and Accruals: FYs 2009/2010 to 2011/2012 Accounts

The Committee heard that Payables and Accruals balance of Kshs.599,431,000.00 includes loan drafts outstanding balance and a Sundry Creditors' General balance which have not been supported with the relevant documents.

Management Response

The Managing Director, AFC informed the Committee that the balances were carried forward during conversion from the Loan Accounting System to the new Equinox Banking system in 2007. These balances have since been identified and cleared.

Committee Observations

The Committee observed that:-

(i) **The Corporation's outstanding balances were as a result of the conversion of the Loan Accounting System to the new Equinox Banking system.**
(ii) **The Corporation did not appreciate the effects nor provide for safeguards for the conversion.**

Committee Recommendation

The Committee recommends that the Corporation should carry out due diligence while carrying out changes in its system and to provide for safeguards for the conversion.

Response on Current Status

As per the Committee's recommendations, the Corporation put in place the following safeguards and measures to ensure seamless transitions during system change overs with minimal disruptions on operations and customer service.

i. Development of a detailed project plan outlining all aspects of the system changeover, timelines and milestones.

of a thorough risk assessment to identify potential risks associated
angeover process.
of a thorough evaluation of the vendor's capabilities, track records and
nt of a robust data migration plan to ensure complete data transfer.
angeover, extensive data tests are necessary to identify any issues and
urity measures are put in place to protect sensitive customer data
changeover.
the Equinox Banking System and the current Br.Net.Com banking
e above framework, risks associated with change overs were minimized
nges not experienced.

Accounts: FYs 2006/2007 AND 2007/2008 Accounts

heard that Agricultural Finance Corporation received Unqualified
Ys 2006/2007 and 2007/2008

rvation

observed that Agricultural Finance Corporation received
rt from the Auditor General for the FYs 2006/2007 and

ommendation

commended Agricultural Finance Corporation for receiving
ounts in the FYs 2006/2007 and 2007/2008.

..... Date.....

BA
D CTOR



ETHICS AND ANTI-CORRUPTION COMMISSION

SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON IMPLEMENTATION

REPORT ON THE IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE 19TH REPORT OF THE PUBLIC INVESTMENT COMMITTEE ON THE EXAMINATION OF THE AUDITOR GENERAL'S REPORT ON FINANCIAL STATEMENTS FOR THE AGRICULTURAL FINANCE CORPORATION FOR THE YEARS 2003/2004 TO 2011/2012

==========

Saturday, 27th April 2024

Mombasa

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SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON IMPLEMENTATION

1. Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under **section 3** of the Ethics and Anti-Corruption Commission Act, 2011 and pursuant to **Article 79** of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crimes in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption.
- This report is submitted to the National Assembly Standing Committee on Implementation as requested vide a letter **Ref: NA/AA& GPC/COI/2024 (021)** dated **18th April, 2024.**

2. Allegation

- In **July 2016,** the Commission received an allegation of procurement irregularities involving the Isiolo County Executive in selection of contractor to partner with the County Government of Isiolo in management of Buffalo Springs and Shaba Games Reserves, facilities of the County.

3. Findings and Status of the Investigation

- The Commission established that there were attempts by the County to lease the reserves to the African Park Network (APN), a South African firm in a partnership engagement, without following the applicable laws and procedures. The bid to look for an investor to partner with the County in managing the reserves was not finalized.

  Status: The investigation was completed and file forwarded to the Director of Public Prosecutions (DPP) with recommendation for closure. The DPP concurred with the recommendation.

- The Commission issued an **advisory** to the County Government of Isiolo on the need to strictly adhere to the applicable laws and procedures in establishing partners for managing the reserves.

Dated this **Saturday, 27th** day of **April 2024**



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Twalib Mbarak, MGH, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)

REPUBLIC OF KENYA

EXECUTIVE OFFICE OF THE PRESIDENT
INSPECTORATE OF STATE CORPORATIONS

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NAIROBI, KENYA

Ref No: ISC/INS/POL/205/VOL.II/19

25th April, 2024

CLERK OF THE NATIONAL ASSEMBLY
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Main Parliament Buildings
NAIROBI

Attn. **Ms Serah M. Kioko, MBS**

IMPLEMENTATION STATUS OF HOUSE RULES

Reference is made to your letter Ref: NA/A&GPC/COI/2024(021) dated 18th April, 2024 inviting the Inspector-General (Corporations) to a meeting with the Implementation Committee on House Rules to apprise it on the implementation status of the recommendations of 19th PIC report in respect of the Agricultural Finance Corporation.

With respect to the Agricultural Finance Corporation, the Inspector-General (Corporations) was to:

1. Pursue the recoverability of **Kshs. 3,273,600** from the former Managing Director, **Mr. George Omari Nyamweya**, who had received a salary of Kshs. 1,166,120 per month instead of the approved gross of Kshs. 347,720 resulting to an overpayment in the FY 2003/2004.

2. Surcharge an amount **Kshs. 22,661,000** which had been advanced to **13 farmers** in Kapsabet against fraudulent collateral in the form of title deeds. The amount was to be recovered from officers of the Corporation and of the Kapsabet Land Registry found culpable after investigations by the Ethics and Anti-Corruption Commission (EACC).

Regrettably, the Inspector-General (Corporations) was not able to implement the recommendations of the 19th PIC report because of the following reasons:

1. The Office of the Inspector-General (Corporations) has over the years suffered from chronic underfunding of its operations. Consequently, the

Department is beset by inadequate human and financial resources as well as other facilities. This has adversely impacted Inspectorate of State Corporations' ability to effectively discharge it statutory mandate.

2. The power of the Inspector-General (Corporations) to surcharge as stipulated in Section 19 of the State Corporations Act had lain dormant from the year 2014 following the inquorate membership of the State Corporations Appeals Tribunal (SCAT).

   SCAT is a statutory body established under section 22 of the State Corporations Act to consider and determine appeals from individuals aggrieved by the decision of the Inspector-General (Corporations) to surcharge.

3. The office of the Inspector-General (Corporations) has for the most part since the year 2014 not been duly filled either substantively or in acting capacity thereby legally compromising its ability to operate.

Way Forward:

i. *The Office of the Inspector-General (Corporations) has embarked on efforts to revamp its operations with the primary aim of effectively and efficiently discharging its statutory mandate.*

ii. *The Executive has since appointed the Chairperson and members of the State Corporations Appeals Tribunal (SCAT). This will strengthen the capacity of the Inspector-General (Corporations) to take a more proactive role in combating corruption and misappropriation of public funds in state corporations given his statutory mandate to surcharge.*

Submitted for your information and further guidance.

James Mungai Warui, 'ndc' (K)
Ag. INSPECTOR-GENERAL (CORPORATIONS)

Annex 21

Submission by the Chief Executive Officer on the Implementation Status of the 13th Report of The Special Funds Accounts Committee (SFAC) on Status of The Equalization Fund

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

SUBMISSION BY DR CHRIS KIPTOO, CBS, THE PRINCIPAL SECRETARY, NATIONAL TREASURY TO THE NATIONAL ASSEMBLY COMMITTEE ON IMPLEMENTATION ON THE STATUS OF THE EQUALISATION FUND: 13TH REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE

BACKGROUND

The Equalisation Fund was established under Article 204 (1) of the Constitution of Kenya 2010 (CoK 2010) which requires that one half per cent (0.5%) of all the revenue collected by the National Government each year, calculated on the basis of the most recent audited revenue received, as approved by the National Assembly, to be paid into the Fund.

Article 204 (2) of the CoK 2010 provides that the national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible. The Fund has a lifespan of 20 years as per Article 204 (6) of the CoK 2010, thus currently has less than 7 years outstanding.

The Fund is operationalized by the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 which were published through Kenya Gazette supplement No. 69, Legal Notice No. 54 of 29th April 2021.

STATUS OF EQUALISATION FUND

1. Actual Transfers to the Fund as at 31st January, 2024 Vis a Vis the Total Summary Entitlement of the Equalisation Fund

In the first three Financial Years after its establishment i.e., 2011/12, 2012/13 and 2013/14, the Equalisation Fund had no allocation since the First Policy identifying the marginalized areas had not been developed by the CRA.

The **total entitlement** to the Fund since inception is **KSh 62,403,758,050.** The **total allocation** to the Fund **(approved by Parliament)** since inception is **KSh. 33,597,717,433.** Out of this, **KSh.12,400,000,000** was appropriated through the **Equalisation Fund Appropriation Act 2018.**

Out of the outstanding **Ksh 21,197,717,433, Ksh.10,330,317,433** has been appropriated through the **Equalisation Fund Appropriation Act 2023** being EF allocation for FY 2021/22 (KSh **3,261,843,222)** and FY 2022/23 **(KSh 7,068,474,211) and outstanding balance of**

Ksh. 10,867,400,000 considered in Equalisation Fund Appropriation Bill 2023 currently in the legislative process.

However, the amount appropriated in the **Equalisation Fund Appropriation Act 2023 Ksh. Ksh.10,330,317,433** being EF allocation for FY 2021/22 and FY 2022/23 was not transferred to the Equalisation Fund since the allocation was reduced to zero during the Supplementary budget of 2022/2023 FY. Therefore, the total arrears entitled to Equalisation Fund amount to **Ksh. 39,136,358,050 (Ksh. 28,806,040,617+ Ksh.10,330,317,433).**

It is important to note that the FY 2023/24 allocation of **Ksh. 10,867,400,000** will be applied to implement Equalisation Fund Appropriation Act 2023.

The table below tabulates the total entitlement to Equalisation Fund and the Allocation approved by Parliament since inception to the FY 2023/2024.

Table 1: Equalisation Fund Entitlement and Allocation since Inception

S/N.	Financial Year	Most recent audited revenues approved by the National Assembly		Equalisation Fund Allocation (KSh.)	Equalisation Fund Entitlement (0.5% of most recent audited and approved revenues) (KSh.)	Amount Reflected in the DORA
		Base Year for most recent audited revenues approved by National Assembly	Audited and approved revenues by National Assembly (KSh.)			
	(a)	(b)	(c)	(d)	(e)	
1)	2011/12	2008/2009	468,151,970,000	0	2,340,759,850	
2)	2012/13	2009/2010	529,300,000,000	0	2,646,500,000	0
3)	2013/14	2009/2010	529,300,000,000	0	2,646,500,000	0
4)	2014/15	2009/2010	529,300,000,000	400,000,000	2,646,500,000	3,400,000,000
5)	2015/16	2012/2013	776,900,000,000	6,000,000,000	3,884,500,000	6,000,000,000
6)	2016/17	2013/2014	935,653,000,000	6,000,000,000	4,678,265,000	6,000,000,000
7)	2017/18	2013/2014	935,653,000,000	0	4,678,265,000	7,727,000,000
8)	2018/19	2013/2014	935,653,000,000	0	4,678,265,000	4,700,000,000
9)	2019/20	2014/2015	1,038,035,000,000	0	5,190,175,000	5,760,000,000
10)	2020/21	2016/2017	1,357,698,000,000	0	6,788,490,000	6,788,490,000
11)	2021/22	2016/2017	1,357,698,000,000	3,261,843,222	6,788,490,000	6,825,317,433
12)	2022/23	2017/2018	1,413,694,840,000	7,068,474,211	7,068,474,200	7,068,474,211
13)	2023/24	2019/20	1,673,715,000,000	10,867,400,000	8,368,574,000	8,368,574,000
GRAND TOTAL			**12,480,751,810,000**	**33,597,717,433**	**62,403,758,050**	**62,637,855,644**

The National Treasury committed to pay the arrears as follows:

Table 2. Proposed Plan on Appropriation of Equalisation Fund Arrears

Financial Year (A)	Budget Estimates (B)	Equalisation Fund Arrears (C)
2023/24	8,368,574,000	-
2024/25	8,368,574,000	9,976,766,000
2025/26	9,590,000,000	9,976,766,000
2026/27	10,960,000,000	9,976,766,000
2027/28	14,393,000,000	9,976,766,000
Grand Total	**51,680,148,000**	**39,907,064,000**

2. Progress of Implementation of First Marginalisation Policy Projects

As a pre-condition to the utilization of the Equalisation Fund, Article 216(4) of the CoK requires that the Commission on Revenue Allocation (CRA) determines, publishes and regularly reviews a policy in which it sets out the criteria by which to identify marginalized areas for purposes of Article 204 (2).

The First Marginalization Policy was developed in 2013 and was approved by Parliament in December 2014.

Based on the triangulation of data, fourteen **(14)** counties were identified as marginalized and have since benefited from the Fund.

Since inception to November 2019 the EF was administered ***directly*** through the nullified Guidelines published in 2015. During this period the First Policy was implemented directly by the National Government through Ministry Department Agencies.

However, the implementation of the First Marginalisation Policy stalled due to the High Court ruling on Petition no. 272 of 2016 which declared the EF Guidelines as unconstitutional, null and void. This in effect disbanded EFAB and barred any further expenditure from EF hence delay in completion of the projects.

In order to ensure completion of ongoing projects under the First Marginalisation Policy, Regulation 3(d) of the Equalisation Fund Regulations, 2021 provide for completion of projects.

As at 31st January, 2024, and based on submission from MDAs, ***a total of 354 projects*** were financed by allocation to the Equalisation Fund for the FYs 2014/15, 2015/16 & 2016/17 as appropriated through Equalisation Fund Appropriation Acts 2017 and 2018.

The projects are at different stages of implementation. Out of the **354** projects:

i. **189** projects are 100% complete and ready for handover
ii. **87** projects between 75% and 99%
iii. **25** projects between 50% and 74%
iv. **28** projects below 50%
v. **24** projects in inception stage
vi. **1** project Stalled.

The details of each project for each of the **14 counties** is as per Equalisation Fund Appropriation Act 2018 and submissions by implementing MDAs.

Table 3: First Marginalization Policy Equalisation Fund Projects

Implementing MDA	No. of Projects	Inception	Stalled	<50%	50% - 74%	75% - 99%	100% (Completed)
Ministry of Health	84	11	1	5	9	51	7
State Department for Infrastructure, through KERRA	84	6	0	12	1	6	59
State Department for Irrigation	30	0	0	0	1	10	19
Ministry of Water and Sanitation	122	1	0	9	14	18	80
State Department for Technical and Vocational Training	4	3		1	0	0	0
State Department for Early Learning Basic Education	10	3	0	0	0	2	5
Ministry of Energy	20	0	0	1	0	0	19
Total	**354**	**24**	**1**	**28**	**25**	**87**	**189**

The completion of all the First Policy projects is ongoing and the Fund expects the implementing MDAs to conclude implementation by end of the current Financial Year (2023/24).

Disbursements from the Equalisation Fund to date

Based on the Equalisation Fund appropriation Act 2018 which appropriated **KSh.12,400,000,000,** the National Treasury has to date disbursed a total of **KSh. 10,956,075,433** in various FYs to the MDAs implementing the identified projects in the 14 marginalized counties as shown below:

Table 4: Total Disbursements from the Equalisation Fund as at 31st January, 2024

No.	Financial Year	Amount in KSh
1.	2016/17	942,313,944
2.	2017/18	6,937,847,293
3.	2018/19	2,466,411,814
4.	2022/23	585,228,546
5.	2023/24	24,273,836
	TOTAL	**10,956,075,433**

Table 5: Disbursements from the Equalisation Fund to Specific Implementing MDAs from FY 2018 to Date

No.	Ministry	Amount Disbursed
1	State Department for Medical Services	1,803,199,253
2	State Department for Technical, Vocational Education and Training	160,499,975
3	State Department for Transport	3,791,095,723
4	State Department for Energy	556,450,000
5.	State Department for Irrigation	1,082,284,823
6.	State Department for Water and Sanitation	3,562,545,659
	TOTAL	10,956,075,433

Out of the total allocation for the Eqaulisation Fund Appropriation Act 2018, **Ksh.12,400,000,0000, Ksh.11,971,837,433** was development expenditure. The total disbursed to implementing MDAs is **Ksh. 10,956,075,433.** Therefore, the amount available for payment of pending bills and the completion of ongoing projects is **Ksh.1,015,761,637.**

The disbursement to the implementing MDAs is subject to provision of payment certificates, project implementation status report and approved works.

3. **Progress of Amendment to the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 for the Appointment of the Fund Administrator and Accounting Officer of the Equalisation Fund Advisory Board**

Section 18 (1) of the Public Finance Management Act 2012 provide that the National Treasury shall administer the Equalisation Fund in accordance to Article 204 of the Constitution. Additional, Section 24 (5) provide that the Cabinet Secretary National Treasury to designate a person to administer every national public fund established under Section 24 (4). In view of the above the CEO Equalisation Fund was appointed by the Cabinet Secretary National Treasury as the administrator of the Fund.

However, Regulation 20 (i) of the Public Finance Management Act Regulations 2015 provide that the Accountant-General Department shall be responsible for administering the Consolidated, Equalization and Contingencies Funds.

It is important to note that currently there are two Bills which are in different stages of legislation process before Parliament:

i. **The Equalization Fund (Administration) Bill (Senate Bills No.14 of 2023)**

The Bill proposes to establish administrative structures for the management of the Equalisation Fund to ensure efficient and effective mechanisms are in place for smooth implementation or

utilization of the Fund. The Bill was passed by the Senate on 12/10/2023 with amendments and referred back to the National Assembly.

ii. **The Equalisation Fund Bill, 2022**

The Bill sponsored by Hon. Kassait Kamket, MP underwent 1st Reading on 30th November, 2022 and committed to the Departmental Committee on Finance and National Planning. The Objective of the Bill is to:

a) Operationalize the Equalization Fund as established under Article 204 of the Constitution; and

b) Establish a board to administer the Fund in instances where the Fund is directly used for the provision of basic services to marginalized areas.

Therefore, to avoid multiple legislations on Administration of the Fund the process of amendment of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 is pending the finalization of the two Bills.

Additionally, the Fund recommends for amendment of Regulation 20 (i) of the Public Finance Management Act Regulations 2015 which provides that the Accountant-General Department shall be responsible for administering the Equalisation Fund to expressly appoint the Chief Executive Officer, Equalisation Fund to be the Fund Administer and the Accounting Officer of Equalisation Fund.

4. **Steps Taken to Ensure That the Equalisation Fund Advisory Board Provides Adequate Facilitation, Including Functional Physical Offices at the Secretariate, to Parliament Representatives**

Section 4 (1) of the Public Finance (Equalisation Fund Administration) Regulations 2021 established an Advisory Board charged with the responsibility of providing policy and strategic direction. The Board as outlined comprises of nine (9) members which comprise of:

i. The Chairperson who shall be appointed by the Cabinet Secretary;
ii. The Principal Secretary to the National Treasury or his representative designated in writing;
iii. The Principal Secretary responsible for matters relating to devolution or his or her representative designated in writing;
iv. One person from a pastoralist community nominated by the National Assembly;
v. One person nominated by the Senate;
vi. One person nominated by the Council of Governors drawn from the areas defined as marginalised;

vii. The Chief Executive Officer who shall be the secretary to the Board; and

viii. Three other persons nominated from organizations working in equalization fund beneficiary counties and special interest group, appointed by the Cabinet Secretary.

The Equalisation Fund Advisory Board was constituted as per the Regulations and as at 31st January 2024 the Board has held has held a total of **16** Board meetings.

The Public Finance (Equalisation Fund Administration) Regulations 2021 provides for appointment by the Cabinet Secretary of two nominees of Parliament: National Assembly and the Senate respectively.

The nominees were competitively nominated by Parliament and appointed by the Cabinet Secretary National Treasury and Economic Planning for a non-renewable term of six years.

As per the provision of the Equalisation Fund Administration Regulations 2021, the nominees are Board directors upon appointment.

The facilitation, benefits and Board allowances of the Board Directors are as guided by *Mwongozo the Code of Governance for State Corporations*, National Government Circulars. Additionally, the Equalisation Fund Board Charter provides for the role, responsibilities, and functions of the Board in the governance of the Equalisation Fund.

Nevertheless, the Equalisation Fund Secretariate will seek guidance from the Salaries and Remuneration Commission on the benefits that can accrue to the Board Directors especially for Parliament nominees considering the competitive nature of nomination and the fixed term of non-renewable six years.

5. Status of Development of the Second Marginalisation Policy

The PFM (Equalisation Fund Administration) Regulations 2021 operationalized the EF which shall be utilized indirectly as conditional grants to the affected counties in accordance with the Division of Revenue Act and the EF Appropriation Act for the respective FY.

The County Technical Committees and all other lower tier committees as stipulated in PFM (Equalisation Fund Administration) Regulations, 2021 have been established in the 34 beneficiary counties and the committees have since been sensitised and inducted.

The Second Policy on Marginalization was developed and published in 2018. The area of analysis changed from county to sub location. There are 7,131 sub locations across the **47** counties. The Policy identified **1,424** marginalized areas as planning units spread in **366** wards, **111** constituencies and **34** counties: ***Turkana, West Pokot, Narok, Mandera, Wajir, Samburu, Garissa, Baringo, Kilifi, Marsabit, Tana River, Kajiado, Kitui, Kwale, Migori, Isiolo, Homa-Bay,***

Laikipia, Nandi, Elgeyo Marakwet, Kericho, Bungoma, Lamu, Tharaka-Nithi, Siaya, Meru, Kisumu, Bomet, Busia, Taita Taveta, Machakos, Trans Nzoia, Nakuru and Murang'a.

The implementation of the Second Marginalisation Policy has commenced and is applied against the Equalisation Fund Appropriation Act 2023 enacted on 30th June, 2023 of **Ksh.10.3 billion** (Copy attached).

The Implementation of the Second Marginalisation Policy was delayed due to the following challenges:

1. **Court Cases:**

i. **Petition number 003 of 2023** in the High Court of Kenya at Garissa and court order dated 31st May, 2023. In the Petition, Sahal Sugow Muhamud, Abdi Madow Elmi, Muhamud Mohamed Abdi and Kusuw Degow Maow have petitioned Equalisation Fund Board, Commission on Revenue Allocation, Controller of Budget, the National Treasury and Office of the Attorney General. The questions for determination were:

   a. That the Commission on Revenue Allocation (CRA) published the Second Marginalisation Policy and criteria for sharing revenue among Marginalised areas without conducting effective and efficient public participation as prescribed in Article 10 of the Constitution.
   b. That CRA and Equalisation Fund Board have discriminated against Dadaja Ward in Wajir South Constituency by comparatively allocating it a lower revenue allocation compared to other wards in Wajir South Constituency as a result of discimination and political interference in contravention to Article 27 of the Constitution of Kenya

ii. **Petition 4 of 2023** in the High Court of Kenya at Garissa. In the Petition, Sahal Sugow Muhamud, Rashid Billow Adan, Muhfuda Hajji, Mahat Mohamed, Mohamed Ibrahim Hussein and Ayub Abdi Osman have petitioned Equalisation Fund Board, the National Assembly, the National Senate, Commission on Revenue Allocation, Office of the Attorney General and Controller of Budget.

The questions for determination were:

a) What criteria was used by the respondents (Equalisation Fund Board, the National Assembly, the National Senate, Commission on Revenue Allocation, Office of the Attorney General and Controller of Budget) in omitting certain wards in Wajir County from the Equalisation Fund Appropriation Bill,2023 yet there was no public participation in the entire county;

b) What was the basis of allocation of funds under the Bill and the creation of fake wards (Ganyure and Wagalla) in Wajir County; and

c) Why was public participation not carried out in Wajir County and what was the basis of allocating funds in that County. The Appropriation Bill, 2023 mentioned Ganyure and Wagalla wards as beneficiaries do not exist in Wajir county.

In the Petitions, the Court ordered that pending the hearing and determination of the applications:

i. An order restraining the respondents from implementing the Commission on Revenue Allocation Second Marginalisation Policy and Criteria 2022/2023 for sharing revenue amongst marginalised areas;
ii. Conservatory orders issued restraining the Controller of Budget from authorising the withdrawal of Equalisation funds; and
iii. Conservatory orders issued restraining the National Treasury from disbursing the Equalisation funds.

This has delayed implementation of the Second Marginalisation Policy.

2. Tight fiscal space to allocate and appropriate all Equalisation Fund entitlement. The allocation to Equalisation Fund appropriated in the Equalisation Fund Appropriation Act 2023 was reduced to zero during the Supplementary budget II of 2023.

The Court order was vacated on 26th November, 2021 and this signaled commencement of implementation of the Second Marginalisation Policy.

As at 31st January, 2024, the Equalisation Fund Advisory Board received project proposals from 30 beneficiary counties: **Baringo, Busia, Bungoma, Elgeyo Marakwet, Homa Bay, Isiolo, Laikipia, Lamu, Kisumu, Kwale, Kilifi, Kitui, Kajiado, Machakos, Marsabit, Mandera, Meru, Migori, Nandi, Nakuru, Narok, Turkana, Trans Nzoia, Taita Taveta, Tharaka Nithi, Tana River, Samburu, Siaya, Wajir and West Pokot.**

Out of the **34** beneficiary Counties **4** counties: **Bomet, Garissa, Muranga and Kericho** are yet to submit their project proposals to the Equalisation Fund Advisory Board.

As at 31st January, 2024, the Equalisation Fund Advisory Board analysed, considered, and approved **644** projects from **14** Counties: **Baringo, Busia, Homa Bay, Laikipia, Kisumu, Meru, Nandi, Tharaka Nithi, Samburu, Marsabit, Mandera, Siaya, West Pokot, and Tana River.** The Board resolutions were communicated to the Counties to begin implementation of the projects.

Projects Proposals from 16 counties: **Bungoma, Elgeyo Marakwet, Isiolo, Kwale, Kilifi, Kitui, Kajiado, Lamu, Narok, Machakos, Migori, Nakuru, Turkana, Trans Nzoia, Taita Taveta and Wajir** have been analysed pending Board's consideration and approval.

Table 6: Analysis of County Project Proposals from 14 Counties Per Sector Priority

S/N	Sector	Number of Projects	Budgeted Amount	Percentage (%)
1.	Education	93	327,834,842	7.4
2.	Energy	54	370,693,796	8.4
3.	Health	120	924,170,798	21.0
4.	Water	155	1,466,088,614	33.3
5.	Roads	220	1,298,410,386	29.5
6.	Others	2	21,367,000	0.5
	Total	644	4,408,565,436	100.0

Regulation 30(3) of the PFM (Equalisation Fund Administration) Regulations 2021 provides that the authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund account in accordance with the authorization and instructions given. Further Regulation 30(4) provides that All withdrawals made from the Fund under sub-regulation (1) shall be deposited into the respective spending counties account.

Therefore, the disbursements of the funds to the respective marginalized Counties for implementation of the Second Marginalisation Policy will commence upon implementation of the projects and guidelines issued by the Controller of Budget.

Your continued support and co-operation will be highly appreciated.

SAMSON P. WANGUSI, OGW
PRINCIPAL ADMINISTRATIVE SECRETARY
For: THE PRINCIPAL SECRETARY / NATIONAL TREASURY

Annex 22

Submissions by the Ag. Chief Executive Officer on The Implementation Status of The Public Investments Committee's (PIC) 21st and 23rd Reports on Consideration of The Auditor-General's Report on The Financial Statements of State Corporations:Coast Water Works Development Agency

Ref: CWSB/FIN/38/VOL.58/23

Date: 7th February 2024

Office of The Clerk
The National Assembly
P. O. Box 41842-00100
Main Parliament Buildings
NAIROBI

Dear Sir,

RE: INSPECTION VISIT BY THE COMMITTEE ON IMPLEMENTATION TO COAST WATER WORKS DEVELOPMENT AGENCY PROJECTS

Reference is made to your letter Ref: NA/AA&GPC/COI/2024(101) on the inspection visit by the Committee on Implementation scheduled to take place on Friday, 9th February 2024.

Find herewith enclosed the status report of implementation together with support evidence of PIC reports for FY2012/2013 - 2014/2015 and FY2015/16 - 2017/18 Audited Financial Statements.

The report is submitted in twenty-five (25) hard copies as requested.

Yours Faithfully,

Eng Martin Tsuma
Ag.CHIEF EXECUTIVE OFFICER

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REPORT TO COMMITTEE OF IMPLEMENTATION OF PIC REPORTS FOR 2012/2013 - 2014/2015

COAST WATER WORKS DEVELOPMENT AGENCY

REPORT TO COMMITTEE OF IMPLEMENTATION OF PIC REPORTS FOR 2012/2013 - 2014/2015 AUDITED FINANCIAL STATEMENTS

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
1.	**PROPERTY, PLANT & EQUIPMENT –**	Committee Recommendation The Committee recommends that: (i) The Ministry of Water and Irrigation ensures that the transfer of assets from the National Water Conservation and Pipeline Corporation to CWSB and other water service boards across the country is finalized within six (6) months of adoption of this Report.	(i)No transfer of Assets has been done to date. However, the Agency has undertaken the following steps to safeguard the assets. • Conducting searches and registering restrictions **(Letters to the Ministry of Lands and Searches)** • Instituting Court matters through the EACC **(Filed Pleadings)** • The Agency has lodged complaints to the National Land Commission (NLC) and the EACC on behalf of the Ministry of Water and National Water. Additionally, the Agency has placed restrictions on these	See attached Annex 1: Letter to the Ministry of Lands See attached Annex 2: Court Pleadings See attached Annex 3: Complaint Letter to EACC and NLC	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
			lands while investigation by EACC is ongoing **(Samples letters to EACC & NLC)**		
		(ii) The Ministry of Water and Irrigation engages the Ministry of Lands and the National Land Commission with the aim of acquiring ownership documents. of the said parcels of land;	(ii) Initiated a consultative meeting between the Ministry of Lands, NLC, EACC, and National to create a road map on reclaiming the grabbed and asset and liability transfer.	See attached Annex 4: Minutes of Meeting	
			The Agency has in place a grounds report that provides individual details of the property within our jurisdiction **(Extract of Ground Report).**	See attached Annex 5: Extract of Ground Report	
		(iii) The CEO ensures that the Board maintains an asset register as a financial prudence measure.	(iii) Further the Agency has an Asset register in place as per the prescribed format of the National Treasury and being submitted on quarterly basis to NT.	See attached Annex 6: Extract of Asset Register.	
		(iv) The CEO seeks a court order for immediate eviction of the illegal occupants from its parcels	(iv) Evictions were not possible since some of the properties had illegal proprietorship with ownership documents **(Copies**	See attached Annex 7: Copies of Searches	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
		of land and Shanzu Staff Housing and puts a caveat on its properties.	**of searches).** The matters are being handled by EACC, which orders being sought will invoke the evictions.		
2.	**TRADE AND OTHER RECEIVABLES: FY 2012/2013-2014/2015 ACCOUNTS**	The Committee recommends that: - (i) The CEO ensures that the Board regularly reconciles payables and receivables between CWSB and the six water service providers it serves and ensures that all reconciliation and outstanding debts are well documented. (ii) The Board reviews the policies in place governing management of debts in the CWSB to establish areas of weaknesses and recommend prudent debt management system, debt restructuring and write-off if any under the Limitation Act. (iii) The County Governments of Mombasa, Kilifi, Kwale, Taita Taveta and Lamu under whose jurisdiction the indebted WSPs fall come up with measures to bail out the companies and fully settle the	(i) CEO constituted a team to undertake both the trade and other receivables from WSP's, who regularly meet and undertake this exercise **(Signed report).** (ii)Reviews of the policies will be completed by June 30, 2024. (iii)Several meetings have been done between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency but	See attached Annex 8: Signed Reconciliation Report-Extract See attached Annex 9: Invitation letters to Directors.	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
		debts owed to CWSB within six (6) months of adoption of this Report. (iv) The parent Ministry of Water and Irrigation intervenes and ensures that the County governments settle the debts owed by their respective WSPs. (v) The CEO ensures that the outstanding Imprest owed by ex-staff members are fully recovered from their terminal dues and further enforce the Board's policy on surrender of Imprest by staff in addition to section 92 of the Public Finance Management Act Regulations of 2015 which allows surcharging of officers for any imprest held beyond the stipulated seven (7) days after return to the work station.	no tangible results have been achieved. (iv)Yes Reconciliatory meeting are constantly held to address this issue. This is pending. The Ministry will be notified by Monday, February 12 2024 to take up the matter. (v)Recovery for Imprest by ex-staff not recovered as final dues have not been claimed. The concerned staff passed on and the family is yet to claim. Management has enforced the Board's policy on surrender of imprest by staff within the stipulated time.		
3.	**TRADE AND OTHER PAYABLES: FY 2012/2013 ACCOUNTS**	The Committee recommends that: - (i) The Board reviews its water tariffs charged on WSPs to enhance its revenue and enforce	(i) New water tariff has been Gazetted and is effective from November 2023 with a loan	See attached Annex 10: Gazetted Tariff	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
		debt collection measures to obtain revenue to enable it meet its financial obligations and cover for losses. (ii) The CEO ensures that the Board maintains its operational costs below its revenue.	repayment component. Once implemented will set aside the component of loan repayment. (ii) This has been complied and the agency ensures its operational costs are below the revenues generated. Additionally, the Agency is in the process of implementing an Alternative Energy source for Baricho and Tiwi Bulk water systems to reduce the over reliance on expensive power		
4.	**TRADE AND OTHER PAYABLES: FY 2012/2013 ACCOUNTS**	The Committee recommends that the CEO ensures that the Board undertakes reconciliation of its accounts regularly and further avails all the documents to the Auditor- General for verification during the audit process.	This was well noted and complied with accordingly. Reconciliations will be done quarterly, and reports will be submitted to the Auditor General annually for Audit		
5.	**WORLD BANK LOAN: FY 2013/2014 & 2014/2015 ACCOUNTS**	The Committee recommends that: - (i) The Board requests the Water Service Regulatory Authority (WASREB) to increase water tariffs so as to factor in a loan repayment component in the new proposed water tariffs.	(i) New water tariff has been Gazetted and is effective from November 1, 2023, with a loan repayment component. The WSPs and the Agency will deposit money in a designated loan repayment account.		

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
		(ii) The CEO CSWB requests the National Treasury to negotiate for rescheduling of the loan repayment period as the Board explores alternative sources of revenue to repay the loan.	(ii) The Agency is undertaking reconciliation with the National Treasury on the loan balances and the actual position will be reported once the exercise is completed and further negotiate for rescheduling of loan repayment.	See attached Annex 11: Letter from the National Treasury	
6.	**OTHER MATTER - 2013/2014 FINANCIAL YEAR ACCOUNTS**	The Committee recommends that the CEO ensures that the Board complies with the International Public Sector Accounting Standards in preparing its financial statements.	The observation was noted and the Agency has applied the Format prescribed by the Public Sector Accounting Standards Board on the Presentation of Financial Statements in the subsequent financial years.		
7.	**THE BOARD EXPENSES: FY 2014/2015 ACCOUNTS**	The Committee recommends that: - (i) The CEO seeks post-facto approval of KES 5,094,049 from the National Treasury for the over-expenditure in FY 2014/2015.	(i) The Agency is yet to receive concurrence from the National treasury on the Approval we will step up the follow up so that the matter can be closed by end of the Financial Year		

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
		(ii) The CEO ensures that the Board complies with the Section 10 of the State Corporations Act and the Mwongozo Code of Governance for State Corporations on remuneration of Board's Chairpersons and Directors. (iii) The CEO ensures that Board Chairman refunds the sitting allowances amounting to KES 99,790 for his failure to attend the training.	(ii) The Agency do comply with Section 10 of the state corporation and the Mwongozo code of Governance in handling remuneration for the chairperson and the directors. (iii) The chairman is yet to refund the funds though he was notified accordingly. Further follow up will be done to ensure the matter is closed by end of the Financial Year.		
8.	**LOCAL TRAVEL AND ACCOMMODATION: FY 2014/2015 ACCOUNTS**	The Committee recommends that the CEO avails all documents to the Auditor-General for verification during the audit process.	This was well noted and complied with accordingly in all subsequent years.		
9.	**OTHER MATTER: FY 2014/2015**	The Committee recommends that the Water Services Regulatory Board provides a justification for exemption of Tana River County from payment of water services provided by the Coast Water Services Board. WASREB should also provide a time frame for which the county is exempted from such payments.	The Agency bills WSPs for water supplied to cover the operational costs of water systems. The Agency has not been operating and maintaining the water systems in some counties, including Tana River County. Tana River County was and is overseeing the operations and maintenance of all water systems. For this	See attached Annex 12: License Certificate and Letter from WASREB on payment of Lease Fees.	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
			reason, the Agency cannot charge water service charge. The Agency used to charge only Administrative/Lease fees up to 2018 but this was stopped after the enactment of the Water Act 2016	See attached Annex 13: An Extract from the Water Act 2016	

REPORT TO COMMITTEE OF IMPLEMENTATION OF PIC REPORTS FOR 2015/2016 - 2017/2018

COAST WATER WORKS DEVELOPMENT AGENCY
REPORT TO COMMITTEE OF IMPLEMENTATION OF PIC REPORTS FOR FYS 2015/16 TO 2017/18 AUDITED FINANCIAL STATEMENTS

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
1.	**OTHER MATTER PROPERTY PLANT & EQUIPMENT (FY 2015/16)**	The Committee recommends that - (i) Management should follow up the matter with the National Land Commission to secure titles for the land within three months of adoption of this report. (ii) The Committee on Implementation should follow up the matter pursuant to its mandate	(i) The Agency has lodged complaints to the National Land Commission (NLC) and the EACC on behalf of the Ministry of Water and National Water. Additionally, the Agency has placed restrictions on this lands while investigation by EACC are ongoing. (ii) The committee is also in place following up with NLC	See Attached Annex 3: Complaint Letter to EACC and NLC	
2.	**TRADE AND OTHER RECEIVABLES FY 2015/16 TO FY 2017/18**	The Committee recommends that - (i) The Board should sue Counties which undertook to clear their long outstanding water bills but had failed to do so.	(i) Several meetings were done between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency. (ii) WSP's do pay partly their water bills to KPLC and at the	See Attached Annex 9: Invitation letters to Directors.	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
		(ii) The presidential directive on clearance of all pending bills should be implemented (iii) Management should seek write off for imprest held by deceased staff after ascertaining that it cannot be recovered from their estate.	same time remit partly to CWWDA. Follow ups are also done by the revenue collection team of CWWDA. (iii) Recovery not yet done as family is yet to claim final dues. Management endeavors to comply to recover full un-surrendered imprest within the stipulated time as stated in the PFMA.		
3.	**TRADE & OTHER PAYABLES FY 2015/16 TO FY 2016/17**	The authority should expeditiously reconcile the audit fees and settle the matter	This matter was resolved.	See Attached Annex 14: Statement from Audit Office.	

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
4.	**WORLD BANK LOAN FY 2015/16 TO FY 2017/18**	The Committee observed that - i) The Board should disconnect water to entities that were not paying their water bills as the lack of revenue was impacting the Board's ability to meet its financial obligations. ii) All the counties that owe CWSB should pay all the pending pills as per the presidential directive and treasury circular	(i) Several meetings were done between the governors, and the board to come up with ways for the WSP's to settle their bills with the Agency. Reconciliations have been two times in FY 2012 and FY 2023 (ii) WSP's do pay partly their water bills to KPLC and at the same time remit partly to CWWDA. Follow ups are also done by the revenue collection team of CWWDA. The current board and management have constituted a team to follow up on the same and have managed to meet with all the Governors.	See attached Annex 9: Invitation letters to Directors. See attached Annex 8: Signed Reconciliation Report-Extract	
5.	**BOARD EXPENSES FY 2015/16 TO FY 2016/17**	The then board of CWSB should be reprimanded for over expenditure without approval from the National Treasury pursuant to Section 12 of the State Corporations Act	We will confirm with National Treasury on the status of the approval		
6.	**OTHER MATTER FY 2015/16**	The Board should desist from having staff acting for more than 6 months.	This was well noted and complied with accordingly.		

	SUBJECT	COMMITTEE RECOMMENDATION	MANAGEMENT RESPONSES AND STATUS	REFERENCES/ &ANNEXES	
7.	**OTHER MATTER FY 2016/17**	The explanation given was satisfactory and the query resolved.	This was well noted and complied with accordingly	-	
8.	**FINANCE COSTS FY 2017/18**	The board should use an amortization schedule provided by treasury and adjust its books accordingly.	This was well noted and complied with accordingly in subsequent Financial statements .		

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE COMMITTEE ON IMPLEMENTATION IN RESPECT TO THE STATUS OF IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE 21ST AND 23RD REPORTS OF THE PUBLIC INVESTMENT COMMITTEE ON AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS

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Presented to the Committee on Implementation
Friday, 9th February, 2024
Mombasa

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REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE COMMITTEE ON IMPLEMENTATION IN RESPECT TO THE STATUS OF IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE 21ST AND 23RD REPORTS OF THE PUBLIC INVESTMENT COMMITTEE ON AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS

Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act, 2011, pursuant to the requirement under Article 79 of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption.
- The Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act, 2003, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Bribery Act, 2016 among others.
- This is a report to the **Committee on Implementation** of the National Assembly in relation to the status of implementation of recommendations contained in the **21st and 23rd Reports of the Public Investment Committee on audited financial statements of State Corporations.**
- Specifically, the Committee seeks the following information:
    i. ***How is the Board currently addressing challenges related to the verification of inherited assets, especially those from the Ministry of Water and Irrigation and the National Water Conservation and Pipeline Corporation, and what steps are being taken to mitigate issues such as encroachment by private developers?***
- The report is submitted pursuant to written requests vide letter **Ref: NA/AA&GPC/COI/2024(003)** dated **5th February 2024**.

RECOVERY SUITS FOR VARIOUS PROPERTIES BELONGING TO COAST WATER WORKS DEVELOPMENT AGENCY

- On 9th September, 2021, Coast Water Works Development Agency (CWWDA) lodged a complaint at the Ethics and Anti- Corruption Commission. The report alleged that there

has been illegal alienation of public land belonging to (CWWDA) and issuance of Titles No: MN/1/10401 and MN/1/9647 to private entities. The parcels of land are within Coast Water Works Development Agency's Shanzu Staff Quarters.

- The Commission commenced investigations on the complaint and established that Coast Water Works Development Agency's Shanzu Staff quarters was well reserved in the Development Plan for the entire Shanzu area, in the Development plan number CT/12/25/88/1 dated 15th January 1988.

- The complaints resulted into **15 investigation files** out which **3 suits** have been filed in Court for recovery of properties worth approximately **Kshs. 365 Million** while **12 cases** are under active investigation at various stages. The particulars of each case and status thereof is as follows:

A. Cases pending before Court

i. EACC/MSA/AT/INQ/25/2023

- Inquiry into allegation of irregular alienation of public land MN/I/10401 entities. The said land is situated in Shanzu and belongs to Kenya National Water Harvesting and Storage Authority-a government agency to whom the land is vested upon.

The land is valued at **Kshs. 300,000,000.00**

Status: Recovery suit **E023/2023** filed for asset recovery of land MN/I/10401 at Environment and Land Court Mombasa ***(Pending hearing).***

ii. EACC/MSA/AT/INQ/13/2023

- Inquiry into allegation of irregular alienation of public land MN/I/9648. The said land is situated in Shanzu and belongs to Kenya National Water Harvesting and Storage Authority-a government agency to whom the land is vested upon.

The land is valued at **Kshs. 30,000,000.00**

Status: ELC LC 39/2023- Suit for asset recovery of MN/I/9648 at Environment and Land Court Mombasa ***(Pending hearing).***

iii. EACC/MSA/AT/INQ/12/2023

- Inquiry into allegation of irregular alienation of public land MN/I/9647. The said land is situated in Shanzu and belongs to Kenya National Water Harvesting and Storage Authority-a government agency to whom the land is vested upon

The land is valued at **Kshs. 35,000,000.00**

Status: ELC LC 40/2023 - Suit for asset recovery of MN/I/9647 at Environment and Land Court Mombasa ***(Pending hearing).***

- In the above cases, the Commission is seeking the following orders from Court;

  a) A declaration that the letters of allotment for the said properties are illegal, null and void *ab initio*;
  b) An order for cancelation and revocation of the Letters of Allotment;
  c) A declaration that the excision and creation of the suit properties were illegal, null and *void ab initio;*
  d) A declaration that the issuance of grant was incapable of vesting an interest in land or proper title to land to the private entities;
  e) An order for compensation for loss of use of the suit property; among others

B. Cases under Investigation

- The Commission is currently undertaking investigation relating to **12 properties** belonging to Coast Water worth **approximately Kshs. 576 Million** broken down as follows:

  i. MN/I/16701, MN/I/16702 and MN/I/16703 situated in Nyali;

  ii. MN/I/9620, MN/I/9621, MN/I/9623 in Shanzu;

  iii. LR.NO. MSA/BLOCK/XXV/121 and MSA/BLOCK/XXX/121;

  iv. MSA/BLOCK/XXV169 occupied by Coast Car Park;

  v. MSA/BLOCK/XXV122 which is registered under Nakumatt Investments Limited;

  vi. MN/I/10121 (CR. 32130) in Shanzu.

Dated this **8th** day of **February, 2024.**



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Twalib Mbarak, MGH, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)

Annex 24

Submissions by Dr. Belio R. Kipsang, CBS - Principal Secretary – State Dept. for Basic Education on the status of implementation on the resolutions of the House on motion sponsored by Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being

RESPONSE:

Honourable Chairperson and Members,

1. We note that the august Committee is considering a motion that was sponsored by the Member for Kakamega County, the Hon. Elsie Muhanda, MP, that the Ministry of Education develops a school feeding policy to cover basic education for pupils and sustains the programme in order to ensure that children are maintained in schools for effective learning and improve their well-being. The motion was approved by the House on 2nd November, 2022. The Committee now requires the Ministry to apprise it of the implementation status of the said motion.

Background to School Feeding

2. The School Meals Programme in Kenya started in 1979, after the country was hit by a severe drought that affected 80% of the population and resulted in school dropouts. The Programme was undertaken by the Government of Kenya in partnership with the World Food Programme (WFP), starting with 240,000 school children.

3. By the 1990s, the number of children in the School Meals Programme had steadily expanded, with the Government committing to meeting 50% of the cost of land transport, storage and handling of the food commodities. Following the introduction of free and compulsory primary education in 2003, the number of learners joining primary school expanded exponentially. In 2018, the programme was fully taken over by the Government of Kenya (from the WFP).

4. The programme has expanded gradually after the transition, to cover a total of 2.6 million learners in 8,185 schools across the country, as of 2024. This covers 26 ASAL counties and informal urban settlements. In 11 of those counties, that is, **Mandera, Tana River, Garissa, Wajir, Marsabit, Isiolo, Samburu, Baringo, West Pokot, Lamu and Turkana**, NACONEK provides in-kind support by providing food to the schools. In the other 15 counties, NACONEK provides cash transfers to selected public schools. These counties are **Baringo, Elgeyo Marakwet, Embu, Nyeri, Kajiado, Narok, Kilifi, Kwale, Machakos, Kitui, Makueni, Tharaka Nithi, Laikipia, Nairobi, Taita Taveta**. The programme also covers all special needs education schools and refugee camp-based schools in Kenya.

5. Over time, the school meals programme has demonstrated a significant impact on school attendance, retention, transition and completion rates in the Arid and Semi-Arid Lands, Pockets of Poverty Areas and Urban Informal Settlements of Kenya. Ensuring that children are well fed, healthy and able to learn is essential to the effectiveness of an education system.

6. Recognizing the critical role of school feeding as both a safety net and protective measure for ensuring vulnerable children can have seamless access to basic education, the Government increased the national budget for this programme from **Ksh. 1.96 Billion** in the FY 2022/2023 to **Ksh. 5.4 Billion** in the FY 2023/2024. However, in the FY 2024/2025, the budget has been reduced to **Ksh. 3.0 Billion.**

7. As a member of the Global School Meals Coalition, Kenya has committed to achieve universal school feeding by 2030, by increasing the current coverage from 2.6 million to 10 million learners. The Ministry implements the School Meals Programme through the National Council for Nomadic Education in Kenya (NACONEK), which is established under the Basic Education Act, 2013.

Honourable Chairperson and Members,

8. Regarding the status of policy development, the Ministry already has a draft Policy document in place. The draft is titled the "Kenya School Meals Policy." The draft has been developed through a collaborative approach involving the Ministry of Education, the United Nations World Food Programme, NACONEK, the Rockefeller Foundation and the Ministries of Health; Agriculture, Livestock and Fisheries; Water, Sanitation and Irrigation. **A copy of the draft Policy is provided herewith**.

9. The overall goal of the Policy is to provide a framework for implementation and management of the school meals programme in Kenya. The Policy provides for the establishment of the programme based on clear goals, strategic objectives and principles.

10. The Policy provides for key thematic areas. These include access, equity and inclusion, through which the Government commits to provide diversified and healthy school meals to all learners, including those with special educational needs. The second thematic area is food safety and quality, under which the Government commits to ensure enhanced food safety and quality in the school meals programme. The third thematic area is nutrition and health. Under this, the Government commits to provide safe, diverse and nutritious meals as part of a comprehensive package of school health and nutrition services.

11. The fourth thematic area is on sourcing of food commodities. Under this, the policy commitment is to promote provision of accessible and affordable locally available food commodities. The other thematic area is on partnerships, collaborations and linkages. The Government commits to promote a coordinated approach through partnerships, collaborations and linkages.

12. The draft Policy document also provides for its implementation. It has provisions on resource mobilisation, to ensure the sustainability of the

programme, and for monitoring, evaluation and research. The draft document also outlines the institutional arrangement for the implementation of the Policy. The Policy will be implemented through existing Ministry of Education structures at the national and county levels.

13. **In line with the requirements of the Constitution, the draft Policy will be subjected to stakeholder validation and public participation, prior to its publication and adoption. The stakeholder validation and public participation are scheduled for July, 2024.**

14. Upon the stakeholder validation, the views and comments obtained through the process will be incorporated into the draft Policy. The revised draft Policy document will then be presented to the Cabinet for approval, after which it will be formally published and adopted. **The Ministry targets to have the Policy in place by September, 2024.**

We trust that these responses adequately address the matter at hand. We remain available to provide any further information that the Committee may require.

Dr. Ezekiel Machogu, EGH
CABINET SECRETARY

Annex 25

Submissions by Hon. Aisha Jumwa Katana, EGH the Cabinet Secretary, Ministry of Gender, Culture, the Arts & Heritage on the Implementation status regarding a motion sponsored by Member for Kamukunji Constituency, the Hon. Yusuf Hadsan, MP, urging the Government to establish the National Swahili Council in Kenya and launch specific strategies, methods, and policies needed to promote and develop Kiswahili in the Country.

JUMHURI YA KENYA
WIZARA YA JINSIA, UTAMADUNI, SANAA NA TURATHI ZA KITAIFA

HATUA ZILIZOPIGWA KUHUSIANA NA KUTEKELEZA HOJA ILIYOPITISHWA KUHUSIANA NA KUUNDWA KWA BARAZA KUU LA KISWAHILI LA KITAIFA

Kiswahili kimebainishwa katika katiba ya Kenya kama lugha ya kipekee ya kitaifa na kama mojawapo ya lugha rasmi pamoja na Kingereza katika nchi.

Katika kutambua na kutekeleza vipengee vinavyoipatia lugha ya Kiswahili umuhimu katika nchi ya Kenya, Jumuia ya Afrika Mashariki na Bara La Afrika kwa jumla (kifungu 7, mkataba wa Jumuia ya Afrika Mashariki na Umoja wa Nchi za Afrika ,AU), Bunge la Kitaifa lilipitisha hoja mnamo Jumatano, Novemba 2, 2022 kuihimiza serikali kuu kupitia wizara ya Michezo, Utamaduni na Turathi kuanzisha rasmi Baraza La Kitaifa La Kiswahili na kizindua mikakati , mbinu na sera makhsusi zinazohitajika kukuza na kuendeleza lugha ya Kiswahili na kushirikiana na vyombo vingine vya kibinafsi vinayohusika na uboreshaji wa lugha ya Kiswahili.

Juhudi za kuunda Baraza La Kitaifa la Kiswahili zilianza mwaka wa 2018. Katibu Mkuu wa Wizara inayohusika na maswala ya utamaduni aliteua kamati ya ufundi (Technical Committee) kutoka wizara mbalimbali na vyuo vikuu ili kuanzisha shughuli ya kuunda hili Baraza. Kamati iliendeleza ukusanyaji wa maoni kutoka kwa majimbo manane hapa nchini kuambatana na katiba ya Kenya. Matokeo ilikuwa rasimu (draft) **Mswada wa Sheria Ya Baraza La Kiswahili La Kenya** (***Draft National Kiswahili Council Bill 2023).***

Mnamo tarehe 21 Mechi 2023, Baraza La Mawaziri, kupitia kwa kumbukumbu (memo), CAB. MEMO NO. (22)88 liliidhinisha kuundwa kwa **Baraza La Kiswahili La Taifa La Kenya** (***National Kiswahili Council of Kenya).***

Mnamo tarehe 23 November 2023, huu mswada uliwasilishwa kwa Mkuu Wa Sheria ili kukaguliwa vilivyo.

Tarehe 18, Januari 2024, Ofisi ya Mkuu Wa Sheria baada ya kuikagua na kuirekebisha, aliwasilisha kwa wizara ***National Kiswahili Council Bill 2024'*** kwa makubaliano kabla ya kukamilishwa. Mswada ulikuwa umefanyiwa marekebisho kulingana na ***Mwongozo*** uliokuwa umetolewa ambao ulieleza kuwa kamati iwe na watu tisa (9). Mkuu Wa Sheria pia alipendekeza mswada uliorekebishwa kufanyiwa utafsiri wa lugha ya Kiswahili.

Kuambatana na kauli hii Idara ya Utamaduni, Sanaa na Turathi imetambua mtaalam wa Kiswahili kwa minajili ya kutafsiri mswada huu, na tafsiri hii sasa umewasilishwa kwa Mkuu wa Sheria ili kukamilishwa kupitia barua Ref.No.SDCH.7/21(C) Vol.I/43 ya tarehe 3 Juni, 2024.

Pia, na kuambatana na himizo katika ***HOJA ILIYOPITISHWA*** la kukikuza na kukiendeleza Kiswahili, idara ya Utamaduni, Sanaa na Turathi inazingatia na kuipatia kipaumbele lugha ya Kiswahili na imeandaa mikakati na mbinu mwafaka. Kati ya hizi mikakati ni pamoja na Kupitisha **Sera ya Lugha za Kenya** ilmaarufu ***Languages of Kenya policy*** ambayo imeitambua lugha ya Kiswahili kama lugha inayoweza kuunganisha nchi na wakenya kwa jumla na lugha ambayo italeta maendeleo na ukuaji wa kibiashara, kitecknologia, kielimu na hata kukuza tamaduni mbali mbali za wakenya kwa kuleta uiano na utangamano baina ya jamii za nchi. Pia warsha za kuhamazisha wakenya juu ya uenezaji na ukuaji wa lugha ya Kiswahili zimefanyika katika sehemu mbali mbali hapa nchini. Lengo la warsha hizi ni kuhakisha matumizi ya Kiswahili yana shamiri na kuongezeka katika nchi ya Kenya na pia kutambua changamoto zinazo kumba ukuaji na usambaaji wa lugha hii ya kitaifa.

Idara pia inaendelea kushirikiana na vyama vinavyo shughulika na maswala ya Kiswahili kama vile Chama Cha Kiswahili Cha Taifa (CHAKITA). Kwa mfano mnamo Machi 7 na 8 2024, idara ilihudhuria ***Kongamano la 24 la Kimataifa la CHAKITA*** katika ukumbi wa ***Chuo Kikuu cha Sayansi na Teknologia cha Masinde Muliro.***

Kiswahili sasa kimetambuliwa ulimwenguni kote, na Shirika La Kimataifa La Elimu, Sayansi Na Utamaduni (UNESCO) limeteua Tarehe 7 mwezi wa 7 kila mwaka kama siku ya kusherehekea lugha ya Kiswahili. Sherehe makhususi zimefanyika mara mbili sasa katika nchi za Tanzania (2022) na Uganda (2023) na mwaka huu zinaandaliwa hapa nchini Kenya. Idara ya Utamaduni, Sanaa na Turathi, ikishirikiana na KAKAMA (Kamisheni ya Kiswahili ya Afrika Mashariki) na washikadau wengine wanendeleza mikutano ya kuandaa sherehe hizi.

Kutamatisha ningechukua fursa hii kuialika kamati hii kushiriki na kuhudhuria tamasha hizi za kusherehekea Siku Ya Kiswahili duniani zitakazofanyika katika mji wa Mombasa, tarehe saba mwezi wa saba mwaka huu wa 2024. Kilele cha sherehe hizi kitakuwa Usiku wa Mswahili (Swahili night) kuonyesha mila na tamaduni za Waswahili zikiwemo vyakula na muziki na nyimbo.

HON. AISHA JUMWA KATANA, EGH
WAZIRI

Annex 26

Submissions by Mr. Paul Mwangemi, Secretary – Civil Registration Services, representing the Cabinet Secretary - Ministry of Interior and National Administration on the implementation status of the recommendations of a Motion, sponsored by the Member for Maragwa Constituency, the Hon. Mary Wamaua, MP, urging the Government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children.

OFFICE OF THE PRESIDENT
MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION
STATE DEPARTMENT FOR IMMIGRATION & CITIZEN SERVICES

BRIEF ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair, the Committee would wish to be apprised on the implementation status of a motion that was sponsored by the **Member for Maragwa Constituency, the Hon. Mary Wamaua, MP,** "*urging the government to establish database centres in all Civil Registration Centres for purposes of storing all the necessary information required for issuance of birth certificates to all children*," which was approved by the House on **Thursday, May 3, 2024.**

I wish to state as follows:

The status of implementation of the aforementioned motion on the establishment of database centres in all Civil Registration Centres in the country is as below:

Honourable Chair, the Civil Registration Services are currently operational in One Hundred and Fifty-Nine (159) Sub-Counties against a possible Four Hundred and Six (406) Sub-Counties countrywide. This is an increase of Thirty-Four (34) Sub-County Offices since 2021.

The Department has put up a 3-year plan to ensure that all Two Hundred and Ninety (290) Constituencies have operational offices. This means that the Department will strive to operationalize a total of One Hundred and Thirty-One (131) offices in the remaining Constituencies which do not have a Civil Registration Office. This will bring services closer to the members of the public.

Honourable Chair, in all the operational Sub-Counties, the Department has established databases although, some are manual in nature. The Department has therefore embarked on the process of digitizing and automating its processes to ensure efficient storage, application and processing of certificates.

The Civil Registration Department has implemented a web-based system to allow members of the public to be issued with a Unique Personal Identifier (UPI) (*Maisha Namba*) at birth. The system will subsequently allow members of the public to apply for certificates online, make payment through eCitizen and download their certificates. The UPI will also allow for integration of the Civil Registration database with other government databases to provide for efficient service delivery. The implementation of this system has, however, been challenged in court and the Department is looking forward to its implementation once it is cleared.

Thank you, Honourable Chair.

Amb. (Prof.) Julius K. Bitok
PRINCIPAL SECRETARY

Tuesday, June 4, 2024

Annex 27

Submissions by the Principal Secretary - State Department for Diaspora Affairs, the PS - Labour and Skills Development - Ministry of Labour & Social Protection and the Director General National Employment Authority on the Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from February 27 to March 3, 2019

MINISTRY OF LABOUR AND SOCIAL PROTECTION

STATE DEPARTMENT FOR LABOUR AND SKILL DEVELOPMENT

OFFICE OF THE PRINCIPAL SECRETARY

PRESENTATION TO THE COMMITTEE ON IMPLEMENTATION, NATIONAL ASSEMBLY OF KENYA

APRIL , 2024

Background & Introduction

The Departmental Committee on Labour and Social Welfare made a visit to Riyadh, Saudi Arabia from 27th February to 3rd March 2019 on a fact-finding mission on the welfare of Kenyan migrant workers. The Committee observed that the vast Kingdom of Saudi Arabia, which hosts over 11 million foreign workers presents a great potential for labour export from Kenya. The Committee further noted that although the number of Kenyan migrant workers (Approximately 55,000) is relatively low compared to the other countries, some of these workers have suffered various forms of culture shock due to the huge difference in the social economic set up in the two countries.

2.0 The Committee Recommendations.

Arising from the visit to Saudi Arabia, the Committee made five recommendations.

This report highlights the status of the implementation of the recommendations of the Committee.

Recommendation 1:

The Ministry of Labour and Social Protection and the National Employment Authority must ensure thorough vetting of Employment Agencies to ensure Kenyans travel to Saudi Arabia and other destinations through officially recognized channels. The immigration Department must be equally vigilant on movement of persons to these countries to ensure only Kenyans with Musaned (an automated system through which the Saudi Ministry of Labour Monitors compliance of employers of domestic workers with established employment practices) compliant employment contracts are permitted to travel.

3.0 Licensing and Certification System of Private Employment Agencies

The Inter-Ministerial Vetting Committee is established under section 54A of the Labour Institutions Act, 2007. The law requires every Employment Bureau or Agency to seek and obtain government approval prior to sending Kenyan Citizens for employment outside Kenya. The Committee is responsible for advising the Cabinet Secretary responsible for labour on matters related to vetting the application for registration made by employment bureaus and agencies. The Committee, with representation from key government agencies vets all the Private Employment Agencies in the country prior to their registration. The

Ministry of Labour and Social Protection chairs the Committee and it comprises of officers from: the Ministry responsible for Labour; Immigration; Internal Security- Interior, DCI, NIS and Kenya Police; Foreign Affairs; and the Office of the Attorney General.

In order to enhance the vetting process, the Committee has undertaken certain reforms:

3.1.1 Requirement to Appear in Person

The Ministry has reviewed the Terms of Reference and Operating Procedures for the Vetting Committee. The vetting process now requires anyone seeking to open/operate an Employment Agency or renew the license to appear in person for vetting. This is meant to ensure that only qualified employment agencies are licensed and that existing recruitment agencies have fulfilled the criteria set out in the laws and legal notice No.110 Labour Institutions (Private Employment Agencies) Regulations 2016 before their licenses are renewed. This requirement has enabled the Ministry to identify and root out rogue employment agencies including the ones run by foreigners using proxies. Further, all prospective employment agencies are now required to declare their collaborating agencies in the labour destination countries for improved monitoring of the agency's operations. In addition employment agencies are required to give proof of financial capability.

A total of five hundred and thirty-five (535) Private employment Agencies have active licence to date. Information on Private Employment Agencies can be verified via the website www.neaims.go.ke

A total number of twenty-one (21) recruitment agencies have been deregistered or denied registration due to various reasons.

3.1.2 Enhanced Monitoring of Activities of Recruitment Agencies

In order to ensure that private employment agencies adhere to the legal framework, a monitoring mechanism has been established. The mechanism involves increased frequency of physical snap inspections of the Private Employment Agencies' premises and their records as well as building the capacity of enforcement agencies, thus promoting effective responses against fraudulent recruitment practices.

Other Measures to regulate Private Employment Agencies

3.1.3 Oversight and Community Feedback Mechanism

The Ministry in collaboration with the International Organization for Migration (IOM) has established an Oversight Mechanism and a Community Feedback Mechanism to facilitate continuous monitoring of Private Employment Agencies. A distress reporting mechanism has been established through a Web Portal under NEAIMS and a Toll-Free Line 0800222223 to report Migrant workers distress cases as well as fraudulent activities by recruitment agencies. To ensure adequate awareness creation of the established mechanisms at the community level, 277 resource persons have been trained on the Oversight and Community Feedback Mechanism in the five pilot counties of Nairobi, Mombasa, Kilifi, Nandi and Busia.

3.14 Capacity Building of Private Employment Agencies on Ethical Recruitment

The Ministry with support from Internation Organization for Migration (IOM) is implementing a programme geared towards capacity building of Private Recruitment Agencies (PRAs) to enable adoption and adherence to the International Recruitment Integrity System (IRIS) standards. The IRIS standards relate to the entire recruitment process, from recruitment, deployment, employment and return/onward migration. A total of 162 Private Employment Agencies (PEAs) have been trained on introductory International Recruitment Integrity, 18 PEAs enrolled in the International Recruitment Integrity System (IRIS) capacity building programme and 4 PEAs audited for compliance with international standards. In addition, the Ministry has supported recruitment agencies to form five associations and Code of Conduct

3.1.5 Code of Conduct for Private Employment Agencies

The Ministry of Labour and Social Protection has supported recruitment agencies to form five (5) associations and develop a code of conduct. The Code of Conduct seeks to enhance self-regulation among the recruitment agencies. It aims to establish acceptable recruitment standards, uphold high standards of ethical and professional conduct, enhance integrity, professional and fair practice; maintain and uphold respect for human rights;

and enhance terms and conditions of employment for migrants. The Code of Conduct will be reviewed periodically to address any emerging issues.

3.1.6 Information on Recruitment Agencies

The list of registered recruitment agencies is available and accessible on the NEA website https://neaims.go.ke/ . The list includes registration status of employment agencies.

3.1.7 Use of Musaned & Clearance of Workers

Kenya embraced the MUSANED- an electronic platform developed by the Government of Saudi Arabia to facilitate recruitment of domestic workers in 2019. The system has enhanced transparency and protection of our migrant workers. Negotiations are ongoing to integrate the Musaned with other information system such as NEAIMS to enhance seamless flow and sharing of information. In addition, the scope of use of the Musaned system has been expanded to include other categories of workers.

Recommendation 2.

The Ministry of Labour and Social Protection and that of Foreign Affairs must continuously monitor the implementation of the Bilateral Labour Agreement to ensure the measures initiated to protect Kenyans working in Saudi Arabia are fully adhered to. The office of the Labour Attache must be strengthened and allocated adequate resources in order to fully monitor employment trends in the Kingdom.

4.0 Bilateral Labour Agreements (BLAs)

Bilateral Labour Agreements (BLAs) have emerged as important instrument in enhancing the protection or migrant workers. There are currently four (4) signed Bilateral Labour Agreement with Governments of Qatar (2012), United Arab Emirates (2018), Kingdom of Saudi Arabia (2017) and concluded and signed a Bilateral Labour Agreement (BLA) on 29th July, 2021 with the United Kingdom of Great Britain and Northern Ireland on recruitment of Health Care Worker. The BLAs with Kingdom of Saudi Arabia, State of Qatar and United Arab Emirates (UAE) have been reviewed to improve terms and conditions of service,

enhance protection of Kenyan Migrant Workers and increase the cadres of skilled and professional workers covered by these agreements.

The status of development of BLAs is summarized in the table below:

4.1 STATUS OF BILATERAL LABOUR AGREEMENTS (BLAs) AND MEMORANDUMS OF UNDERSTANDING (MOUs) ON EMPLOYMENT OF KENYAN MIGRANT WORKERS WITH KEY COUNTRIES OF DESTINATION

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
FOUR (4) SIGNED BILATERAL LABOUR AGREEMENTS		
1.	Bilateral Labour Agreement between the Government of the Republic of Kenya and. Government of the United Kingdom of Great Britain and the Northern Ireland for Collaboration on Health Care Workforce	• The BLA was signed in September, 2021 and Guidelines developed. The Guidelines have been cleared by the office of the Attorney General and forwarded to UK for consideration. • 280 Nurses have been employed in UK through the agreement. • A total of five (5) Private Employment Agencies have been identified and names submitted to UK National Health Services (NHS) for listing. • There is Need to create awareness among interested Kenyan Health Care workers on the UK National Health Services (NHS) requirements (language testing and the immigration process).
2.	Bilateral Labour Agreement between Government of Kenya and Government of Kingdom of Saudi Arabia on Recruitment of Domestic Workers	• The Agreement was **signed in May, 2017** covering recruitment of Domestic Workers. • The agreement has been reviewed and finalized in-cooperating counter proposals from both parties. The Kingdom of Saudi Arabia notified the Ministry of labour on its willingness to sign the reviewed agreement. The Ministry is awaiting the confirmation of the exact date for signing.
3.	Memorandum of Understanding on Labour Cooperation between the Republic of Kenya and the United Arab Emirates (UAE)	The MOU was **signed in April 2018** and is operational. • The Joint Implementation Committee held a virtual meeting on 31st October,2023. During the meeting, both parties affirmed their commitment to implement the MOU.

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
4.	Draft Bilateral Agreement between the Government of the Republic of Kenya and Government of the State of Qatar on Regulation and Employment of Kenyan migrant workers	• Initial Agreement was signed in 2012. The Agreement was to remain in force for a period of three (3) years renewable for a similar period. • The first (initial) Agreement has since expired and the Ministry submitted a revised draft BLA to the State of Qatar for consideration. A meeting was held in August, 2023 with the Chargé d'Affaires of the Embassy of Qatar in Kenya where it was agreed that a negotiating team be constituted and propose dates for the negotiation for confirmation by the Qataris.
	SEVEN (7) NEW DRAFT BILATERAL LABOUR AGREEMENTS - NEGOTIATIONS COMMENCED	
5.	Agreement between the Republic of Kenya and the Federal Republic of Germany on employment of Kenyan Workers. ***(Proposed BLA name: Agreement on a comprehensive migration and mobility partnership)***	• A taskforce drawing membership from the two countries was launched on the 13th of February, 2024 to commence negotiations during the official engagements between the Cabinet Secretary, Ministry of Labour and Social Protection and the Commissioner for Migration, for the Federal Republic of Germany. • Germany officially submitted their counter proposal in response to the draft agreement submitted by Kenya. Their counter proposal is an agreement on a comprehensive migration and mobility partnership. The agreement seeks to address the whole cycle of migration including a return and Readmission framework • The 1st round of official negotiations took place in Berlin, Germany from 5th- 7th, March 2024. The Kenyan delegation was led by the Principal Secretary for Labour and Skills Development while the German Delegation was led by the Commissioner for Migration, The Federal Republic of Germany. • Officials from various agencies in both governments deliberated on the counter

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
		proposal from the German Government. Due to the complexity and the sensitivity of issues that the agreement seeks to address, the 2nd round of technical negotiations have been scheduled for Nairobi in May, 2024.The second round seeks to look into areas that both governments have requested for more time to allow for further consultations. • The Bilateral Agreement is due for signing in mid-2024. • The targeted group are students and apprentices, and skilled workers
6.	Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Sultanate of Oman on Regulation of Employment.	• An agreed negotiated Draft MOU between the two countries has been finalized, and forwarded to the heads of the Ministries in charge of Labour in the respective countries for approval and signing. • The Government of Kenya and the Sultanate of Oman held two (2) days of bilateral meetings on the 7th and 8th June,2023 and concluded negotiations on the draft MOUs. • The final BLA is awaiting signing.
7.	MOU between the Government of the Republic of Kenya and the Government of the Kingdom of Bahrain on Regulation of Employment of Kenyan workers	• MOU approved by Office of the Attorney General and the National Treasury. The MOU was forwarded to and comments received from the Kenyan Embassy in Kuwait • The MOU has been revised to incorporate comments received from the Kingdom of Bahrain and was re-submitted to the Kingdom of Bahrain for further consideration
8.	Memorandum of Understanding between the Government of Kenya and the United Republic of Tanzania on labour matters	• A draft BLA was prepared and submitted to MFA on 15th December, 2022 for onward submission to the United Republic of Tanzania. • The draft MOU was discussed during the high-level Bilateral forum between the Government of Kenya and Republic of

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
		Tanzania held in April,2023 and is awaiting finalization.
9.	Bilateral Labour Agreement between the Government of the Republic of Kenya and the Government of the Republic of Austria on Recruitment and Employment	• A draft BLA has been prepared and was submitted to MFA for onward submission to the Republic of Austria • The Ministry held a consultative discussions with the Director General for Labour in Austria and agreed to include Labour Clauses in the Economic Agreement with Kenya. • Even though the process of negotiations is still on-going, the labour migration has started taking place as Austrian employment agencies are in collaboration with the Private Recruitment Agencies in Kenya. • There is also an MOU between Austria and Mount University of Kenya in sourcing for 40 nurses every year from Kenya to provide their services and skills in the health industry for Austria.
10.	Cooperation between the Government of Canada and the Republic of Kenya.	• The Ministry submitted a Draft BLA to the Government of Canada and was advised by the Canadian High Commission officials to engage directly with the Government of the provinces of Manitoba, Saskatchewan and Alberta as labour migration issues are devolved in Canada. • Advisory from the Canadian Minister for International Cooperation for Kenya to consider exploring employment opportunities using the Atlantic and Rural Immigration Programmes which provide for easy entry requirements for migrants because they are employer driven. • The State Department for Diaspora Affairs has since shared two draft MOUs with provinces of Nova Scotia and New Brunswick for their consideration. The provinces have acknowledged receipt and committed to send their responses.

	NAME OF THE INSTRUMENT	STATUS AS AT 8TH March, 2024
11.	Memorandum of Understanding between the Government of the Republic of Kenya and the Government of the Republic of Serbia on Regulation of Employment	• The draft BLAs have been forwarded to Ministry of Foreign Affairs and Diaspora Affairs for onward submission to Serbia for consideration. • There is already an on-going negotiation between the Kenya National Chambers of Commerce and Industry (KNCCI) and the Republic of Serbia on the modalities of the recruitment process.
	Fourteen (14) NEW DRAFT BILATERAL LABOUR AGREEMENTS – AWAITING NEGOTIATIONS	
12.	Agreement on Recruitment and Employment of Kenyan Workers between the Government of the Republic of Kenya and the following Countries of Destination: • Kingdom of the State of Kuwait • United Kingdom • Kingdom of Saudi Arabia • Hashemite Kingdom of Jordan • Republic of Poland • Republic of Ireland (Nursing and Midwifery Workforce) • Arab Republic of Egypt • Republic of Kazakhstan • Republic of Rwanda • Federal Republic of Ethiopia • Republic of Malta • State of Israel • Vietnam • Russia	• The draft BLAs have been forwarded to Ministry of Foreign Affairs and Diaspora Affairs for onward submission to the Countries of Destination for consideration. • The Ministry is yet to receive feedback or counter-proposals from the identified countries of destination. • These BLAs are focusing on employment of Kenyans skilled and professional cadres. • The Kingdom of Saudi Arabia has acknowledged the receipt of the draft BLA and has affirmed commitment to submit their counter proposal in due course. • The Framework Agreement between Kenya and Israel is on the temporary recruitment and employment of Kenyans to work in the Agricultural sector in the state of Israel.

4.2 Policy and legal Reform

The Ministry of Labour and Social Protection finalized the National Policy on Labour Migration. The Policy aim to provide a framework for promotion of inclusive and sustainable development of the country through safe, orderly and productive labour migration. The Policy outlines strategies whose implementation will enhance protection of Kenyan migrant workers. The Policy was approved by the Cabinet and is awaiting approval by the National Assembly.

The Ministry in consultation with the stakeholders has developed the Labour Migration Management Bill, 2024 which seeks to promote safe, ethical and orderly recruitment; and safeguard the rights and the welfare of migrant workers. The Bill has introduced additional clauses to make recruitment agencies more accountable and periodically report on the welfare of the migrant workers recruited. The Bill underwent public participation in September, 2023 where comments received have been considered and incorporated, The Office of Attorney General is yet to finalize the legal drafting of the Bill,it will then be submitted to Cabinet before submitting to Parliament for approval and enactment.

4.3 Kenyan Migrant Workers Welfare Fund

The Cabinet approved the establishment of a Kenyan Migrant Workers Welfare Fund in February 2021. Executive order No.1 of 2023 directed that the Ministry of Labour and Social Protection establish a Kenyan Migrant Workers Welfare Fund (KMWWF). The main objective of the Fund is to provide protection, welfare and assistance to Kenyan migrant workers during migration, stay in destination country and upon return to the country. The establishment of the Fund is anchored under the Labour Migration Management Bill, 2024.

4.4 Operationalization of the Labour Migration Desk at the Major Airports

The Ministry with support from the Kenya Airports Authority (KAA) has operationalized the Labour Migration Desk at the Jomo Kenyatta International Airport. The purpose of the desk is to ensure compliance with Labour Migration Procedures before exiting the country and upon returning. This is expected to curb irregular migration, unethical

recruitment, and human trafficking to ensure the realization of safe, orderly, regular labour migration for all Kenyans. The desk is manned by officers from the State Department of Labour and Skills Development, National Employment Authority (NEA) in collaboration with the immigration officers and the Kenya Airports Authority. A total of 3590 migrant workers have been cleared the Labour migration desks.

4.5 Development of Information Handbooks

The Ministry developed Information handbooks for Bahrain, Kuwait, Qatar, Oman, Jordan, United Arab Emirates, Saudi Arabia, United Kingdom (for health care workers) have been developed to provide information to prospective health care workers.

The Ministry has also initiated development of information handbooks for Canada, Australia and Poland. The handbooks are meant to empower Kenyan migrant workers by providing factual information on the country of destination, and assist them in setting realistic goals and developing the key skills and attitudes needed to succeed in their new work environment. The information include geography to basic laws, healthcare system, and cultural. Such background will help any potential migrant, worker or family member, in mitigating any risk (including sociocultural shocks).

NEA is also upgrading the Kenya migrant worker website (https://kmw.nea.go.ke/). The website is dedicated to provide migrant workers with country specific information.

4.6 Return and Re-Integration Programme

The Ministry through the National Employment Authority (NEA) with support from the International Labour Organization (ILO) has operationalized five (5) Migrant Resource Centres to offer redress to migrant workers and returnees. The MRCs are in located in Nairobi, Mombasa, Kisumu, Eldoret and Thika.

The Ministry with support from the International Organization for Migration (IOM) has developed Standard Operating Procedures (SOPs) and guidelines to ensure the implementation of dignified return and sustainable reintegration programmes that entail economic, social and psychosocial dimensions, as well as provide a holistic and a needs-based response at the individual, community and structural levels.

Recommendation 3

The National Employment Authority and the Directorate of Diaspora Affairs, Ministry of Foreign Affairs should embark on a rigorous campaign to market Saudi Arabia as an important destination country for foreign employment. The current notion that foreign workers in Saudi Arabia go through suffering need to be corrected and the citizens sensitized on the correct procedure of travel to Saudi Arabia.

5.0 Marketing Saudi Arabia as Preferred Destination Country

The ministry has aggressively embarked on marketing of Saudi Arabia as the preferred labour destination country.

5.1 Visit to the Kingdom of Saudi Arabia

In January 2023, a delegation from Kenya visited the Kingdom of Saudi Arabia (KSA). The main objective of the visit was to understand labour migration challenges affecting Kenyan migrant workers in the KSA.

The delegation engaged various stakeholders. During the visit, presentations were made and received from various teams relating to issues on labour migration management, welfare and protection of Kenyan migrant workers. Interviews and interactive sessions were held with state and non-state actors (Government officials, recruitment agencies and stakeholders) in order to gain insights into the experiences of the agencies on labour migration management.

During these engagements, the delegation discussed good practices, challenges as well as good practices that can assist our government in designing and implementing appropriate strategies on labour migration with a view to enhancing the promotion of safe and orderly migration of our workers to the Kingdom. The team also gained useful insights on grievance reporting and handling procedure, which is key in addressing issues arising from the employment contracts.

Arising from the visit, the Ministry picked four Priority Areas. These are:

a) Strengthening the capacities and monitoring operations of Private Recruitment Agencies;
b) Review and complete overhaul of pre-departure training;
c) Restructuring of the attestation and management of foreign contracts; and
d) Development and integration of labour migration information management systems.

The two countries have been holding bi weekly meetings to discuss issues affecting labour migration. The discussions are already yielding positive results as the reported number of Kenyan migrant workers in distress in KSA has drastically reduced.

a) Visit to Saudi Arabia in December 2023

In December 2023, a delegation visited the Kingdom of Saudi Arabia (KSA) to among others things discuss the possibility of increasing our share in the Kingdoms vast labour market. The delegation held discussions with various state and non-state actors. A major outcome of the visit was the offer of 2,500 job opportunities for Nursing professionals.

b) Visit by a Delegation from Saudi Arabia

A delegation from Takamol (Musaned) visited Kenya in December 2023 and held consultations with the Ministry of Labour and other stakeholders on enhancing safe and orderly labour migration from Kenya to Saudi Arabia. Arising from these consultations, the two countries have embarked on integration of Musaned with NEAIMS as well as other systems. This initiative will facilitate sharing of information between the two countries.

5.2 Engagements with Other Countries

The Ministry has embarked on various strategies to secure decent employment opportunities with a number of countries and has been able to source for jobs in different sectors such as Health, Agriculture, Construction, Hospitality and Domestic among others.

5.2.1 Germany:

Our engagement with the Federal Republic of Germany marks a significant milestone in our efforts to expand employment opportunities for Kenyan workers. The Ministry is working towards establishing a robust Labour mobility and migration partnership. This partnership seeks to create pathways for Kenyan workers to access employment opportunities in Germany through various channels, including apprenticeship programs, university pathways, skilled worker visas, and the Opportunity Card initiative. In March 2024, there was an exchange of proposals between the special commissioner for migration in Germany and the Ministry of Labour and Social Protection. A second round of technical negotiations is scheduled for May 2024 in Nairobi. This partnership will pave the way for increased employment opportunities for Kenyan workers in Germany.

5.2.2 Canada:

A market assessment was conducted in the Atlantic Provinces of Canada, namely New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island. This assessment aimed to identify employment opportunities and labor shortages in key industries within these provinces, laying the groundwork for potential collaboration and the export of Kenyan labour to Canada. Kenya has initiated discussions with the the Provinces of Nova Scotia and New Brunswick, to explore employment opportunities for Kenyan workers through the Provincial Nominee Programs (PNPs) and other immigration pathways

5.2.3 Republic of Austria:

The Ministry has initiated engagements with the Republic of Austria which aims at seeking enhanced cooperation in labor mobility, apprenticeship, student training, and employment. Austria has submitted a draft agreement outlining areas of potential collaboration between our two countries. In response, Kenya has reviewed the proposal and has formulated a counterproposal aimed at furthering our mutual interests and strengthening bilateral ties.

The following job orders have been secured with different countries and recruitment is on-going as in accordance with the attached annexe.

Recommendation 5

The Ministry of Labour should initiate and strengthen pre-departure training to prepare Kenyans travelling to Saudi Arabia for the challenges expected in Saudi Arabia as a way of assisting them fit in well into the Saudi Social Economic System.

6.0 Pre-Departure Training programmes for Kenya Migrant Workers

The Ministry through the National Industrial Training Authority (NITA) has put in place a comprehensive pre-departure and orientation programme for migrant workers. The Home Care Management Curriculum for domestic migrant workers is being implemented to address the challenges faced by workers locally and abroad. The curriculum has 4 Courses including Pre-Departure Training for out-bound migrant workers and aims at creating a qualified, productive, healthy workforce with practical knowledge and skills in homecare management.

6.1 Review of The Homecare Management Training Course

In January 2023, a delegation from Kenya led by the Ministry of Labour and Social Protection visited the Kingdom of Saudi Arabia (KSA) to address labour migration issues. During the visit, it was noted that whereas KSA employers appreciate the professionalism and productivity nature of Kenyan migrant workers, there are a few concerns which appear to constrain full exploitation of the potential benefits of labour migration to both countries and in particular the migrants and respective employers.

NITA embarked on the review of the current homecare management curriculum and was supported by the International Labour Organization (ILO). In June 2023, NITA released a draft of the reviewed curriculum for piloting. A number of changes were proposed in the revised curriculum which include;

a) Renaming of the programme from Homecare Management course Syllabus and Regulations to Homecare Assistant III Curriculum;
b) The duration of the curriculum was reviewed from 360 to 400 hours consisting of; 200 hours institutional training while the other 200 hours shall be workplace placement (industrial attachment);

c) Inclusion of a formative assessment accounting for 10% of the final grade that will be internally carried out by the training institution;
d) Inclusion of an additional assessment (final assessment) after industrial attachment to determine award of NSC-I Certificate;
e) Inclusion of the requirements for resource persons (teachers) and accreditation of training institutions (schools);
f) Inclusion of specific content as proposed by the stakeholders including;
    - Saudia culture and laws
    - Social media management
    - Customer service techniques
    - Practical home management practices for modern house
    - Basic Arabic
    - Employment contract

Following further engagements with the Saudi Arabian authorities in December 2023, further proposals were done on the reviews to the curriculum. A key proposal was reduction of the processing time for unskilled domestic workers from the average of 60 days to less than 30 days. In essence, this meant that the training duration had to be affected. Consequently, the following was done:

a) Developed two training structures for homecare management training based on the agreements with the Saudi authorities, A 14 days training programme (112 hours) for KCSE holders and a 21 days training programme (174 hours) for KCPE holders. The two structures were piloted during Cohort-31 and Cohort-32.
b) Developed an independent 40-hour (5 days) module for pre-departure training targeting cross cutting occupations to include recommendations from the KSA team.
c) Additional sub units were introduced to reinforce training on Saudi Culture and Customs. These are:
    i) Introduction to the Kingdom of Saudi Arabia
    ii) Saudi Culture
    iii) Arabic Conversation

iv) Arabic non-verbal expression

v) Arabic numbers and symbols

vi) Employment Contract

vii) Ministerial Decision No. 605 - Transfer of Domestic Workers

viii) Trained 176 resource persons (industry specialists) from 75 institutions on the revised curriculum module enhance their capacity to deliver the same.

d) NITA adopted the training and assessment of the pre-departure training as a Stand-alone course applicable to all persons migrating for work to the Kingdom of Saudi Arabia.

To enhance efficiency in predeparture training NITA has:

- Developed a registration portal where details of all prospective domestic migrant workers are uploaded for training in various schools. The system captures name, ID, recruitment agency and schools the migrant worker will be enrolled in for Pre-Departure training;
- Developed a transcript with security features including a QR reader to ensure it is not duplicated elsewhere;
- Resulted to submission of results to all schools through an administrator log. This ensures only authorised persons or school directors can access the transcript. The log in details for transcripts are different from that of registration to ensure security of the transcript;
- Set strict timelines which ensure no students are uploaded un-procedurally into the system; and
- Integrated their systems with NEA to enable the prospective migrant workers be recruited through the NEA portal which also enables the results release for processing for travel.
- Domestic migrant workers headed to Saudi Arabia are only approved by NEA through the Musaned System, once they have been assessed and certified by the National Industrial Training Authority (NITA), and the successful candidates are accessed by NEA through the integrated system.

- NEA in collaboration with NITA and the Ministry, conducts Physical inspections in the Accredited Training Institutions offering Pre-departure training to check on the quality of training being offered and the safety and health of the trainees.

Since its inception, the following are the key achievements:

- Trained 217,200 Domestic workers.
- Accredited 136 specialized training institution for migrant workers with a combined capacity of 10,238 trainees.
- Trained 667 resource persons (industry professionals) for ToT to enhance their capacity to roll-out training of migrant workers by September 2023.
- Regulated 32 training Cohorts (for Module-I) during which 227,536 migrant workers were trained and assessed as of 15th April 2024.

7.0 SUPPORT REQUIRED FROM THE COMMITTEE

3.1 Fast Track the approval and enactment of Labour Migration Management Bill, 2024 after the approval of the AG and Cabinet.

3.2 Establishment of Safe Houses in the Gulf Region (Cities of Riyadh, Jeddah, Dammam in Saudi Arabia and State of Qatar) with priority in the Kingdom of Saudi Arabia where numerous distress cases have been reported.

3.3 Support towards establishment of additional Labour Attaché Offices in key labour destination countries (Cabinet approved the establishment of 7 Labour Attaches Offices in February, 2021 however this has been hampered by lack of allocation.

3.4 Adoption of Sessional Paper on National Policy on Labour Migration.

3.5 Support in Establishment of the Kenya Migrant Workers Welfare Fund

3.6 Additional resources on local and international travel to pursue the Bilateral Labour Agreements (BLAs) by ksh.353,500,000.

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Shadrack M. Mwadime, EBS
PRINCIPAL SECRETARY

DATE.....18/4/2024

Annex 28

Submission by the Kenya Electricity Generating Company on the implementation status of the Report of the Department Committee on Energy on a Public Petition regarding the degradation of the Environment along the Sondu-Miriu Dam due to the failure by KENGEN to fully comply with the Environmental Impact Assessment of 1995

Annex 29

Submissions by Ms. Norah Ratemo the Director General Kenya Development Corporation on the implementation status of the Report of The Auditor-General on the Financial Statements of Kenya Tourist Development Corporation for the Year Ended 30 June 1997 to 2012

KENYA DEVELOPMENT CORPORATION

SUBMISSION TO THE COMMITTEE ON IMPLEMENTATION REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEAR ENDED 30 JUNE 1997 TO 2012

27TH APRIL 2024

1.0 INTRODUCTION

Kenya Development Corporation Limited (KDC) is a State Corporation under the Ministry of Investments, Trade and Industry established under the Companies Act in November 2020 with the mandate of promoting sustainable economic development in Kenya by providing development finance, infrastructure finance, long-term financing, equity capital, business support and advisory services to medium and large-scale industries in target sectors.

KDC was established to merge the operations of Tourism Finance Corporation (TFC), Industrial Commercial & Development Corporation (ICDC) and Industrial Development Bank (IDB Capital) which was done through the Kenya Development Corporation Limited (Vesting) Order, 2021. It is wholly owned by the Government of Kenya through the National Treasury & Economic Planning to serve as a strong single cross sector Development Finance Institution (DFI) that would be enabled with sufficient scale, scope and resources to play a catalytic role in Kenya's socio-economic development.

Tourism Finance Corporation (TFC) was established under Section 75 of the Tourism Act 2011 as the successor to the Kenya Tourist Development Corporation (KTDC) which was established in 1965 through the Kenya Tourist Development Corporation Act, Cap 382 of the Laws of Kenya.

2.0 SUBMISSIONS TO COMMITTEE ON IMPLEMENTATION

Reference is made to the 19th report of the PIC which KDC has received from the National Assembly on the audited financial statements of Kenya Tourist Development Corporation (KTDC) for the FYs 1996/1997 to 2011/2012. The following is the implementation status report following PIC's recommendations as contained in the report.

10.0 KENYA TOURIST DEVELOPMENT CORPORATION: FY 1996/1997 TO 2011/2012

10.1 REVOLVING FUND LOANS: FYs 1996/1997 AND 1997/1998 ACCOUNTS

The Committee heard that during the years in question, the Corporation's recovery of Revolving Fund Loans was poor. Out of the total loan and accrued interest totalling Ksh.136,172,972 outstanding, only Ksh.6,172,074 had been recovered. The unrecovered loan as at 30th June 1997 was Ksh.89,296,064.

Management Response:

The Managing Director informed the Committee that some of the loans dated back to 1970's. The loans had gone up due to interest forcing the Corporation to write off the interests and getting twice the premiums as opposed to completely wring them off.

However, the committee was informed that the board has cleared majority of the loans with only six remaining by the year 2010.

Committee Observations

The committee observed that the Corporation while lending failed to undertake due diligence and follow prudential guidelines.

Committee Recommendations

The committee recommends that:

i) The Corporation recovers the loans and ensures that prudential guidelines are followed.

ii) The then Managing Director under whose tenure the loans were disbursed without prudential guidelines be surcharged for not doing due diligence.

Management Implementation Status

i) As at 30th June 2023, out of the six (6) Revolving Fund Loans outstanding arrears of KShs 89,296,064, five (5) loan accounts had been redeemed (paid up) and closed. Only one account (Hotel Big Five) had an outstanding loan arrears of KShs 36,417,706. This account is currently being serviced as per the agreed registered (2022) out-of-court agreement with a monthly repayment of KShs 325,000 as per the table below.

ii) The Corporation further reviewed the policies and procedures to ensure that lending is done as per the approved prudential guidelines to reduce such exposure in the future.

The current status of revolving fund is as follows;

Account	Approval Date	Loan Amount (Kes.)	Loan Arrears at 14/03/2024 (Kes.)	Total loan Balance (Kes.)	Status
Delight Dreamland Hotel Ltd.	1993	2,900,000	-	-	*Account redeemed & closed*
Kenya Agro Business Ltd.	1993	2,500,000	-	-	*Account redeemed & closed*
Mohazo Ex-Imp Ltd	2007	3,500,000	-	-	*Account redeemed & closed*
Pafido Fast Foods Ltd	2007	5,400,000	-	-	*Account redeemed & closed*
Proland Ltd.	2010	11,063,264	-	-	*Account redeemed & closed*
Hotel Big Five	**2004**	**8,400,000**	**36,417,706**	**36,417,706**	***Client currently servicing the loan per out-of-court agreement.***

					They paid a lumpsum of Kes 6,500,000 and a monthly repayment of Kes 325,000

10.2 INVESTMENTS AND COMMERCIAL LOANS: FY 1996/1997 AND 1997/1998 ACCOUNTS

The Committee heard that the Corporation had invested through Equity, Commercial and Revolving Fund Loans in organizations that had not been performing, non-profitable or were non-existent. The loans were not recovered and amounts outstanding may not be recoverable.

Management Response

The Managing Director informed the Committee that the loan amounts that had been advanced to the Corporation subsidiaries and their interests had been suspended. The Board had already approved the debt to be converted into equity in their respective units.

Committee Observation

The committee observed that the Corporation is owed huge debts by its subsidiaries.

Committee Recommendations

The Committee recommends that the Corporation converts the debt owed by its subsidiaries into equity.

Management Implementation Status

Only one loan has been converted into equity as explained below.

Kenya Safari Lodges & Hotels (KSLH)

The Board of KSLH offered rights issues to all the existing shareholders and all loans were converted into equity in March 2014 amounting to Kshs 75,553,620. Share certificate number 15 for 3,777,681 ordinary shares in the name of TFC was issued by KSLH.

The remaining four subsidiaries had been earmarked for privatisation by the Privatisation Authority and the main concern affecting the conversion was from the Privatisation Authority which stated that the conversion would adversely affect the due diligence report which would state the individual shareholder values. The loan balances due from the four (4) subsidiaries will be recovered from the proceeds of the on-going privatization process. These are Kabarnet Hotel Ltd, Mount Elgon Lodge Ltd, Golf Hotel Ltd and Sunset Hotel Ltd.

Additionally, the conversion of the loans to equity would have surpassed the allowed threshold of shareholding that TFC would have held being the majority shareholder.

10.3 STALLED PROJECTS: FY 1996/1997 AND 1997/1998 ACCOUNTS

The Committee was informed that Ksh.38,549,827 was invested in a project that was later abandoned and that no feasibility study had been done before the project was started. Further, there were additional expenditures of Ksh.109,250 on feasibility when the project was on-going.

Management Response

The Managing Director agreed with the position of the Auditor General. He informed the Committee that since the project stalled, there was no possibility of actualizing it and that the Corporation intended to remove the asset from the books of accounts.

Committee Observation

The committee observed that the Corporation invested in a project without undertaking a feasibility study; the project stalled.

Committee Recommendations

The committee recommends that:

i) The Corporation ensures that it undertakes feasibility studies before commencing any project.

ii) The Board be held accountable for the poor investment decision including recovery of the lost funds.

iii) The EACC investigates the circumstances under which the project was procured, payments made and reasons as to why the project stalled and if the board is found culpable be prosecuted and be surcharged.

Management Implementation Status

i) Management has subsequently carried out feasibility studies before any financial commitments in line with the approved KDC Business Development Policy.

ii) As recommended, the Corporation wrote to EACC with a view to carry out investigations on this defunct project for possible recovery of the funds utilized in the project from the culpable persons.

10.4 FIXED DEPOSITS/PRIVATIZATION PROCEEDS: FYs 1996/1997 TO 2005/2006

The Committee was informed that proceeds from privatization through sale of shares in 9 companies were invested in banks at a lower rate than the Treasury Bills rate of 24% - 26%. The proceeds were held in bank accounts not jointly operated with Treasury and withdrawals were not used for intended purposes contrary to the Treasury Circular No. 351/03 of 26th April 1993. Further, the Committee heard that part of the proceeds amounting Ksh.15,455,200 were paid to a foreign company in United Kingdom on behalf of the Parent Ministry.

Management Response

The Managing Director informed the Committee that the privatization proceeds totalling Ksh.386,347,440 were held by the Corporation as Fixed deposits in a Commercial Bank managed by the Corporation alone contrary to the Treasury Circular. A sum of Ksh.134,089,192 was paid out without approval of the Board and the Treasury as required by Section 15 (1) and 12 of the State Corporations Act, Cap 446. However, the Corporation is currently operating its accounts jointly with the Treasury abiding by the guidelines. Actions were taken against officers who were involved in the acts of omission and commission.

Committee Observation

The committee observed that the Inspectorate of State Corporations needed to thoroughly inspect State Corporations. Further, the committee observed that the Corporation invested proceeds of privatization in bank accounts at rates lower than Treasury Bills and paid out monies without Board and Treasury approval contrary to section 12 of the State Corporations Act, Cap 446.

Committee Recommendations

The committee recommends that;

i) The corporation should not pay for expenses incurred by their parent Ministries.

ii) The Corporation should ensure that all investments are done in line with Treasury guidelines.

iii) The then Managing Director be held accountable for poor investment decisions and investing without Treasury approval contrary to Section 12 of the State Corporations Act, CAP 446.

Management Implementation Status

i) The Corporation has since then not paid for any other expenses incurred by or on behalf of the parent ministry.

ii) The former Managing Director was charged under Case file number HCC 27/2003 for Abuse of office contrary to Sec. 101(1) of the Penal Code Cap 63 Laws of Kenya

10.5 DEBTORS AND PRE-PAYMENT: FYs 1996/1997, 1997/1998, 1998/1999, 1999/2000, 2000/2001, 2004/2005, 2005/2006, 2006/2007, 2011/2012 ACCOUNTS

The Committee was informed that the Corporation had long outstanding debtors who were dormant for 3 - 8 years and whose recoverability was doubtful. The debtors included ex staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi.

Management Response

The Managing Director informed the Committee that the Corporation had outstanding debtors as indicated by the Auditor General. The Corporation was however pursuing the debtors through all possible means including hiring private investigators. The Corporation had recovered from the benefits of the CEO imprest taken and was holding his car's logbook. Further, the Corporation had made provisions for the doubtful debts in its books of accounts.

As for the Investment Forum, the Corporation was in partnership agreement not providing services.

Committee Observation

The committee observed that the Corporation had long outstanding debtors who include ex-staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investment Forum in Nairobi and whose recoverability was doubtful.

Committee Recommendations

The Committee recommends that the Managing Director ensures that all debts owed to the Corporation are recovered within six months of tabling of this report.

Management Implementation Status

i) Pursuant to the referred debtors in this audit, i.e Skyperth Enterprises Ltd (Ksh.11,057,638) and the former Managing Director (Ksh.2,005,233.55) which had been outstanding, the corporation engaged a private investigator Ms. Nenle Services Agency to follow up and get details for possible recovery from one debtor Skyperth Enterprises Limited. The investigator's report concluded that the debtor had ceased operations and it was an uncollectable debt and

given that the auctioneers had already sold their equipment seized from their premises. The provisions for this doubtful debt was provided for in the books of accounts in the financial year ended 30th June 2001.

ii) The then CEO was pursued for his part of the debt and his imprest balance was recovered from his terminal dues and further committed to civil jail and eventually served his term. Thus, the debt could not be pursued any further.

10.6 IRREGULAR PAYMENTS: FYs 1996/1997, 1997/1998, 1999/2000, 2000/2001, 2003/2004, 2005/2006 ACCOUNTS

The Committee was informed that irregular payments were made as follows:

- Rent was paid for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.
- Sitting allowances and bonuses were paid to public servants receiving a salary.
- Payment of legal fees that were higher than was advised by the Company Secretary.
- Sitting allowances and Christmas bonuses paid to an expired Board.
- Salary award without approval of the parent Ministry.
- Consultancy fee paid to human resource company without competitive selection, approval of the Board and the parent Ministry.
- Directors' expenses exceeded budget without approval by Treasury.

Management Response

The Managing Director concurred with the Auditor General's position. She informed the Committee that allowances were paid to representative of the Permanent Secretary (PS) including bonuses.

Further, on the issue of the expired Board, the PS recalled the Board and hence the meetings were irregular.

Concerning the salary award, the Corporation was given an approval by the Head of Public Service. On the issue of HR Consultancy, the Corporation hired it on contractual basis without adhering to Treasury Circular and Procurement and Disposal Act.

Regarding the Directors' emoluments, the budget was exceeded by having more board meetings than were scheduled as at that time the Managing Director had been terminated from employment.

Committee Observation

The Committee observed that KTDC management made irregular payments.

Committee Recommendations

The Committee recommends that:-

i) The Corporation urgently recovers from the then Managing Director, Directors expenses that exceeded the budget and that was incurred without Treasury approval contrary to Section 12 of the State Corporations Act, Cap 446.

ii) The Corporation urgently recovers monies paid as rent for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.

iii) The then Managing Director/CEO be held responsible for abuse of office contrary to Section 11 of the Public Officer Ethics Act, 2003 and Section 101 of the Penal Code by awarding himself hefty house allowance instead of owner occupier house allowance.

iv) The then Managing Director be held responsible and accountable for procuring consultancy services without Board and Ministerial approval and in contravention of Treasury Circular and Public Procurement and Disposal Act, 2005.

v) The Corporation recovers monies paid as allowances and Christmas bonuses to representatives of the Permanent Secretary.

Management Implementation Status

i) The then CEO was sued and committed to civil jail in a civil matter HCC/687/2005 and eventually convicted in 2009 where he served his term for his outstanding debts and he was further charged with Abuse of Office in a matter HCC/27/2003.

ii) Representatives of the Permanent Secretary to the Board are accorded similar treatment and recognition as the rest of the Board of Directors.

10.7 BANK OVERDRAFT: FY 2000/2001 ACCOUNTS

The Committee heard that the Corporation had an overdraft of Ksh.15,562,032 in the bank against the approved ceiling of Ksh.10,000,000. The Corporation did not have an approval from the Parent Ministry for the increased overdraft ceiling.

Management Response

The Managing Director informed the Committee that the Board authorized the Corporation to operate the overdraft facility with Kenya Commercial Bank upto a maximum of Ksh.15 Million. However, there was no approval from the Parent Ministry. The situation was corrected and the current limit is Ksh.10 Million per Kenya Tourist Development Corporation Act.

Committee Observation

The committee observed that the Corporation exceeded the legal overdraft limit in contravention of the Kenya Tourist Development Corporation Act.

Committee Recommendations

The committee recommends that the EACC investigates and recommends prosecution by the Director of Public Prosecutions of the then Managing Director and Board of Directors for;

i) Operating an overdraft facility without ministerial approval and in contravention of the Kenya Tourist Development Corporation Act.
ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Management Implementation Status

i) The then CEO was sued and committed to civil jail in a civil matter HCC/687/2005 and eventually convicted in 2009 where he served his term for his outstanding debts and he was further charged with Abuse of Office in a matter of HCC/27/2003.

10.8 PROCUREMENT OF MARINA PROJECTLAND: FY 2011/2012 ACCOUNTS

The Committee was informed that in the Financial Year 2012 the Corporation purchased land valued at Ksh.35,000,000 and paid Ksh.3,500,000 without details of compliance with the Public Procurement and Disposal Act.

Management Response

The Managing Director informed the Committee that this land was for a specific purpose of putting up a Marina due to its uniqueness and was identified with the help of Kenya Ports Authority. The Management prepared a paper to the Board to initiate the acquisition of the land and approval was granted. However, the Project has stalled and no contracts have been signed to formally acquire the land due to the absence of a functional KTDC Board.

Committee Observation

The Committee observed that the Corporation single sourced the purchase for land and paid for it in contravention of Article 10 and 226(5) of the Constitution; Section 74 of the Public Procurement and Disposal Act, 2005; and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.

Committee Recommendations

The Committee recommends that;

i) The EACC investigates the conduct of the then Managing Director and the Board (names) and the circumstances under which the purchase of land was single sourced and recommend prosecution by the Director of Public Prosecutions for;

a. Breach of Section 74 of the Public Procurement and Disposal Act, 2005 and Regulations 62 of the of the Public Procurement and Disposal Regulations, 2006.
b. Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

ii) The then Managing Director and the Board be surcharged or money recovered from them to make good the loss incurred.

iii) The then Managing Director and the Board should not hold public office if found culpable.

Management Implementation Status

The Corporation received back the entire KShs 3,500,000 deposit in two instalments paid in June 2019 (2018/2019FY) of KShs 3,000,000 and the balance of KShs 500,000 paid in July 2019 (2019/2020FY).

10.9 ADVANCE OF KSHS 50 MILLION TO AN INVESTMENT COMPANY: FY 2011/2012 ACCOUNTS

The Committee was informed that the Corporation advanced Ksh.50Million to an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

Management Response

The Managing Director informed the Committee that the funds were lent to Lagoon Development Limited in Kilifi Creek. The Board formulated the Credit Policy and using their powers, could review it according to the KTDC mandate and management recommendations. The said loan is up to date in terms of repayments.

Committee Observation

The committee observed that the Corporation advanced KShs 50 million in November 2011 to Lagoon Development Limited in Kilifi Creek, an investment company in which Kenyan shareholding was only 37% contrary to the requirements of at least 51% Kenyan shareholding.

Committee Recommendations

The committee recommends that EACC investigates the circumstances surrounding the irregular and unlawful advance of KShs 50 million and recommend prosecution by the Director of Public Prosecution of the then Managing Director and the Board for;

i) Acting beyond the mandate provided for under the Kenya Tourist Development Corporation Act.

ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

Management Implementation Status

The Credit Policy 2010 formulated by the Board of TFC (then KTDC) had full powers under clause 1.3 to review it or lift a clause in it according to the Corporation's mandate and management recommendations.

Accordingly, the Board exercised that power and waived the requirement of clause 4.1.1. on 51% Kenyan Shareholding threshold in order to catalyze the investment of Kshs.3.78 Billion project by Lagoon Development Ltd in Kilifi which only had 37% Kenyan shareholding. Management clearly pointed this out to the Board and the decision to waive this requirement for this project was by the Board with full disclosure. The Board also considered the size and impact that the project would have on economic development of Kenya as a country.

The loan account was fully redeemed/recovered on 1st February 2017 when the company paid Kshs. 63,948,785 as a final repayment bringing the total amount recovered by the Corporation to Kshs. 76,323,785

10.10 PROPERTY, PLANT AND EQUIPMENT: FYs 2005/2006 AND 2006/2007 ACCOUNTS

The Committee was informed that the Corporation had reflected land in Mombasa and Kitale as investment and not under property, plant and equipment and the correctness of figures could not be verified.

Management Response

The Managing Director informed the Committee that these lands were reclassified.

The Committee Observation

The committee observed that the land in Mombasa and Kitale reflected as investments and not under Plant, Property and Equipment.

Committee Recommendations

The committee recommends that the Corporation ensures proper classification of items in its books of accounts.

Management Implementation Status

As two assets were reclassified under property, plant and equipment both totalling to KShs 8,839,009 during the 2007/2008 financial year Financial statements.

The Corporation no longer holds the land in Kitale as it was disposed in the 2011/2012FY as non-strategic land property.

The Corporation has continued to ensure proper classification of all accounting items in its books of accounts as per the accounting standards.

10.11 NON-CURRENT ASSETS LOANS: 2005/2006, 2007/2008, 2008/2009, 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS

The Committee was informed that the Corporation issued loans to Buffalo Springs, an entity whose going concern could not be verified.

Management Response

The Managing Director informed the Committee that the Corporation loaned Ksh.8,467,395 to Buffalo Springs Ltd, a subsidiary of KTDC. The premise in which the Company operated was leased out to another tenant by Isiolo Town Council crippling operations of the Company. The Company has not been servicing its loan as per the agreement. The matter was referred to the office of the Auditor General for a forensic audit; however, the request was turned down.

Committee Observation

The committee observed that the premises from which Buffalo Springs operated from was leased to someone else thus crippling the operations of Buffalo Springs.

Committee Recommendations

The committee recommends that EACC investigates the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

Management Implementation Status

In line with the committee's recommendations, the Corporation wrote to EACC to carry out investigations on the circumstances under which the Isiolo Town Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

10.12 TAXATION: FYs 1998/1999, 1999/2000, 2000/2001, 2008/2009, 2009/2010, 2010/2011, 2011/2012 ACCOUNTS

The Committee was informed that the Corporation had been granted 50% waiver of penalties and interests but had not paid the remaining 50%.

Management Response

The Managing Director informed the Committee that the Corporation had applied for total waiver for penalties and interests and had been granted. Further the

Corporation has instituted measures to update its taxes and to ensure that no more penalties are accrued.

Committee Observation

The Committee observes that the Corporation had failed to meet its tax obligations thus leading to penalties and interests.

Committee Recommendations

The Committee recommends that the Corporation ensures that all taxes and levies are paid on time and in accordance with relevant laws and regulations to avoid penalties and interest.

Management Implementation Status

The Corporation, having paid all the principal taxes due, subsequently entered into negotiations for a 100% waiver of the penalties and interest with the Kenya Revenue Authority (KRA).

The then Ministry of Finance through their letter dated 2nd of April 2013 communicated the Minister's decision and approval for the 100% waiver under section 94(4) of the Income Tax Act. The Corporation was therefore relieved from this Contingency Liability as at 30 June 2013.

In line with the relevant laws, the Corporation has endeavoured to meet its tax obligations as expected.

BSA

BENLE SERVICES AGENCY

Court Process Servers, Private Enquiry Agents, Investigators, Debt Collectors & Commission Agents

12th floor
Protection House
Nairobi

P. O. Box 625
00200-City Square
Nairobi

Date 21st March, 2006 *Our Ref* BSA/0715/2006 *Your Ref* 60/K0056/17

To: Hamilton Harrison & Mathews Advocates
I.C.E.A. Building
4th Floor
NAIROBI

RECEIVED
21 MAR 2006
H. H. & M.
Partner

Attn: Mr. Paul Ogunde

Dear Sirs,

SKYPERTH ENTERPRISES LIMITED

We acknowledge receipt of your letter dated 13th March, 2006 and herebelow we append our preliminary investigation report.

SCOPE OF THE INVESTIGATION:
You instructed us to carry out an investigation to trace the defendant company and see if it has any attachable assets.

INVESTIGATIONS:
We started our investigations by contacting your client on 11th floor of Utalii House and requested for the file containing the defendant company's details.

We were given the file and indeed we perused it. The details we gathered here were that:

(i) the defendant had an Head Office at Jethalal Chambers along Tubman Street, Box number 43502, Telephone Numbers 020-210979 and 0723-77726;

(ii) further details indicated that the Marketing Manager and the Managing Director of the defendant company were Mr. J. Nderi and Mr. John K. Mburu respectively; and

(iii) the other details were that before the defendant company left their Utalii House office, on the 1st floor, the auctioneers invaded their offices and attached the assets. These were, MARCHET AUCTIONEERS of 1st floor Gill House.

Having these details, we proceeded to Telkom (K) Ltd and placed a search on telephone number: 020-210979.

The search revealed that the said telephone number was indexed to another firm called WASP AFRICA of P.O. Box 016666, 00100-GPO, NAIROBI.

We immediately telephoned and successfully talked to them. They indeed informed us that they are situated at the Longonot Place. We proceeded there and enquired from them whether they knew the 2 persons named above (Mr. J. Nderi and Mr. John K. Mburu). They denied knowing the two and they maintained that the firm Wasp Africa was owned by the Longonot Place and does the work of communications for the place.

We also enquired from them to know how they got similar telephone member as that one for SKYPERTH ENTERPRISES and they said they only applied for the telephone line at offices of Telkom (K) Ltd and were given that number.

They even informed us that there many more other people who calls the number and asks for the defendant company in question.

We proceeded to City Hall, Nairobi Water Company and placed a search on P.O. Box 43502, Nairobi. We were later informed that the Box number was missing from the records and we were requested to give them sufficient time to go through their records and then shall go back there for the details of the said Box number.

We visited the offices of Marchet Auctionners in Gill House and again enquired about the defendant company's directors. They informed us that they of course attached the defendant's assets in Utalii house but they never met with the defendant's directors. From there, we extended our enquiries to Companies Registry and again place a search on the defendant company.

The Registrar informed us that the file for the defendant company was missing and he could not trace it at all.

We are therefore chasing for the results of the said Box number at City Hall, and shall revert back to you shortly informing the progress made in tracing the defendant or its directors.

Yours faithfully,
For: BENLE SERVICES AGENCY

FRANCIS KIONGO CHABARI
Mobile No. 0733-861904

B S A

BENLE SERVICES AGENCY

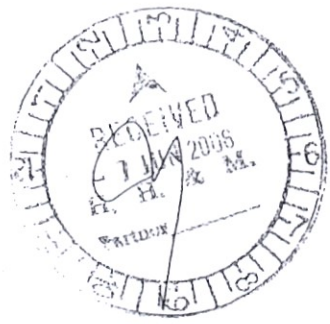
Court Process Servers, Private Enquiry Agents, Investigators, Debt Collectors & Commission Agents

12th floor
Protection House
Nairobi

P. O. Box 625
00200-City Square
Nairobi

Date 7th June, 2006 *Our Ref* BSA/0715/2006 *Your Ref* 60/K0056/17

To: Hamilton Harrison & Mathews Advocates
I.C.E.A. Building
4th Floor
NAIROBI



Attn: Mr. Paul Ogunde

Dear Sirs,

SKYPERTH ENTERPRISES LIMITED

We refer to your letter dated 22nd May, 2006.

We have completed our investigations on the above named company and we append herebelow our report.

INVESTIGATIONS:

Further to our report dated 21st March, 2006 we proceeded to City Hall, Water Tabulation Department and placed a search on P.O. Box 43502 said to be used by the defendant company herein. The results we got the revealed that the said Box number was not indexed to anyone.

Further information we gathered at your client's offices about the defendant company was that the attached assets were for SANNEX Auctioneers and the lawyers who put an injunction to stop Marchet auctioneers from selling the asssets were Merssrs Githinji, Kimano & Co. Advocates of 4th Floor, Room 454, Uniafric House, Nairobi.

We discretely visited the said lawyers' offices and met their court clerk in.

Audience with the said clerk revealed that after the advocates blocked the auctioneers from selling the attached goods, the two directors Messrs M. Nderi and John K. Mburu went to the said Advocates' offices and indeed talked to them about getting back their attached assets and they disagreed.

Marchet auctioneers later sold the attached assets. It is here that the 2 directors of the defendant company started going underground.

NB: The defendant company was associated with prominent people of the former Regime (KANU) such as Honourables, Kulei, Biwott, etc.

Further investigations revealed that one of the defendant company's directors Mr. John K. Mburu is seen around the city streets conducting unknown business.

The said court clerk of Githinji, Kimano & Co. Advocates told us that he sometime meets with Mr. Mburu at Times Tower but he could not establish what type of business he conducts there.

The other director, Mr. J. Nderi's whereabouts remains unknown.

Having spent a couple of days with the said court clerk and walking together with him to Times Tower, we never met with Mr. Mburu. We also enquired from the Kenya Revenue Authority if they could be knowning the said company and they denied knowing it.

Since the defendant company used to deal in the work of clearing and forwarding, we have since contacted other clearing agents at Jomo Kenyatta Airport and we have had no luck in getting vital clues on the defendant company/directors.

CONCLUSION

We are convinced that the defendant company is no longer trading since its assets were attached and sold, and it is not known at the areas we extended our enquiries to such as Jomo Kenyatta International Airport and at the offices of Kenya Revenue Authority.

We shall forward to you our disbursements invoice for settlement.

Yours faithfully,
For: BENLE SERVICES AGENCY



FRANCIS KIONGO CHABARI
Mobile No. 0733-861904

183

HAMILTON HARRISON & MATHEWS

K.A. Fraser*
R. Omwela
K. Kimani
G.G. Murugara
A. Khawaja
P.V. Shah
A. Mugambi
M.K. Kirimi
*British

Consultants:
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RECEIVED
15 MAY 2009
MANAGING DIRECTOR
K.T.D.C.

WHEN REPLYING PLEASE QUOTE OUR REF: 20/K0056/6 YOUR REF: TDC/C/CH/8

15th May, 2009

Corporation Secretary
Kenya Tourist Development Corporation
Utalii House, Uhuru Highway
NAIROBI

URGENT

Attention: Edgar Imbamba Esq.

Dear Sir,

High Court Civil Case Number 687 of 2005
KENYA TOURIST DEVELOPMENT CORPORATION v WILLIAM ARAP CHELASHAW

We refer to our letter of the 11th May, 2009.

Benle Services Agency were able to arrest Mr. Chelashaw yesterday. Mr. Chelashaw was asking for time and to be released on a free bond until Monday to come back with proposals. In view of the fact that Mr. Chelashaw had not honoured the arrangements he made in August 2007, our Mr. Murugara refused to accept this.

Mr. Chelashaw made no proposals for payment. His advocate did not come to court. Mr. Murugara then pressed for an order for committal to civil jail. The registrar made an order and Mr. Chelashaw was committed yesterday afternoon to civil jail for six months. We were required to pay the subsistence allowance for him and we paid a sum of Kshs.10,800/- for this.

We expect that there will be approaches to you and to ourselves during the course of today and that there will probably be an application to court seeking his release. We have asked if there is any minimum that you would expect as a settlement with an instalment plan to follow. We feel that you should be ready with a decision on this or whether you are going to insist that he stays in civil jail for the six months until the full amount is paid.

Yours faithfully,
HAMILTON HARRISON & MATHEWS

K A FRASER

HH&M
HAMILTON HARRISON & MATHEWS

See SMD 185. Awaits response

Bring file to my attention

19/05/09

181

Your Ref: 20/K0056/6

Our Ref: TDC/C/CH/8

14th May 2009

Hamilton Harrison &Mathews
Advocates
ICEA Building, 4th Floor
Kenyatta Avenue
P. O. Box 30333
00100 – NAIROBI

Dear Sirs,

RE: Hccc NO.687 of 2005 – Ourselves Vs William Arap Chelashaw

The above subject matter and your letter of 11th May 2009 refer.

We write to confirm that you do proceed and apply to have him committed to civil jail and further that we are prepared to pay the Kshs. 60/- per day being his subsistence.

Yours faithfully

CARREY FRANCIS
SENIOR LEGAL OFFICER
FOR: MANAGING DIRECTOR

O.B. No.....

CHARGE SHEET

DATE TO COURT 11-4-03 (61)

COURT FILE NO ACC 27/2003

Christian Names in full or Name	Surname or Father's Name	Identity Certificate No.	Sex	Nationality or Tribe	Apparent Age	Address (include District and Location where applicable)
WILLIAM KIPRUTO	BIRIR ARAP CHELASHAW		M	KALENJIYO	A	

CHARGE 1

COUNT 1 — **ABUSE OF OFFICE CONTRARY TO SECTION 101(1) OF THE PENAL CODE CAP. 63 LAWS OF KENYA**

PARTICULARS OF OFFENCE (*See* Second Schedule of C.P.C.)

WILLIAM KIPRUTO BIRIR ARAP CHELASHAW: On 19th June 2000 at the Kenya Tourist Development Corporation offices in Nairobi, within Nairobi Area, being an officer employed in the public service to wit Managing Director of the Kenya Tourist Development Corporation, in abuse of the authority of the said office, arbitrarily and in breach of the provisions of The Kenya Tourist Development Corporation Act (Cap 382 Laws of Kenya) and Treasury Circulars, invested KShs. 30,000,000 in a fixed deposit account at Euro Bank Limited, an act which was prejudicial to the Kenya Tourist Development Corporation.

(FOR OTHER COUNT SEE ATTACHED SHEET)

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
YES	10/4/03	W/O		ON BOND	NIL

Remanded or Adjourned to

Complainant and Address

Witnesses

1 REPUBLIC OF KENYA THRO' KENYA POLICE (ACPU).
2
3 TO BE STATED
4
5
6
7
8
9
10

Sentence

Court and date — NAIROBI LAW COURTS ON 11/4/03 — Date — If fine paid

OFFICER IN CHARGE CENTRAL POLICE STATION

KILIMANI

Officer in Charge.....*Police Station*

[P.T.O.

KENYA DEVELOPMENT CORPORATION

Postal address P. O. Box 12665–00100 Nairobi, Kenya.
location Uchumi House, 17th Floor,
telephone +254-020-222 9213 / 277 1000
mobile +254-(0)727 534 572 / (0)736 229 213
fax +254-020-317456
email info@kdc.go.ke
web www.kdc.go.ke

Our Ref: KDC/DG/PM/04/24
Date: 22nd April, 2024



The Chief Executive Officer
Ethics and Anti- Corruption Commission
P.O. Box 61130-00200
NAIROBI

Dear Sir,

RE: REQUEST FOR INVESTIGATION ON MATTERS RAISED BY THE PUBLIC INVESTMENTS COMMITTEE IN REGARDS TO AUDIT REPORTS OF KENYA TOURIST DEVELOPMENT CORPORATION (KTDC)

Kenya Development Corporation Limited (KDC) is a State Corporation under the Ministry of Investments, Trade and Industry established under the Companies Act in November 2020. KDC was established to merge the operations of Tourism Finance Corporation (TFC) (Formerly KTDC), Industrial Commercial & Development Corporation (ICDC) and Industrial Development Bank (IDB Capital) which was done through the Kenya Development Corporation Limited (Vesting) Order, 2021.

The Public Investments Committee in its Nineteenth Report of The Public Investments Committee on the Audited Financial Statements of State Corporations presented to The National Assembly in 2015, made certain recommendations touching on former officials of the Kenya Tourist Development Corporation (KTDC) in transactions relating to the then corporation. In its recommendations, the committee directed that the following matters be presented to your office for further investigation and possible prosecution for those found to be culpable.

i) The Committee was informed that Ksh.38,549,827 was invested by KTDC in a project in Nairobi that was later abandoned and that no feasibility study had been done before the project was started. Further, there were additional expenditures of Ksh.109,250 on its feasibility when the project was on-going. The committee observed that the Corporation invested in a project without undertaking a feasibility study thus the project stalled.

It therefore resolved that:

a) The EACC investigates the circumstances under which the project was procured, payments made and reasons as to why the project stalled and if the board is found culpable be prosecuted and be surcharged.

ii) The Committee was informed that the Corporation issued loans to Buffalo Springs, an entity whose going concern could not be verified. The committee observed that the premises from which Buffalo Springs operated from was leased to someone else by the defunct Isiolo County Council (ICC) thus crippling the operations of Buffalo Springs.

It therefore resolved that:

a) The EACC investigates the circumstances under which the Isiolo County Council leased out premises that Buffalo Springs as a subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.

We therefore, request the Commission to pursue the above cases as recommended by the Parliamentary Committee in order to put these matters to rest and advised on the way forward if any of the concerned parties are found to be culpable.

Kindy do not hesitate to contact the undersigned for the detailed requirements of the committee and any relevant information to facilitate the above request.

Yours Faithfully,



NORAH RATEMO
DIRECTOR GENERAL

OFFICE OF THE AUDITOR-GENERAL

Enhancing Accountability

PRESENTATION TO THE NATIONAL ASSEMBLY COMMITTEE ON IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

27 April, 2024

The Chair of Committee on Implementation

Honorable Members of the Committee

A. INTRODUCTION

1. I wish to thank the Committee on Implementation for inviting me to this meeting to discuss the status of implementation of House resolutions.
2. As the Supreme Audit Institution, we hold the three arms of the Government and the two levels of the of Government, Commissions and Independent Office accountable for the execution of the budget by ensuring, on behalf of the citizens, users of public services and other stakeholders that the three arms of Government and the two levels of the of Government, Commissions and Independent Office manage and use resources legally and responsibly, for the purposes intended, economically, efficiently and effectively.
3. Parliament and the Auditor-General have a mutual dependency and symbiotic relationship. The Committees depend on the Auditor-General to provide accurate and insightful audit reports. The Auditor-General depends on the Committees to enforce its recommendations and follow-up on government implementation.
4. One of the most critical audit process is implementation of audit recommendations. Indeed, Section 53(1) of the Public Audit Act, 2015 requires that, within three months, after Parliament has considered and made recommendations on the audit report, an Accounting Officer of a State Organ or public entity shall take the relevant steps to implement the recommendations of Parliament on the report of the Auditor-General or give explanations in writing to the Parliament on why the report has not been acted upon.
5. Further, Section 31(1)(a) of the Public Audit Act, 2015 requires that within three months after Parliament or a County Assembly has debated and considered the report of the Auditor-General and made recommendations; a State Organ or a public entity that has been audited, shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit. In addition, Section 31(3) of the Public Audit Act, 2015 requires the Auditor-General to state in his/her report how responsive a state organ or public entity has been to the past audit findings.

6. Principles 1 and 3 of INTOSAI P-12 also require us to have appropriate mechanisms for following up audit findings and recommendations. We are also required to report, as appropriate, on the follow-up measures taken with respect to our recommendations. Therefore, following up on the status of implementation of audit recommendations is part of professional responsibilities as SAI auditors. Both the Accounting Officer and ourselves have a responsibility to report on implementation of audit recommendations.
7. However, we have noted with a lot of concern that, Accounting Officers do not implement audit recommendations because there lacks an effective mechanism for follow-up on implementation of audit recommendations. There also lacks consequences or requisite sanctions for non-adherence. This has led to perennial failure by some Accounting Officers to adequately account for the management and use of public resources entrusted in their care. It has also led to fiscal indiscipline including misallocations, wastage of resources, theft and corruption which in turn has affected development programmes thereby threatening sustainability of service delivery and the wellbeing of the citizens.
8. Parliament has also over the years raised concern about the lack of an effective mechanism for follow up on implementation of audit recommendations, leading to recurrence of audit queries in subsequent audit reports. Implementation of recommendations is critical to ensuring public funds, public resources, impact positively on the lives and livelihoods of the people.

B. INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION-2016/2017

Honorable Chair

Honorable Members

9. On 18 April 2024, this Committee invited me through letter referenced NA/AA/&GPC/COI/2023(020) to make submission on the status of implementation of recommendations contained in the Report of Public Accounts Committee of the National Assembly on the examination of the report

of The Auditor-General on the Financial Statements of the Independent Electoral and Boundaries Commission (IEBC) for the year ended 30 June 2017.

10. The Public Accounts Committee Reports in respect of the Independent Electoral and Boundaries Commission (IEBC) for the financial year ended 30 June 2017 as amended and adopted by the House on 23 April 2019 required the Auditor-General to;

I. Conduct a comprehensive performance audit to evaluate, whether there was value for money in the purchase of data bundles of 149,640.5GB valued at Kshs. 127,625,926.00;

II. Conduct a procurement audit to establish the lawfulness and value for money for the expenditure totalling Kshs.249,128,933 relating to Primary and Secondary Data Centers;

III. Table a report before Parliament indicating the findings of the review and verification of the stores ledger and control card (S3) delivery notes and supporting copy of counter receipt (S13) No. 5982572 and issue vouchers (S12) in relation to supply and delivery of badges;

IV. Table a report before Parliament indicating the findings of the review and verification of the Stores ledger and control card (S3)860860; 427635; 860604, delivery notes and supporting copies of counter receipt (S13) No. 5939304 and issue voucher (S12) in relationship to supply of gas lamps mantles;

V. Table a report before Parliament indicating the findings of the review and verification of the Stores ledger and control card (S3), delivery notes and supporting copies of counter receipt (S13) and issue voucher (S12) in relationship to supply and delivery of security seals;

VI. Undertake a comprehensive performance audit to evaluate, whether there was value for money in the procurement of internet services;

VII. The National Treasury and the Auditor-General should assist the Commission undertake verification of all pending bills with a view to expedite the settlement of all genuine payments due to the suppliers in order to save the public from incurring additional costs that may arise from protracted legal disputes with such suppliers;

The team should also institute mechanisms to recover all monies that might have been paid to suppliers improperly. Investigations should also be undertaken, and if impropriety is established, appropriate action taken against all the officers involved.

I wish to inform this Committee that these requests were inadvertently not communicated or brought to the attention of the Auditor-General.

However, I would wish to respond as follows with regard to the issues raised;

Purchase of Data Bundle- Supply, Delivery, Implementation, and Commissioning of Network Transmission-Excess

11. During the examination of the Report in respect of purchase of data bundles, the Accounting Officer submitted to the Committee that the data procured was based on mobile networks terms where data not utilized would expire. The Accounting Officer submitted that unutilized data was lost.

Honorable Chair

Honorable Members

12. The following three recommendations relate to inventory management by the IEBC;
    i. Supply and Delivery of Badges,
    ii. Supply of Gas Lamp Mantles,
    iii. Supply and Delivery of Security Seals,

Honorable Chair

Honorable Members

13. In response to the three recommendations, I wish to respond that in the audit report for the financial year 2018/2019, the Auditor-General raised the issue of

lack of inventory management systems where the value of inventory held could not be determined and disclosed in financial statements.

14. In the audit report for the financial year 2019/2020 and 2020/2021, the Auditor-General raised the same observations where there was no robust system to manage inventories.
15. During the examination of audit report for the financial year 2020/2021 by Public Accounts Committee, the IEBC submitted that they had acquired an Information Technology Service Management (ITSM) that included an Asset and Inventory Management module. The Committee recommended IEBC to ensure the inventory management module is fully implemented and ensure the inventories are properly valued and disclosed in the FY 2022/2023.
16. The audit of the financial year 2022/2023 revealed that although there were major improvements, challenges still exist with an unexplained variance of Kshs.40,653,000 between value disclosed in the financial statements and the new system. The 2022/2023 report has not been discussed by the Public Accounts Committee.

Pending Bills

17. As regards pending bills, the Auditor-General has carried out audit of pending bills for IEBC and material issues reported in the reports for the financial statements of 2018/2019 to 2022/2023.

    The Commission continues to incur pending bills without settling prior bills. In 2021/2022 we reported pending bills which were outstanding for ten years.

C. INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION – 2020/2021

Honorable Chair

Honorable Members

18. This Committee has further requested through letter referenced NA/AA/&GPC/COI/2023(023) dated 23 April, 2024 that we comment on the implementation status of the House recommendations in respect of the Report

of the Independent Electoral and Boundaries Commission (IEBC) for the financial year ended 30 June 2021.

The report was adopted by the House on 28 February, 2024.

We have subsequently issued reports for 2021/2022 and 2022/2023 which the Public Accounts Committee is discussing. We will follow up on the recommendations and report back.

D. KENYA TOURISM DEVELOPMENT CORPORATION

Honorable Chair

Honorable Members

19. In addition, this Committee has requested through letter referenced NA/AA/&GPC/COI/2023(022) dated 18 April 2024 that we comment on the implementation status of the House recommendations on the 19th Report of the Public Investment Committee on the consideration of the Auditor-General report on the financial statements in respect of Kenya Tourism Development Corporation.
20. The 19th Report of the Public Investment Committee on the consideration of the Auditor-General report on the financial statements for the Kenya Tourism Development Authority for the financial years 1996/1997 to 2011/2012 did not have any specific recommendations to be implemented by the Auditor-General. We note that there are several recommendations relating to other agencies. We shall provide evidence to those agencies as required.
21. We have subsequently issued reports from 2012 to 2023 financial years which the Public Investment Committee is discussing.

E. AGRICULTURAL FINANCE CORPORATION

Honorable Chair

Honorable Members

22. This Committee has also requested through letter referenced NA/AA/&GPC/COI/2023(021) dated 18 April 2024 that we comment on the implementation status of the House recommendations on the 19th Report of the Public Investment Committee on the consideration of the Auditor-General

report on the financial statements in respect of Agricultural Finance Corporation.

23. The 19th Report of the Public Investment Committee on the consideration of the Auditor-General report on the financial statements for the Agricultural Finance Corporation for the financial years 2003/2004 to 2011/2012 did not have any specific recommendations to be implemented by the Auditor-General. We shall provide evidence to those agencies as required.
24. We have subsequently issued reports up to 2023 financial year which the Public Investment Committee is discussing.

Recommendations and Way Forward

25. As a way forward, the Office of the Auditor-General has developed a mechanism for monitoring all House Resolutions that require action by the Auditor-General.
26. The Auditor-General will designate a Liaison Officer to work with the Committee on Implementation.
27. In September 2023, the Auditor-General wrote to the Clerk of the National Assembly requesting parliament to be communicating all resolutions which require action from the Auditor-General to enable us take timely action.
28. The Office has been steadfast in strengthening the Forensic Audit Directorate by deploying additional staff to handle the special audit requests.
29. The Office will combine special audits requests where the area of focus or Terms of Reference are similar in order to ensure that all Parliamentary requests are addressed efficiently.

Conclusion

30. My Office is committed to providing quality and timely assurance to Parliament, County Assemblies and the citizens. However, to provide this assurance, we need adequate and continuous support in terms of terms funding and in ensuring action is taken on our reports.

I thank you for this opportunity.

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

27 April 2024

REPUBLIC OF KENYA

EXECUTIVE OFFICE OF THE PRESIDENT
INSPECTORATE OF STATE CORPORATIONS

Telephone: +254-(0)20-3247000
Kenya Railways Headquarters
When replying please quote

P. O. Box 54457 - 00200
NAIROBI, KENYA

Ref No: ISC/INS/POL/205/VOL.II/20

25th April, 2024

CLERK OF THE NATIONAL ASSEMBLY
P.O. Box 41842-00100
Main Parliament Buildings
NAIROBI

Attn. Ms Serah M. Kioko, MBS

IMPLEMENTATION STATUS OF HOUSE RULES

Reference is made to your letter Ref: NA/A&GPC/COI/2024(22) dated 18th April, 2024 inviting the Inspector-General (Corporations) to a meeting with the Implementation Committee on House Rules to apprise it on the implementation status of the recommendations of 19th PIC report in respect of the Kenya Tourism Development Corporation.

With respect to the Kenya Tourist Development Corporation (KTDC), now Kenya Development Corporation (KDC), PIC recommended that the Inspector-General (Corporations):

1. Undertakes investigations and ensures that the Managing Director who was in service and disbursed the Revolving Fund loans without prudential guidelines is surcharged the unrecovered loans of **Kshs. 89,296,064**.

2. Surcharges members of the Board, if found culpable after investigations by the EACC, an amount of **Kshs. 38,549,827** which was invested in a project without carrying out feasibility study and was later abandoned.

3. Surcharges and recovers **Kshs. 35,000,000** and a further **Kshs. 3,500,000** for procurement of Marina Project Land from the then Managing Director and the Board. The land had been single sourced and paid for in contravention of the existing laws.

Regrettably, the Inspector-General (Corporations) was not able to implement the recommendations of the 19th PIC report because of the following reasons:

1. The Office of the Inspector-General (Corporations) has over the years suffered from chronic underfunding of its operations. Consequently, the Department is beset by inadequate human and financial resources as well as other facilities. This has adversely impacted Inspectorate of State Corporations' ability to effectively discharge it statutory mandate.

2. The power of the Inspector-General (Corporations) to surcharge as stipulated in Section 19 of the State Corporations Act had lain dormant from the year 2014 following the inquorate membership of the State Corporations Appeals Tribunal (SCAT).

   SCAT is a statutory body established under section 22 of the State Corporations Act to consider and determine appeals from individuals aggrieved by the decision of the Inspector-General (Corporations) to surcharge.

3. The office of the Inspector-General (Corporations) has for the most part since the year 2014 not been duly filled either substantively or in acting capacity thereby legally compromising its ability to operate.

Way Forward:

i. The Office of the Inspector-General (Corporations) has embarked on efforts to revamp its operations with the primary aim of effectively and efficiently discharging its statutory mandate.

ii. The Executive has since appointed the Chairperson and members of the State Corporations Appeals Tribunal (SCAT). This will strengthen the capacity of the Inspector-General (Corporations) to take a more proactive role in combating corruption and misappropriation of public funds in state corporations given his statutory mandate to surcharge.

Submitted for your information and further guidance.

James Mungai Warui, 'ndc' (K)
Ag. INSPECTOR-GENERAL (CORPORATIONS)

OFFICE OF THE AUDITOR-GENERAL

Enhancing Accountability

PRESENTATION TO THE NATIONAL ASSEMBLY COMMITTEE ON IMPLEMENTATION REGARDING IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

27 April, 2024

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29. The Office will combine special audits requests where the area of focus or Terms of Reference are similar in order to ensure that all Parliamentary requests are addressed efficiently.

Conclusion

30. My Office is committed to providing quality and timely assurance to Parliament, County Assemblies and the citizens. However, to provide this assurance, we need adequate and continuous support in terms of terms funding and in ensuring action is taken on our reports.

I thank you for this opportunity.

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

27 April 2024

ETHICS AND ANTI-CORRUPTION COMMISSION

SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON IMPLEMENTATION

REPORT ON THE IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE 19TH REPORT OF THE PUBLIC INVESTMENT COMMITTEE ON THE EXAMINATION OF THE AUDITOR GENERAL'S REPORT ON FINANCIAL STATEMENTS FOR THE KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEARS 1996/1997 TO 2011/2012

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Saturday, 27th April 2024

Mombasa

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SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON IMPLEMENTATION

1. Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under **section 3** of the Ethics and Anti-Corruption Commission Act, 2011 and pursuant to **Article 79** of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crimes in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption.
- This report is submitted to the National Assembly Standing Committee on Implementation as requested vide a letter **Ref: NA/AA& GPC/COI/2024 (022)** dated **18th April, 2024.**

2. Allegation

- In **September, 2015** the Commission received allegations of intended irregular disposal of Plot No. MOMBASA/ BLOCK 25 /169 by Tourism Finance Corporation without Board of Directors in place to sanction.

3. Findings and Status of the Investigation

i. The Tourism Finance Corporation, now the Kenya Tourist Development Corporation (KTDC) hired Baseline Auctioneers to sell Plot No. MOMBASA/ BLOCK 25 /169 as evidenced by an advertisement on the newspapers inviting interested bidders to submit bids by **10th March 2015**.

ii. The Valuation of the property measuring approximately 4.756 acres was done by Trans-Country Valuers Limited indicating an Open Market Value of **Kshs. 700,000,000.00**.

iii. At the time of disposal of the said property there was no Board of Directors in place to approve the sale and it was not factored in the budget for the Financial Year 2014/2015.

iv. The process of contracting the two companies (Baseline Auctioneers and Trans Country Valuers) to provide the services did not meet the threshold for

restricted tendering as set out in section 73 of the then Public Procurement Disposal Act (PPDA).

v. The Managing Director directly engaged the two companies (Baseline Auctioneers and Trans Country Valuers) to provide the services to the Corporation.

Status: The investigation file was forwarded to the Director of Public Prosecutions (DPP) on **16th January, 2019** with recommendations to charge **two (2)** officials; **Marianne Ndegwa**, the former Managing Director and **Carrey Francis Odhiambo,** the former Head of Legal Department.

- The DPP returned the file in **November, 2023** for additional evidence and the Commission has prioritized the matter for re-submission.

Dated this **Saturday, 27th** day of **April 2024**



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Twalib Mbarak, MGH, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)