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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

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

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Attorney General and Department of Justice
CBK	-	Central Bank of Kenya
CMA	-	Capital Market Authority
COK	-	Constitution of Kenya
CRA	-	Commission on Revenue Allocation
EADB	-	East African Development Bank
FKE	-	Federation of Kenya Employers
ICPAK	-	Institute of Certified Public Accountants of Kenya
IDA	-	International Development Association
IMF	-	International Monetary Fund
IPF	-	Institute of Public Finance
LSK	-	Law Society of Kenya
MP	-	Member of Parliament
OAG	-	Office of the Auditor General
ODM	-	Orange Democratic Movement
UDA	-	United Democratic Alliance

ANNEXURES

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Annexure 3: The East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026)

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CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026). The Bill was published in the Kenya *Gazette* on 5th June 2026 and read a First Time on 1st July 2026. The Bill was thereafter committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

The Bill seeks to amend the East African Development Bank Act, Cap. 493A, to require the approval of the National Assembly prior to the Cabinet Secretary authorizing a charge or issuance of public funds from the Consolidated Fund to the East African Development Bank. The proposed amendment therefore seeks to enhance legislative oversight and accountability in line with the principles of public finance as set out under the Constitution. The Bill also seeks to introduce measures to ensure the safeguards of assets of the East African Community and its institutions.

In compliance with Article 118 (1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 7th July 2026. In addition, the Clerk of the National Assembly, vide letter Ref. No. NA/DDC/F&NP/2026/101, NA/DDC/F&NP/2026/102, NA/DDC/F&NP/2026/103, and NA/DDC/F&NP/2026/104 dated 8th July 2026 invited key stakeholders to submit views on the Bill and attend a public participation forum from Tuesday, 21st July 2026 to 23rd July 2026. The memoranda was to be received on or before Tuesday, 21st July 2026 at 5.00 pm (East African Time).

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. Similarly, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my pleasure to report that the Committee has considered the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026) and recommends that the House **approves** the Bill with amendments.

Hon. FCPA. Kuria Kimani, CBS, M.P
Chairperson, Departmental Committee on Finance and National Planning

CHAPTER ONE

1 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

    a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
    c) *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
    d) To study and review all legislation referred to it;
    e) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
    f) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    g) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
    h) *To examine treaties, agreements and conventions;*
    i) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
    j) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    k) *To examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule to the National Assembly Standing Orders assigns the Committee the mandate to consider matters in relation to public finance, public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.
3. In executing its mandate, the Committee oversees the following Ministries/Departments:

    a) The National Treasury.
    b) State Department for Economic Planning.
    c) State Department for Public Investments and Asset Management.
    d) The Commission on Revenue Allocation (CRA)
    e) Office of the Controller of Budget

1.2 COMMITTEE MEMBERSHIP

1. The Departmental Committee on Finance and National Planning was constituted by the House on 27th October 2022 and reconstituted on Wednesday, 5th March 2025 and comprises the following Members:

Chairperson
Hon. FCPA Kuria Kimani, CBS, MP
Molo Constituency
UDA Party

Vice-Chairperson
Hon. (Amb.) FCPA Langat Benjamin Kipkirui, CBS, MP
Ainamoi Constituency
UDA Party

Members

Hon. Peter Kaluma, CBS, MP
Homa Bay Town Constituency
ODM Party

Hon. FCPA Oyula, Joseph H. Maero, MP
Butula Constituency
ODM Party

Hon. Mboni, David Mwalika, MP
Kitui Rural Constituency
WDM Party

Hon. Okuome Adipo Andrew, MP
Karachuonyo Constituency
ODM Party

Hon. Chiforomodo, Munga, MP
Lunga Lunga Constituency
UDM Party

Hon. Sunkuyia, R. George, MP
Kajiado West Constituency
UDA Party

Hon. Dr. Gathoni Wamuchomba, HSC, MP
Githunguri Constituency
UDA Party

Hon. Sheikh Umul Sheikh, MP
Mandera County
UDM Party

Hon. (Dr.) Shadrack Mwiti, MP
South Imenti Constituency
Jubilee Party

Hon. (Dr.) Ariko John Namoit, MP
Turkana South Constituency
ODM Party

Hon. CPA Rutto Julius Kipletting, MP
Kesses Constituency
UDA Party

Hon. Machele M. Soud, MP
Mvita Constituency
ODM Party

Hon. Paul Biego, MP
Chesumei Constituency
UDA Party

1.3 COMMITTEE SECRETARIAT

4. The Committee is facilitated by the following staff:

Ms. Tracy Chebet
Principal Clerk Assistant II

Ms. Jennifer Ndeto
Deputy Director Legal Services

Mr. Benson Kamande
Clerk Assistant III

Ms. Winfred Kambua
Clerk Assistant III

Mr. Salem Lorot
Senior Legal Counsel

Mr. Eugene Luteshi
Audio Officer III

Ms. Nelly W. Ondieki
Research Officer III

Mr. George Ndenjeshe
Fiscal Analyst II

Mr. James Macharia
Media Relations Officer

Ms. Joyce Wachera
Hansard Reporter II

Mr. Benson Muthuri
Assistant Serjeant-At-Arms

Mr. Jared Onyancha
Protocol Officer

Mr. Allan Ngugi
Administrative Officer II

CHAPTER TWO

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

2.1 Background

5. The East African Development Bank (Amendment) Bill, 2026 (National Assembly Bills No. 33 of 2026) is a National Assembly Bill sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, EGH, MP. It was published on 5th June, 2026, and was read for a First Time on 1st July, 2026. The Bill was thereafter committed to the Committee for its consideration and tabling of the report to the House pursuant to Standing Order 127.

2.2 Summary of Legal Provisions

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

7. The amendments to the Schedule to the Act seek to introduce measures to ensure the safeguard of assets of the East Africa Community and its institutions.

8. Clause 2 of the Bill seeks to delete and replace section 2 of the East African Development Bank Act with a new provision. The changes introduced by the provision are as follows—

   i. Payments by the Cabinet Secretary to the Bank to be paid as provided for in an Appropriation Act; and on the approval of the Controller of Budget.
   ii. Submission of a report by the Cabinet Secretary to the National Assembly on payments made
   iii. Payments to be made with the approval of the National Assembly
   iv. Provision for the relevant Committee to consider approval of the payment
   v. Deeming provision for non-passage of resolution for approval by the National Assembly
   vi. Definition of "Cabinet Secretary"

9. The amendments to clause 2 seek to align the provision to the provisions of the Constitution and the National Assembly's procedural requirements. These are elaborated below:

    i. Article 221(6) of the Constitution provides for appropriation of public expenditure in the following terms:

    > *221. (6) When the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.*

    ii. Article 228(4) and (5) of the Constitution provides for the constitutional mandate of the Controller of Budget on authorization of withdrawals from public funds in the following terms—

    > *228. (4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207.*
    > *(5) The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.*

    iii. Article 95(4)(b) of the Constitution provides for the National Assembly's role in appropriation of funds for expenditure in the following terms, *"The National Assembly appropriates funds for expenditure by the national government and other national State organs".*

    iv. The definition "Cabinet Secretary" is aligned to the definition provided in section 2 of the Public Finance Management Act, Cap. 412A, as follows—

    > *"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;*

10. Clause 3 of the Bill provides for amendment to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(*Use of currencies*), Article 44 (*Judicial proceedings*), and 45 (*Immunity of Assets*). These are discussed below.

(a) **Amendment of Article 24 (Use of currencies):** The Bill proposes to amend Article 24 by deleting paragraph 5 and substituting therefor a new paragraph. However, the text proposed to replace paragraph 5 is the same text in the current Act.

Current Act	Bill
5. The Bank shall be accorded, in the territories of the Member States, a creditor status no less than that accorded to the International Monetary Fund, the International Bank of Reconstruction and Development, the International Development Association, the African Development Bank and the African Development Fund.	*5. The Bank shall be accorded, in the territories of the Member States, a creditor status no less than that accorded to the International Monetary Fund, the International Bank of Reconstruction and Development, the International Development Association, the African Development Bank and the African Development Fund.*

(b) **Amendment of Article 44 (Judicial proceedings):** The Bill proposes to amend Article 44 by deleting paragraph 1 and substituting therefor a new paragraph. However, the text proposed to replace paragraph 1 is the same text in the current Act.

Current Act	Bill
1. The Bank shall enjoy immunity from every form of legal process except in any case where it has expressly waived its immunity in writing, when it may be sued in a court of competent jurisdiction in a Member State in which the Bank has an office, and has appointed an agent for the purpose of accepting service or notice of process. It is however understood that no waiver of immunity shall be implied or extend to any measure of execution.	*1. The Bank shall enjoy immunity from every form of legal process except in any case where it has expressly waived its immunity in writing, when it may be sued in a court of competent jurisdiction in a Member State in which the Bank has an office, and has appointed an agent for the purpose of accepting service or notice of process. It is however understood that no waiver of immunity shall be implied or extend to any measure of execution.*

(a) **Amendment of Article 45 (Immunity of Assets):** The Bill proposes to amend Article 45 by deleting and replacing paragraphs 1 and 3 with new texts. However, the text proposed to replace paragraphs 1 and 3 are the same text in the current Act.

Paragraph 1

Current Act	Bill
1. Property and other assets of the Bank, wheresoever located and by whomsoever held, shall be immune from interference, search, requisition, confiscation, expropriation, nationalization or execution or any other form of taking or foreclosure by executive, legislative, judicial or administrative action, and premises used for the business of the Bank shall be immune from search, provided that in legal proceedings brought within the terms of the Charter such immunity shall apply before delivery of a final judgment against the Bank by the highest court of competent jurisdiction.	*1. Property and other assets of the Bank, wheresoever located and by whomsoever held, shall be immune from interference, search, requisition, confiscation, expropriation, nationalization or execution or any other form of taking or foreclosure by executive, legislative, judicial or administrative action, and premises used for the business of the Bank shall be immune from search, provided that in legal proceedings brought within the terms of the Charter such immunity shall apply before delivery of a final judgment against the Bank by the highest court of competent jurisdiction.*

Paragraph 3

Current Act	Bill
3. For the purpose of this Charter, the terms "property and assets of the Bank" shall include property and assets owned or held by the Bank, the Bank's premises, and deposits and funds entrusted to the Bank in the ordinary course of fulfilling its mandate.	*3. For the purpose of this Charter, the terms "property and assets of the Bank" shall include property and assets owned or held by the Bank, the Bank's premises, and deposits and funds entrusted to the Bank in the ordinary course of fulfilling its mandate.*

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

11. To facilitate public participation, the Clerk of the National Assembly placed an advertisement in the print media on 7th July 2026 inviting the public to submit memoranda on the Bill. Further, the Clerk of the National Assembly vide letter Ref NA/DDC/F&NP/2026/101, NA/DDC/F&NP/2026/102, NA/DDC/F&NP/2026/103 and NA/DDC/F&NP/2026/104 dated 8th July 2026 invited key stakeholders to submit views on the Bill and attend a public participation forum from 21st July 2026 to 23rd July 2026 respectively.

12. The Committee received thirteen (13) memoranda from the following stakeholders whose submissions are detailed below:

(1) The Ministry of Investments, Trade and Industry- State Department for Trade;
(2) The Attorney General;
(3) Capital Markets Authority (CMA);
(4) Office of the Auditor General (OAG):
(5) Hon. Raphael Tuju, EGH;
(6) WeCare CBO;
(7) KPMG;
(8) Consortium of Civil Societies in Kenya;
(9) Institute of Certified Public Accountants of Kenya (ICPAK);
(10) Federation of Kenya Employers (FKE);
(11) The Law Society of Kenya (LSK);
(12) The Commission on Revenue Allocation (CRA); and
(13) Gregory Ndege and Associates

3.1 SUBMISSIONS FROM STAKEHOLDERS

General Submissions

Office of the Attorney-General

13. The AG submitted that they have scrutinized the content of the Bill and in their considered opinion, the Bill does not offend the Constitution or raise significant statutory issues. They observed that the Bill is in line with Article 206 of the Constitution and the Public Finance Management Act.

Office of the Auditor General (OAG)

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

Capital Markets Authority (CMA)

15. **CMA** noted that the Bill aligns with Kenya's capital markets legal framework and is consistent with good governance, fiscal accountability, and investor protection principles. In addition, the Bill is generally consistent with the objectives of the Capital Markets Act, particularly regarding strengthening transparency, improving public accountability in public financial commitments and promoting investor confidence through enhanced governance.
16. However, the Bill does not address whether EADB should increasingly mobilise capital through regional capital markets. From a capital market development perspective, Kenya could encourage provisions supporting regional bond issuances which would include local currency bonds, sustainability-linked bonds, infrastructure bonds. These would deepen regional capital markets.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*. Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."*

***The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended.* Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.**

Hon. Raphael Tuju, EGH

17. **Hon. Tuju** submitted that the proposed amendment in the bill fails to address the matter of diplomatic immunity which could be inadvertent. He noted that there is no country among the 195 members of the United Nations that grant blanket immunity with respect to criminal acts by the staff of any international body. Kenya would be the first to grant such immunity in the whole world. He further highlighted that currently, there is a criminal case at the Nairobi Magistrates Court against EADB, and Parliament should take due notice so as not to fall into the trap of abetting criminality.

18. Additionally, **Hon. Tuju** highlighted that the diplomatic immunity should be governed by an appropriate Host Country Agreement (HCA) through the Ministry of Foreign Affairs and take cognizance of the Vienna Conventions on diplomatic immunity. Further, he noted that the provision that parliament has to approve the funds to EADB within 30 days or else the funds are considered approved may not be feasible especially when Parliament is on recess.

Committee Observation

The Committee agreed with Hon. Raphael Tuju that the deeming provision in clause 2 in the proposed new section 2(6) is problematic and was of the view that it might be unconstitutional. It provides as follows—

> ***(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.***

The provision may sidestep the oversight role of the National Assembly; hence, the Committee recommended deletion of the proposed new section 2(6) in clause 2 of the Bill.

Further, on immunities provided for in the Bill and the Act, the Committee made the following further observations:

(a) Clause 3 of the Bill provides for amendments to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(*Use of currencies*), Article 44 (*Judicial proceedings*), and 45 (*Immunity of Assets*);
(b) The stakeholder's claim is that the Bill/Act grants immunity from criminal acts, which calls for its analysis in Articles 44 of the Act;
(c) The amendment to Article 44 (*judicial proceedings*) of the Act in clause 3 of the Bill provides as follows—

"1. The Bank shall enjoy immunity from every form of legal process except in any case where it has expressly waived its immunity in writing, when it may be sued in a court of competent jurisdiction in a Member State in which the Bank has an office, and has appointed an agent for the purpose of accepting service or notice of process. It is however understood that no waiver of immunity shall be implied or extend to any measure of execution."

(d) The amendment above, upon scrutiny with the text in the Act, is the same word-for-word, hence the Committee recommends its deletion;
(e) The amendment stated in paragraph (c) is meant to provide immunity from legal process for the organization, that is the East African Development Bank, with the safeguard of the Bank expressly waiving its immunity. Under International law, the provision is proper;
(f) By way of example, section 2 of Article II of the Convention on the Privileges and Immunities of the United Nations (CPIUN) grants the United Nations broad immunity from legal action in the following words: "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."
(g) The Bank's immunity falls within the "functional necessity" within the international law realm as the immunity seeks to protect its independent operation;
(h) For staff immunity, the Bill has not proposed an amendment but the Act has provisions on it. Article 48 of the Schedule to the Act provides as follows—

Article 48 – Personal Immunities and Privileges
1. All directors, alternates, officers and employees of the Bank —
(a) shall be immune from civil process with respect to acts performed by them in their official capacity; and
(b) shall be accorded such immunities from immigration restrictions or alien registration, and, where they are not citizens of a Member State, such facilities in relation to exchange regulations as are accorded by Member State to the representatives, officials and employees of comparable rank of other Member States.
2. Experts or consultants rendering services to the Bank shall be accorded the same immunities and privileges as in paragraph 1 above, unless the Member State concerned determines otherwise.

(i) The textual reading of Article 48 reproduced in paragraph (h) only addresses immunity from "*civil process with respect to acts performed by them in their official capacity*" and does not expressly state grant of immunity from criminal acts as alluded to by the stakeholder and since the matter may fall within the *sub judice* rule, the Committee may not comment further on it, save to note that if there will be need to amend the Article, the Governing Council, in which Kenya has representation, may amend the Bank's Charter then subsequently the Act will be amended to reflect the change.

(j) In any case, the constitutionality of articles 44, 45 and 46 of the EADB have already been addressed by our Court. In *Nusu v National Assembly & 6 others; Law Society of Kenya* (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR), the High Court states at paragraph 103 as follows—

> ***103. This court is bound by the findings of the Supreme Court with regard to this issue under the principle of stare decisis and I do find and hold that the provision under article articles 44, 45 & 46 of the EADB Act, are not unconstitutional.***

Consortium of Civil Societies in Kenya

19. The Consortium submitted that the judgment of the High Court at Machakos (Olel, J.) in *Paul Lihanda Nusu v. The National Assembly & 5 others*, Constitutional Petition No. E009 of 2023, highlighted the following material findings;

    (a) that section 2(1) and (2) of the EADB Act was declared unconstitutional for violating Articles 10, 95(4)(b), 201, 206, 228(5) and 232 of the Constitution, the Court having found that the provision vested the Cabinet Secretary for the National Treasury with sole responsibility to charge and issue public funds from the Consolidated Fund without parliamentary oversight;

    (b) that the amendments introduced to the Schedule of the EADB Act by section 30 of the Finance Act, 2013 were declared null and void *ab initio* for want of genuine public participation;

    (c) that an order of *mandamus* was issued requiring the Cabinet Secretary to produce, within sixty days, records of all payments made from the Consolidated Fund to EADB from 2014; and

    (d) that the declarations of unconstitutionality were suspended for one year, to on or about 20th March 2026.

20. The Consortium observed that the suspension window lapsed some two and a half months before the Bill was gazetted on 5th June 2026, and submitted that, absent any recorded extension, section 2(1) and (2) stood void for all purposes from that date.

Clause by Clause

Clause 2

21. **The State Department for Trade** proposed retaining parliamentary oversight while providing an expedited approval procedure for urgent financial obligations under the Treaty. Additionally, they proposed clarifying timelines for consideration by the National Assembly and providing exceptions where delays may prejudice Kenya's treaty obligations or the Bank's operations. They submitted that requiring prior parliamentary approval for raising funds may delay Kenya's ability to meet its financial obligations to the Bank or respond promptly to regional financing requirements. The deemed approval period may also create uncertainty where urgent financing is required.

Committee Observation

The Committee agreed with the State Department for Trade that the deeming provision in clause 2 in the proposed new section 2(6) is problematic and was of the view that it might be unconstitutional. It provides as follows—

> ***(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.***

The provision may sidestep the oversight role of the National Assembly; hence, the Committee recommended deletion of the proposed new section 2(6) in clause 2 of the Bill.

On the proposal for expedited approval procedure, the Committee was of the view that this could be handled effectively administratively and there are procedural safeguards entrenched in parliamentary procedure to handle this.

Clause 2 (3)

22. **WeCare** supported the clause. They recommended that the report also be published in a simplified, publicly accessible format (not tabled in Parliament alone) to enable civic monitoring by citizens and civil society organizations.

23. **The Consortium of Civil Societies in Kenya** highlighted that a bare reporting obligation is inadequate given the Court's finding that EADB's audit arrangements under Article 35 of the Charter fall outside the mandate of the Auditor-General. They proposed amending the clause to require that all sums paid to EADB from the Consolidated Fund be subject to periodic independent audit, with the audit report tabled before the National Assembly, in fulfilment of Articles 201(d) & (e) and 229 of the Constitution.

24. Amend the clause to prescribe the level of details to be provided in the report to the National Assembly. The **Law Society of Kenya** noted that the annual reporting obligation is broadly drafted as it does not prescribe the level of detail to be provided such as the amounts paid, the purpose of payments, or any outstanding financial obligations. The LSK submitted that this would strengthen parliamentary oversight by ensuring that the National Assembly receives comprehensive and consistent information on Kenya's financial obligations under the Act.

25. **Gregory Ndege and Associates** noted that the proposed section 2(3) only requires the Cabinet Secretary to report to the National Assembly on payments made to the East African Development Bank but does not require such payments to be subjected to independent audit. The stakeholder further observed that the High Court found that the Bank's audit arrangements under Article 35 of its Charter are not accountable to any Kenyan constitutional oversight body and that a reporting obligation without independent verification is inadequate. The stakeholder therefore proposed an amendment to require that all sums paid to the East African Development Bank from the Consolidated Fund be subjected to periodic independent audit, with the audit report tabled before the National Assembly.

Committee Observation

The Committee noted the proposals by WeCare, the Consortium of Civil Societies in Kenya, the Law Society of Kenya and Gregory Ndege and Associates.

On WeCare's proposal that the report also be published in a simplified, publicly accessible format, the Committee took note and appreciated the benefit of ensuring that the report if widely accessible. This could be addressed administratively.

On LSK's proposal, the Committee was of the view that the stakeholder's concerns will be addressed in new section 2(5) since the Committee will ferret out all details of all payments during consideration in addition to the oversight function of the House during debate.

In response to proposals by the Consortium of Civil Societies in Kenya and Gregory Ndege and Associates, the Committee made the following further observations—

(a) **In *Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)*, the Court held that by dint of article 229(4)(b), (5) and (6) of the Constitution as read with section 7 of the Public Audit Act, the Auditor-General was only allowed to audit books of the national and county governments (paragraph 131 of the Judgement);**

(b) **In Paragraph 148(f) of the *Nusu* Judgement, Hon. Justice Francis Rayola Olel made the following declaration:**
f. A declaration be and is hereby issued that any private entity that receives public funds and other state resources is obliged to account for the utilization of the same to the public through appropriate legislation to be put in place by parliament.

(c) **From the submissions of East African Development Bank, the Bank stated as follows: "*Similar to other multilateral financial institutions, the Bank is self-regulating through its Charter which, among other things, requires the Governing Council to appoint an external auditor from reputable audit firms (see articles 26(1)(d) ad article 35(1)). The Bank is currently being audited by KPMG and prior to that was audited by PWC.*";**

(d) **Section 35 of the Treaty Amending and Re-enacting the Charter of the East African Development Bank, provides that the Bank's accounts would be audited every financial year by auditors of high repute selected by the Board of Directors;**

(e) **In the circumstances, the Committee finds that the current provision to be adequate and that if there is need to amend it, then it could be done through the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.**

Clause 2(4)

26. Amend the clause to include an approval process setting out the documents to be submitted to the National Assembly, the information to accompany the request, and the decision-making process for considering and granting approval. The **LSK** noted that the Bill requires the approval of the National Assembly before the Cabinet Secretary may make the necessary financial arrangements or raise loans. However, it does not prescribe the procedure for obtaining that approval. The stakeholder submitted that the absence of a clear approval process may create uncertainty in the implementation of the provision and affect the efficiency and transparency of parliamentary oversight.

27. **CRA** proposed deleting the proposal. They submitted that under the doctrine of separation of powers, there can be no deemed or implied approval by Parliament regarding financial matters. Further, any appropriation of public funds or imposition of a charge upon the Consolidated Fund strictly requires an affirmative, formal resolution by the Legislature.

Committee Observation

The Committee agreed with CRA that the deeming provision in clause 2 in the proposed new section 2(6) is problematic and was of the view that it might be unconstitutional. It provides as follows—

> ***(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.***

The provision may side-step the oversight role of the National Assembly hence the Committee recommended deletion of the proposed new section 2(6) in clause 2 of the Bill.

On LSK's proposal, the Committee noted the Society's concerns but was of the view all the procedural details may not be provided for in the Bill but that administratively, coupled with National Assembly's procedural safeguards, there will be no gaps.

Clause 2 (5)

28. **ICPAK** submitted that although the proposed clause is meant to promote efficiency, it could potentially dilute Parliament's constitutional oversight role over borrowing and public finance. They proposed amending the sub-clause to read as follows;

> *5a. Subject to subsection (4), the relevant Committee of the National Assembly shall consider and table its report for debate within thirty days from the date on which the notification for approval was sought.*
>
> *5b. Within the period specified in subsection 5a, the Speaker shall ensure the matter is accorded priority for consideration in the sittings of the National Assembly, and shall approve the proposal by resolution before the Cabinet Secretary may proceed.*

Committee Observation

The Committee noted ICPAK's proposal but was of the view that prioritization of House business is adequately addressed in the National Assembly's Standing Orders.

Clause 2 (5&6)

29. **The OAG** proposed the deletion of clauses 2(5) and 2(6) as amounts payable to the bank would have been approved as provided in clause 2(1). Additionally, they proposed introduction of a new paragraph immediately after paragraph 7 to indicate that the Auditor-General shall audit and report on the funds paid to the Bank from the Consolidated Fund and Funds received from the Bank within six months after the end of each financial year. This will provide an assurance to the National Assembly on utilization of the funds paid to the Bank and received from the Bank.

Committee Observation

The Committee agreed with the OAG that the deeming provision in clause 2 in the proposed new section 2(6) is problematic and was of the view that it might be unconstitutional. It provides as follows—

> ***(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.***

The provision may side-step the oversight role of the National Assembly hence the Committee recommended deletion of the proposed new section 2(6) in clause 2 of the Bill.

On the proposal that the Auditor-General audits the funds of the Bank, the Committee made the following further observations—

(a) In *Nusu v National Assembly & 6 others; Law Society of Kenya* (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR), the Court held that by dint of article 229(4)(b), (5) and (6) of the Constitution as read with section 7 of the Public Audit Act, the Auditor-General was only allowed to audit books of the national and county governments (paragraph 131 of the Judgement);

(b) Therefore, the Judgement was express that the Auditor-General could not audit the funds of the East African Development Bank;

(c) The matter has already been canvassed and a declaration made on it, and it is noteworthy that the Auditor-General was the 6th Respondent in the matter.

Clause 2 (6)

30. **KPMG** proposed deleting Section 2(6) or, alternatively, amendment of the provision as follows: "*If, after expiry of the period specified in subsection (5), the National Assembly has not passed a resolution, the Speaker shall, within seven days thereafter, cause the matter to be scheduled for priority debate and determination by the National Assembly, and the proposed approval shall remain pending until a resolution of the National Assembly is passed.*"

31. **WeCare** submitted that a default 'deemed approval' undermines the Bill's own stated purpose of enhancing legislative oversight and accountability. They proposed amending the proposal by deleting or narrowing the '*deemed approval*' default and replacing it with a requirement that, if the National Assembly has not acted within 30 days, the matter is escalated for express plenary debate rather than automatically approved by default.

32. **The Consortium of Civil Societies in Kenya** noted that subsection 2(6), which deems approval to have been given where the House has not resolved within thirty days, re-creates back door opaque disbursement regime struck down by the High Court. They recommended its deletion and replacement with a requirement of affirmative resolution failing to which no payment shall be authorized.

33. **FKE** submitted that the "deemed approval" clause completely undermines the principle of robust oversight and accountability, which is the objective of the amendment of ensuring that the Act is in line with the principles of public finance as set out under the Constitution. They propose amending the clause as follows;

    (6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval is not granted.

34. **LSK** proposed deleting the clause in its entirety as this ensures that significant financial commitments are subject to explicit parliamentary scrutiny and accountability and not being deemed to have been approved if a specified period lapses. The LSK submitted that the proposal in the Bill undermines the National Assembly's oversight role by allowing significant financial commitments to proceed without an express parliamentary decision.

35. **Gregory Ndege and Associates** observed that the proposed subsection of the Bill provides that where the National Assembly has not passed a resolution within thirty days of notification for approval, the approval shall be deemed to have been given. The deeming provision defeats the very purpose of restoring parliamentary oversight and effectively recreates the opaque and unaccountable disbursement regime that the High Court declared unconstitutional. The stakeholder therefore proposed amending the proposed section 2(6) by deleting the deemed approval mechanism and replacing it with a requirement for an affirmative resolution of the National Assembly, failing which no payment shall be authorised.

Committee Observation

The Committee agreed with the stakeholders that the deeming provision in clause 2 in the proposed new section 2(6) is problematic and was of the view that it might be unconstitutional. It provides as follows—

(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.

The provision may side-step the oversight role of the National Assembly hence the Committee recommended deletion of the proposed new section 2(6) in clause 2 of the Bill.

New proposal

36. **FKE** proposed amending the bill by inserting a new subsection (6A) and (6B) immediately after subsection (6) as follows:

(6A) If the committee of the National Assembly fails to act within thirty days, the proposal defaults directly to the floor of the entire National Assembly for an emergency vote within next sitting.

(6B) If the National Treasury requires an emergency capital injection into the East Africa Development Bank to prevent a regional treaty breach, the Cabinet Secretary shall table a Certificate of National Interest alongside the request.

37. This will legally reduce the review window down to 7 days, but will still require an explicit, recorded vote from the House.

Committee Observation

The Committee noted FKE's proposal and further observed that the proposal arises because the deeming provision in clause 2 of the proposed new section 2(6) is problematic and was of the view that it might be unconstitutional. It provides as follows—

(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.

The provision may side-step the oversight role of the National Assembly hence the Committee recommended deletion of the proposed new section 2(6) in clause 2 of the Bill. The deletion of the subsection therefore addresses the stakeholder's concern.

Clause 3

38. **The LSK** proposed that the Bill be reviewed to identify the specific amendments intended to be made and ensure that only provisions requiring substantive changes are deleted and substituted. Where no change is intended, the proposed amendment should be omitted. The Law Society of Kenya observed that the Bill proposes to delete and substitute various provisions of the Principal Act. However, the stakeholder observed that the provisions proposed for substitution already exist, thus creating uncertainty as to whether the amendment is intended to introduce substantive changes or merely restate the existing law. They noted that this may result in unnecessary legislative duplication.

39. The **CRA** proposed that the current provision be retained as it is unclear why the immunity status of the Bank is subject to amendment as proposed in the Bill.

Committee Observation

The Committee noted LSK's and CRA's proposals and observed that clause 3 of the Bill provides for amendment to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(Use of currencies), Article 44 (Judicial proceedings), and 45 (Immunity of Assets). However, upon scrutiny, the Committee concluded that the text proposed in the amendment is the same text, word-for-word, in the current Act; hence, it recommends deletion of clause 3 of the Bill.

Clause 3(a)

40. **The State Department for Trade proposed** clarifying that the enhanced creditor status shall be implemented in accordance with Kenya's Constitution, applicable financial legislation and Kenya's international obligations to avoid legal uncertainty. They highlighted that granting preferential creditor status may affect the treatment of other creditors under domestic insolvency or debt recovery processes if not clearly harmonized with Kenyan law.

41. **The OAG** noted that the proposed deleted paragraph in the Primary Act and the proposed substituting paragraph are the same. They recommended deletion of clause 3(a) as it does not result in an amendment.

Committee Observation

The Committee noted proposals by the State Department for Trade and OAG and observed that clause 3 of the Bill provides for amendment to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(Use of currencies), Article 44 (Judicial proceedings), and 45 (Immunity of Assets). However, upon scrutiny, the Committee concluded that text proposed in the amendment is the same text word-for-word in the current Act hence recommends deletion of clause 3 of the Bill.

Clause 3(b)

42. **The OAG** noted that the proposed deleted paragraph in the Primary Act and the proposed substituting paragraph are the same. They recommended deletion of clause 3(b) as it does not result in an amendment.

43. **KPMG** noted that while immunity is necessary to enable international financial institutions to perform their mandate independently, the provision may limit access to legal remedies by counterparties, creditors and other persons dealing with the Bank. They proposed clarifying the interaction between immunity provisions and contractual dispute-resolution mechanisms by inserting an additional sub clause to the effect that: *The immunity granted under the Act shall not prevent access to dispute resolution mechanisms expressly provided under contracts entered into by the Bank, including arbitration and other agreed dispute resolution procedures.*

44. **The Consortium of Civil Societies in Kenya** noted that Article 44(1) of the Charter confers immunity from every form of legal process and Article 48(1) extends civil-process immunity to directors, officers and employees. The Consortium submitted that the immunity regime is presently being invoked as a shield in relation to allegations of criminal conduct, and recommended that Clause 3(b) be expanded, with a corresponding amendment to Article 48, to place beyond doubt that no immunity extends to criminal conduct by any director, officer, employee or agent of the Bank.

45. **ICPAK** observed that while legal immunity is a standard feature of international financial institutions such as the IMF, IDA and ADB, the provision confers broad discretion on the EADB to determine when legal proceedings may be instituted (by waiving its immunity in writing).

46. Unlike the African Development Bank Agreement, the Bill does not provide an express exception for disputes arising from the Bank's borrowing powers. They proposed amending the provision to align with the African Development Bank Act. The new provision should read as follows;

> *"The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers or where it has expressly waived its immunity in writing, when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has an office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from member"*

47. **Gregory Ndege and Associates** noted that Article 44 of the Charter confers immunity from every form of legal process on the Bank while Article 48 extends comparable immunity to its directors, officers and employees in respect of acts performed in their official capacity. The immunity provisions are allegedly being relied upon in relation to criminal proceedings involving individuals associated with the Bank and that no immunity should extend to criminal conduct under Kenyan law. The stakeholder therefore proposed amending the provision and making a corresponding amendment to Article 48 of the Charter to expressly exclude criminal conduct by any director, officer, employee or agent of the Bank from the scope of immunity.

Committee Observation

The Committee noted the proposals by OAG, KPMG, the Consortium of Civil Societies in Kenya, ICPAK, Gregory Ndege and Associates and made the following observations—

(a) Clause 3 of the Bill provides for amendment to the Schedule to the Bill, which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24 (Use of currencies), Article 44 (Judicial proceedings), and 45 (Immunity of Assets). However, upon scrutiny, the Committee concluded that the text proposed in the amendment is the same text word-for-word in the current Act hence recommends deletion of clause 3 of the Bill;

(b) The East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of*

the East African Development Bank, and to provide for matters related thereto".

Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."* The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

Clause 3(c)

48. **The State Department for Trade** proposed clarifying that privileges and immunities shall be exercised only to the extent necessary for the fulfilment of the Bank's official functions and shall not exempt the Bank from compliance with applicable Kenyan laws where immunity has been waived or is not required by the Charter. They submitted that broad privileges and immunities should not undermine domestic regulatory oversight or accountability where the Bank undertakes activities within Kenya.

49. **CMA** proposed introducing an express provision clarifying that the immunity of assets under Article 45 shall not apply so as to defeat or prejudice the rights of investors in respect of capital markets instruments issued by or through the Bank, and that in such instances, the enforcement framework under the Capital Markets Act shall remain applicable.

The New Sub-Article — Article 45(4)

"Notwithstanding the provisions of paragraphs 1 and 3 of this Article, the immunity conferred upon the property and assets of the Bank shall not extend to, or be construed so as to defeat, limit, or prejudice:

(a) the rights and remedies of investors

(b) the enforcement of any judgment, award, or order of a competent court or tribunal obtained by an investor.

50. **The OAG** noted that the proposed deleted paragraph in the Primary Act and the proposed substituting paragraph are the same. They recommended deletion of clause 3(a) as it does not result in an amendment.

51. **KPMG** submitted that while protection of the Bank's assets is necessary to safeguard its developmental mandate and operations, legal certainty is required to ensure that parties engaging with the Bank understand the extent of available remedies and the enforceability of contractual rights. They proposed clarifying that the immunity afforded to the Bank's assets shall not prejudice the enforcement of dispute- resolution mechanisms expressly agreed to by the Bank or otherwise provided under the Charter.

Committee Observation

The Committee noted the proposals by the State Department for Trade, CMA, OAG, and KPMG and made the following observations—

(c) Clause 3 of the Bill provides for amendment to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(Use of currencies), Article 44 (Judicial proceedings), and 45 (Immunity of Assets). However, upon scrutiny, the Committee concluded that text proposed in the amendment is the same text word-for-word in the current Act hence recommends deletion of clause 3 of the Bill;

(d) The East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*. Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."* The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

Clause 3(b&c)

52. **WeCare** proposed clarifying that these treaty-based immunities apply to the Bank itself and do not extend to, or limit, Kenya's domestic accountability mechanisms including the Auditor-General's mandate under Article 229 and Parliament's oversight under Article 226 over funds disbursed by or received from the Bank on Kenya's side of the transaction.

Committee Observation

The Committee noted WeCare's proposal and was of the view that the Treaty and the Bank's Charter are not intended to override Kenya's constitution or its accountability mechanisms. On audit of funds, the Committee observed that in *Nusu v National Assembly & 6 others; Law Society of Kenya* (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR), the Court held that by dint of article 229(4)(b), (5) and (6) of the Constitution as read with section 7 of the Public Audit Act, the Auditor-General was only allowed to audit books of the national and county governments (paragraph 131 of the Judgement). Therefore, the Judgement was express that the Auditor-General could not audit the funds of the East African Development Bank. Despite this, the purpose of the Bill as can be seen is to reinforce the accountability mechanisms, including Parliament's oversight over disbursed funds.

New Proposals

53. **The Consortium of Civil Societies in Kenya** noted that the bill is silent on the structural, licensing and governance defects at the Bank, and therefore constitutes an incomplete legislative response. The Consortium submitted that section 4(1) of the Banking Act, Cap. 488, prohibits the transaction of banking business without a CBK licence, and that EADB engages in lending, deposit-taking and development finance in Kenya without such a licence or prudential supervision. It further submitted that Article 2(6) of the Constitution domesticates ratified treaties but cannot exempt a treaty-based entity from a statute of general application absent an express exemption, and urged the Committee to require the Central Bank of Kenya to table a formal position on the licensing status of the Bank's Kenyan operations.

Committee Observation

The Committee noted the proposals by the Consortium of Civil Societies in Kenya and made the following observations—

(a) One of the issues for determination in *Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)* was *"Whether EADB is operating without being licensed by the Central Bank of Kenya and is operating contrary to provisions of section 4(1) of the Banking Act";*

(b) In paragraph 120 of the Judgement in *Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)*, the High Court stated as follows—

> ***120. The petitioner did not provide any proof to back these allegations, and the rebuttable presumption that EADB is operating within the confines of the law was not displaced.***

(c) Therefore, the Committee formed the opinion that the matter had been addressed in courts and that for the purposes of consideration of the Bill, it does not affect the consideration of the Bill.

54. Additionally, the Consortium noted the following on governance structure;

(a) the governance architecture permits directors to access credit facilities and thereafter participate in decisions to write off or restructure those facilities, which is a conflict of interest, and they proposed that continued disbursement be made conditional upon the Bank adopting and publishing a conflict-of-interest and insider-lending policy;

(b) neither the Act nor the Charter prescribes any term limit for Board directors, and they noted that certain members are reported to have served as long as seventeen years. They proposed that Kenya formally propose a fixed, renewable-once term through the Bank's governing organs; and

(c) they noted that the Bank routinely excludes the jurisdiction of Kenyan courts in its standard-form contracts while relying on Charter immunities to resist suit, which the Consortium submitted produces a one-sided arrangement. They proposed that continued funding be conditional upon Kenyan counterparties having the option of resolving disputes before the Courts of Kenya or an arbitral tribunal seated in Kenya.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*.

Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."* The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

55. **LSK** proposed amending the Bill to require the publication of approved borrowing arrangements, financial commitments or payments made under the Act so as to promote transparency, strengthen public accountability, and enhance public confidence in the management of public funds. They submitted that the lack of publication of approved borrowing arrangements, financial commitments or payments made limits transparency and makes it difficult for the public and other stakeholders to monitor Kenya's financial obligations to the Bank.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*. Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."*

The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

Comprehensive Institutional Reforms

56. **Gregory Ndege and Associates** observed that the Bill is silent on the structural, licensing and governance defects affecting the East African Development Bank, including its alleged unlicensed banking operations, governance deficiencies and misuse of immunity. Addressing only the funding approval mechanism does not provide a complete legislative response to the concerns identified by the High Court. The stakeholder therefore proposed expanding the scope of the Bill to address the Bank's structural, licensing and governance concerns.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as "*An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto*". Section 3 of the Act provides as follows, "*The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya.*" The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

Licensing and Regulation of the East African Development Bank

57. **Gregory Ndege and Associates** observed that the East African Development Bank undertakes lending, deposit-taking and development finance activities in Kenya without a licence issued by the Central Bank of Kenya and is therefore not subject to the prudential supervision, capital adequacy requirements and consumer protection oversight applicable to other financial institutions under the Banking Act. Article 2(6) of the Constitution does not exempt treaty-based entities from complying with statutes of general application in the absence of an express statutory exemption. Gregory Ndege and Associates, therefore proposed requiring the Central Bank of Kenya to table, within a specified period, a formal position on whether the Bank's operations constitute banking business under the Banking Act and, where applicable, indicate the steps taken or proposed to bring the Bank within the licensing and prudential supervision framework or explain why an express statutory exemption is necessary.

Committee Observation

(a) **One of the issues for determination in *Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)* was *"Whether EADB is operating without being licensed by the Central Bank of Kenya and is operating contrary to provisions of section 4(1) of the Banking Act";***

(b) **In paragraph 120 of the Judgement in *Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)*, the High Court stated as follows—**

> ***120. The petitioner did not provide any proof to back these allegations, and the rebuttable presumption that EADB is operating within the confines of the law was not displaced.***

(c) **Therefore, the Committee formed the opinion that the matter had been addressed in courts;**

(d) **The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. *In case amendments are proposed by stakeholders, this may be reconsidered by the Governing Council, in which Kenya has representation,* so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.**

Conflict of Interest and Insider Lending

58. **Gregory Ndege and Associates** observed that the governance framework of the East African Development Bank allegedly permits directors to obtain credit facilities from the Bank and thereafter participate in decisions relating to the restructuring, write-off or forgiveness of those facilities, thereby creating conflicts of interest. Neither the East African Development Bank Act, the Charter nor the Bill requires the Bank to maintain and publish a conflict-of-interest policy prohibiting insider lending and self-approved write-offs. The stakeholder therefore proposed making continued disbursement of Kenyan public funds to the Bank conditional upon the Bank adopting, publishing and periodically certifying compliance with a conflict-of-interest and insider-lending policy consistent with Kenyan corporate governance standards. The stakeholder further proposed requiring the Cabinet Secretary's annual report under the proposed section 2(3) to disclose any credit facilities extended by the Bank to its directors, alternate directors, officers or their associates, together with the status and justification of any write-off, restructuring or forgiveness of such facilities.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*. Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."*

The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

Board Tenure Limits

59. **Gregory Ndege and Associates** noted that neither the East African Development Bank Act, the Charter nor the Bill prescribes maximum terms of office or term limits for Board directors and alternate directors, thereby allowing prolonged tenure that may undermine accountability and good corporate governance. Kenya should promote governance reforms through its representation in the Bank's governing organs. The stakeholder therefore proposed requiring the Cabinet Secretary, as a condition precedent to further disbursement under clause 2, to certify that Kenya has formally pursued amendments to the Charter introducing fixed, renewable-once terms of office for Board directors and alternate directors and to report annually to the National Assembly on the progress of those reforms.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*.

Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."* The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

Access to Kenyan Courts and Dispute Resolution

60. **Gregory Ndege and Associates** submitted that the East African Development Bank's standard-form contracts with Kenyan borrowers and counterparties are understood to exclude the jurisdiction of Kenyan courts through foreign choice-of-law, choice-of-forum or arbitration clauses while the Bank simultaneously relies on immunity under the Charter to resist proceedings before Kenyan courts. This arrangement limits access to justice for Kenyan citizens while permitting the Bank continued access to public funds. The stakeholder therefore proposed requiring, as a condition of continued funding under the proposed section 2, that the Bank's standard-form contracts with Kenyan citizens, residents and entities provide an option, at the election of the Kenyan counterparty, to resolve disputes before the courts of Kenya or before an arbitral tribunal seated in Kenya under the Arbitration Act, 1995. The stakeholder further proposed requiring the Cabinet Secretary to report annually to the National Assembly on the number and nature of disputes between the Bank and Kenyan counterparties and the fora in which those disputes have been or are being resolved.

Committee Observation

The Committee observed that the East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as *"An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto"*. Section 3 of the Act provides as follows, *"The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya."*

The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended. Therefore, the Committee was of the view that this may be reconsidered by the Governing Council in which Kenya has representation so that there is uniformity in the Bank Charter's provisions and in each Member State's Acts.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

The Committee, having considered submissions received and held meetings with stakeholders, made the following observations:

Principal object of the Bill

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

62. The Bill seeks to align the Act to the Judgement in ***Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR)***. The High Court declared that section 2(1) & (2) of the EADB Act is unconstitutional and violates provisions of articles 10, 95(4)(b), 201, 206, 228(5) of the Constitution.

The East African Development Bank Act, Cap. 493A

63. The East African Development Bank Act, Cap. 493A, and amendments to it, seek to domesticate the Charter of the East African Development Bank and the Treaty of 1980. The long title to the Act provides for it as "*An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto*". Section 3 of the Act provides as follows, "*The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya.*" The Bank's Charter is approved by each member state through the Governing Council, and whenever there is an amendment to the Charter, the East African Development Bank Acts in the respective countries are amended.

Possible unconstitutionality of the "deeming provision" in Clause 2 of the Bill in the proposed new section 2(6)

64. The deeming provision in clause 2 in the proposed new section 2(6) is problematic and might be unconstitutional. It provides as follows—

> *(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.*

65. The provision may side-step the oversight role of the National Assembly; hence, there is a need to delete the proposed new section 2(6) in Clause 2 of the Bill.

Clause 3: the amendment that never was

66. Clause 3 of the Bill provides for amendment to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(*Use of currencies*), Article 44 (*Judicial proceedings*), and 45 (*Immunity of Assets*). However, upon scrutiny, the text proposed in the amendment is the same text word-for-word in the current Act; hence, Clause 3 of the Bill should be deleted.

Should the Auditor-General audit the East African Development Bank?

67. In ***Nusu v National Assembly & 6 others; Law Society of Kenya (Interested Party) (Constitutional Petition E009 of 2023) [2025] KEHC 7162 (KLR),*** the Court held that by dint of article 229(4)(b), (5) and (6) of the Constitution as read with section 7 of the Public Audit Act, the Auditor-General was only allowed to audit books of the national and county governments (paragraph 131 of the Judgement).

68. Therefore, as obtained in the Judgement, the Auditor-General may not audit the East African Development Bank.

69. However, section 35 of the Treaty Amending and Re-enacting the Charter of the East African Development Bank, provides that the Bank's accounts would be audited every financial year by auditors of high repute selected by the Board of Directors.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATION

70. The Committee, having considered the East African Development Bank (Amendment) Bill (National Assembly Bill No. 33 of 2026), recommends that the House **approves** the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED.....**DATE**.13th October 2026

HON. FCPA KURIA KIMANI, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 13 OCT 2026 DAY.
TABLED BY:
CLERK-AT THE-TABLE:

CHAPTER SIX

6 SCHEDULE OF PROPOSED AMENDMENTS

CLAUSE 2

THAT, clause 2 of the Bill be amended in the proposed new section 2 by deleting the proposed new subsection (6).

Justification

The deeming provision in clause 2 in the proposed new section 2(6) is problematic and might be unconstitutional. It provides as follows—

> ***(6) If, after expiry of the period specified in subsection 5, the National Assembly has not passed a resolution, the approval shall be deemed to have been given.***

The provision may side-step the oversight role of the National Assembly hence the proposed deletion.

CLAUSE 3

THAT, clause 3 of the Bill be deleted.

Justification

Clause 3 of the Bill provides for amendment to the Schedule to the Bill which contains the provisions of the Charter annexed to the Treaty of 1980. In other words, the Schedule provides for the various Articles of the Charter. Clause 3 therefore seeks to amend Article 24(*Use of currencies*), Article 44 (*Judicial proceedings*), and 45 (*Immunity of Assets*). However, the text proposed in clause 3 of the Bill is the same text, word-for-word, as in the current Act, hence the proposed deletion of clause 3 of the Bill.