

Approved for tabling.



REPUBLIC OF KENYA



ELEVENTH PARLIAMENT

*Bat SNA
3/12/15*

*Paper laid by
Hon. Adan Kinyanjui
on 3/12/2015*

NATIONAL ASSEMBLY – THIRD SESSION

PUBLIC INVESTMENTS COMMITTEE

REPORT OF THE COMMITTEE'S BENCHMARKING VISIT
TO WASHINGTON DISTRICT OF COLUMBIA, UNITED
STATES OF AMERICA

(6TH TO 14TH JUNE, 2015)

Published by:

Clerk's Chambers
Parliament Buildings
NAIROBI.

DECEMBER 2015

V.31

Table of Contents

1.0	PREFACE.....	1
1.1.	Introduction	1
1.2.	Justification for the Visit to Washington DC	2
1.3.	Members of the Delegation	3
1.4.	Specific Objectives of the Visit.....	4
1.5.	Thematic Areas.....	4
1.6.	Acknowledgement.....	5
2.0	HIGHLIGHTS OF THE PRESENTATIONS DURING VISIT.....	7
2.1	Government Accountability Office in the USA.....	7
2.2	Open Government Partnership.....	8
2.3	Office of the District of Columbia Auditor	14
2.4	Open Contracting Partnership (World Bank HQs, Washington DC).....	15
3.0	LESSONS LEARNT	21
4.0	RECOMMENDATIONS FROM LESSONS LEARNT	23

ABBREVIATIONS/ACRONYMS

CAP	-	Chapter
DC	-	District of Columbia
GAGAS	-	Generally Accepted Government Auditing Standards
GAO	-	Government Accountability Office
Hon.	-	Honourable
ICT	-	Information Communication Technology
IIA	-	Institute of Internal Auditors
IRM	-	Independent Reporting Mechanism
KENAO	-	Kenya National Audit Office
MP	-	Member of Parliament
ODCA	-	Office of the District of Columbia Auditor
OGP	-	Open Government Partnership
PIC	-	Public Investment Committee
UN	-	United Nations
USA	-	United States of America

1.0 PREFACE

1.1. Introduction

Mr. Speaker Sir,

The Public Investments Committee draws its mandate from the National Assembly Standing Order 206 which outlines the functions of the Committee as follows:

- (a) **Examine the reports of the Auditor General on the public investment;**
- (b) **Examine the reports, if any, of the Auditor General on the Public Investments;**
- (c) **Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.**

The Committee however is exempted from examining:-

- (a) matters of major Government policy as distinct from business or commercial functions of the public investments;
- (b) matters of day-to-day administration; and
- (c) matters for the considerations of which machinery is established by special statute under which a particular investment is established.

Committee Membership

The Committee is comprised of the following Members:

- | | | |
|---|---|------------------|
| (1) Hon. Adan Wehliye Keynan, CBS, MP | - | Chairperson |
| (2) Hon. Anthony Kimani Ichung'wah, MP | - | Vice Chairperson |
| (3) Hon. Francis Mwanzia Nyenze, EGH, MP | | |
| (4) Hon. (Dr.) Oburu Oginga, MGH, MP | | |
| (5) Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP | | |
| (6) Hon. Adan Mohammed Nooru, MP | | |
| (7) Hon. Franklin Mithika Linturi, MP | | |
| (8) Hon. Athanas Wafula Wamunyinyi, MP | | |
| (9) Hon. Elias Bare Shill, MP | | |
| (10) Hon. Sammy Silas Komen Mwaita, MP | | |
| (11) Hon. John Olago Aluoch, MP | | |

- (12) Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP
- (13) Hon. (Eng.) John Kiragu, M.P
- (14) Hon. (Major) (Rtd.) John Waluke Koyi, MP
- (15) Hon. Abdullswamad Sheriff Nassir, MP
- (16) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (17) Hon. Bernard Munywoki Kitungi, MP
- (18) Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
- (19) Hon. Cornelly Serem, MP
- (20) Hon. Ejidius Njogu Barua, MP
- (21) Hon. Irungu Kang'ata, MP
- (22) Hon. Johana Kipyegon Ng'eno, MP
- (23) Hon. John Muchiri Nyaga, MP
- (24) Hon. John Ogutu Omondi, MP
- (25) Hon. Korei Ole Lemein, MP
- (26) Hon. Mary Sally Keraa, MP
- (27) Hon. Onesmus Muthomi Njuki, MP

It is in pursuit of the above mandate and the sustained efforts by the National Assembly to expose the Members of committees and staff to other jurisdictions that a delegation of the Public Investments Committee, visited the Washington District of Columbia, United States of America from 6th to 13th July 2014.

1.2. Justification for the Visit to Washington DC

Mr. Speaker, Sir,

Oversight of Public Financial Management in State Corporations entails the development of laws, organizations and systems to enable sustainable, efficient, effective and transparent management of public resources.

In the process of oversight, there are several challenges encountered by the Public Investments Committee. Some of the challenges include:

- i. Weak partnerships and linkages with civic organizations, other non- governmental oversight agencies, donor partners to improve governance in public funds in particular whistle blowers;
- ii. Lack of a framework or a model to engage witnesses and on how to carry investigations in public management matters and governance issues as stipulated in the Constitution of Kenya, 2010 and Public Finance Management Act, 2012;
- iii. Late submission of monitoring and evaluation reports from Ministries, government departments and agencies which affect the oversight role of Parliament; and
- iv. Dishonor of invitations by witnesses to submit evidence and other relevant information that might enhance the oversight role of Parliament in an inquiry

It is in this context that the Public Investment Committee arranged a benchmarking visit to the United States of America from 6th to 14th June, 2015, in order to learn on best practices and standards on Oversight of Public Enterprises in the US.

1.3. Members of the Delegation

Mr. Speaker, Sir,

The delegation had a successful visit in which it had fruitful deliberations with various oversight agencies in the United States including Non-Governmental Agencies. The institutions visited include: US Government Accountability Office, Open Government Partnership Office, The World Bank and Office of the District of Columbia Auditor. The delegation also paid a courtesy call on Congressman Peter Roskam, Representative of Illinois 6th District and Chair of House Democracy Partnership.

Members of the delegation included:

1. Hon. (Dr.) Oburu Oginga, MGH, MP (Leader of Delegation)
2. Hon. Onesmus Njuki Muthomi, MP
3. Hon. Korei Lemein, MP
4. Hon. Mary Sally Nyabaro, MP

5. Hon. Ejidius Njogu Barua, MP
6. Hon. Elias Bare Shill, MP
7. Hon. Chrisantus Wamalwa Wakhungu, CBS, MP
8. Hon. Wafula Wamunyinyi, MP
9. Hon. Beatrice Nkatha Nyagah, HSC, MP
10. Ms. Susan Maritim (First Clerk Assistant)
11. Mr. Charles Atamba (Research Assistant III)

1.4. Specific Objectives of the Visit

The specific purpose of the visit included:

- i. To interact with the corresponding oversight committee(s) on accounts of State Corporations and other supporting agencies such as the Supreme Audit Office;
- ii. To learn about the country's structure of Government and their policy on formation of State Corporations and its impact on parliamentary audit committee(s); and
- iii. To gain more insight on oversight of public investments and government privatization.

1.5. Thematic Areas

The delegation focused on the following thematic areas during the visit. They include:

- i. Improving the effectiveness and efficiency of Parliamentary Oversight Role**
 - a. Strengthening the relationship between parliamentary oversight committee, supreme audit institutions (SAIs) and the law enforcement agencies.
 - b. Strengthening procurement framework: e-procurement, laws & regulations, fraud detection etc.
 - c. Selecting focus areas and work planning.
 - d. Member engagement and responsibility sharing.
 - e. Building cross party consensus before parliamentary committee investigations.

ii. Parliamentary Oversight Role in Public Institutions and Other Government Investments

- a. How Audit office and other oversight agencies best support parliamentary oversight.
- b. Oversight of outsourced government spending in public enterprises and other government investments.

iii. Monitoring and Evaluation of Public Enterprises/ Parastatal Audits and other government Investments:

- a. Opening up public enterprises (parastatals) to public scrutiny in public service delivery;
- b. Pre-emptive action: audit of mega projects; Role and capacity of Parliamentary Committees;
- c. The role of audit institutions in preventing losses during project implementation;
- d. Managing conflict of interest in Public Sector Entities or enterprises; and
- e. Constructing a functioning inter-government monitoring and evaluation system and mainstreaming the media in accountability process.

1.6. Acknowledgement

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the Committee to undertake this important study visit. We also acknowledge and thank His Excellency, Amb. Njeru Githae, Kenya's Ambassador to Washington, DC, USA and his dedicated team of staff for the unwavering support that they gave to the delegation during the period of the visit.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the members of the delegation to table this report and recommend it to the House for adoption.

SIGN: *Oburu*

HON. (DR.) OBURU OGINGA, MGH, MP
LEADER OF

DELEGATION

Date: *3/12/15*

2.0 HIGHLIGHTS OF THE PRESENTATIONS DURING VISIT

2.1 Government Accountability Office in the USA

The U.S Government Accountability Office (GAO) is an independent agency in the legislative branch of the federal government (*Commonly known as the investigative arm of the Congress or the congressional watchdog*).

GAO is headed by the Comptroller General of the United States, who is appointed for a 15- year term, one of the longest in government. The Senate confirms the Comptroller General after being nominated by the President from a list of candidates proposed by the Congress. GAO's independence is further safeguarded.

GAO examines how taxpayers' funds are spent and advises lawmakers and agency heads on ways to make government work better.

GAO exists to support Congress in meeting its constitutional responsibilities and to help improve performance and ensure the accountability of the federal government for the benefit of the American citizens.

It provides Congress with timely information that is objective, fact-based, non-partisan, non-ideological, fair, and balanced.

GAO is unique among legislative branch support agencies in that its reports often present original data and professional analyses drawn from extensive fieldwork.

Every GAO report reflects three core values: accountability, integrity and reliability. The agency also operates under strict professional standards of review and referencing; all facts and analyses in GAO work are thoroughly checked for accuracy.

Most GAO work is done at the request of congressional committees or subcommittees or is mandated by public laws or committee reports. GAO also undertakes research under the authority of the Comptroller General.

GAO supports congressional oversight by

- i. Auditing agency operations to determine whether federal funds are being spent efficiently;

- ii. Investigating allegations of illegal and improper activities;
- iii. Reporting on how well government programmes and policies are meeting their objectives;
- iv. Performing policy analyses and outlining options for congressional considerations; and
- v. Issuing legal decisions and opinions, such as bid protests rulings and reports on agency rules.

GAO also informs the American citizens about government performance through publicly reporting of its findings on its website, digital and social media.

GAO's independence is further safeguarded by the fact that its workforce consists of career employees hired on the basis of their knowledge, ability and skills. GAO's diverse staff includes economists, social scientists, accountants, public policy analysts, attorneys, and computer experts as well as specialists in different fields ranging from foreign policy to healthcare.

2.2 Open Government Partnership

Open Government Partnership (OGP) was launched in the year 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens. It is a voluntary international initiative that aims to secure commitments to citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

Since then, OGP has grown from eight (8) countries to sixty-five (65) participating countries, Kenya included. In all of these countries, government and civil society are working together to develop and implement ambitious open government reforms. There is also an Independent Reporting Mechanism (IRM) that is carried out biannually to review progress made in OGP activities of member countries.

OGP works towards ensuring that more governments become sustainably more transparent, more accountable, and more responsive to their own citizens, with the ultimate goal of improving the quality of governance, as well as the quality of services that citizens receive. This requires a shift

in norms and culture to ensure genuine dialogue and collaboration between governments and civil society.

OGP aspires to support both government and civil society reformers by elevating open government to the highest levels of political discourse, providing cover for difficult reforms, and creating a supportive community of like-minded reformers from countries around the world.

OGP has **three primary ways** to ensure the right conditions are in place for member countries to deliver ambitious open government reforms. They include:

- i. Maintain high-level political leadership and commitment to OGP within participating countries and support domestic reformers with technical expertise and inspiration;
- ii. Foster more engagement in OGP by a diverse group of citizens and civil society organizations; and
- iii. Ensure that member countries are held accountable for making progress toward achieving their OGP commitments.

To join OGP, countries must commit to uphold the principles of open and transparent government by endorsing the Open Government Declaration. Through endorsing this Declaration, countries commit to foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government. The Declaration has been endorsed by the sixty-five (65) OGP countries. The member countries work towards fostering the following. They include:

- i. **Accountability**-This includes OGP member countries setting rules, regulations and putting mechanisms in place that call upon government actors to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments.
- ii. **Technology and Innovation**- Member Countries should embrace the importance of providing citizens with open access to technology; embracing the role of new technologies in driving innovation, and the importance of increasing the capacity of citizens to use technology.

- iii. **Citizen Participation**-Member Countries should seek to mobilize citizens to engage in public debate, provide input, and make contributions that lead to more responsive, innovative and effective governance.
- iv. **Transparency**-Information on government activities and decisions is open, comprehensive, timely freely available to the public and meets basic open data standards.

Open Government Declaration

In September 2011, members of the OGP, committed to the principles enshrined in the Universal Declaration of Human Rights, the UN Convention against Corruption, and other applicable international instruments related to human rights and good governance:

The member countries acknowledge that people all around the world are demanding more openness in government. They are calling for greater civic participation in public affairs, and seeking ways to make their governments more transparent, responsive, accountable, and effective.

The member countries also recognize that countries are at different stages in their efforts to promote openness in government, and that each of the countries pursue an approach consistent with their national priorities and circumstances and the aspirations of their citizens.

The member countries also accept responsibility of strengthening commitments to promote transparency, fight corruption, empower citizens, and harness the power of new technologies to make government more effective and accountable.

The main objective of the declaration is to improve delivery of services, manage public resources, promote innovation, and create safer communities, through embracing principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in member countries and in an increasingly interconnected world.

Commitments declared by member countries include the following:

- i. **Increase the availability of information about governmental activities.**

Governments collect and hold information on behalf of people, and citizens have a right to seek information about governmental activities. Member countries committed to promoting increased access to information and disclosure about governmental activities at every level of government.

This should be achieved through increasing efforts to systematically collect and publish data on government spending and performance for essential public services and activities.

OGP member countries have committed to pro-actively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate re-use. This also included providing access to effective remedies when information or the corresponding records are improperly withheld, including through effective oversight of the recourse process.

ii. Support Civic Participation.

Member countries value public participation of all people, equally and without discrimination, in decision-making and policy formulation.

Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people's knowledge, ideas and ability to provide oversight. Member countries committed to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities.

In this regard, the member countries committed to protecting the ability of non-profit making civil society organizations to operate in ways consistent with the commitment to freedom of expression, association, and opinion; creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.

iii. Implement the highest standards of professional integrity throughout our administrations.

Accountable government requires high ethical standards and codes of conduct for public officials. To achieve ethical standards, member countries committed to having robust anti-corruption policies, mechanisms and practices, ensuring transparency in the management of public finances and government purchasing, and strengthening the rule of law.

In the same regard, member countries committed to maintaining or establishing a legal framework to make public information on income and assets of national, high ranking public officials; enact and implement rules that protect whistleblowers and make information regarding the activities and effectiveness of anticorruption prevention and enforcement bodies, as well as

the procedures for recourse to such bodies, available to the public, respecting the confidentiality of specific law enforcement information. This would increase deterrents against bribery and other forms of corruption in the public and private sectors, as well as to sharing information and expertise.

iv. Increase access to new technologies for openness and accountability

New technologies offer opportunities for information sharing, public participation, and collaboration. Harnessing different technologies makes more information public in ways that enable people to both understand what their governments do and to influence decisions made.

Member countries committed to developing accessible and secure online spaces as platforms for delivering services, engaging the public, and sharing information and ideas. In the same spirit there is recognition that equitable and affordable access to technology is a challenge, and commitments to seeking increased online and mobile connectivity were made; while also identifying and promoting the use of alternative mechanisms for civic engagement.

This will enable engagement of civil society and the business community to identify effective practices and innovative approaches for leveraging new technologies to empower people and promote transparency in government, while supporting the ability of governments and citizens to use it.

In making the above mentioned declaration and commitments, OGP member countries aim at contributing to advancing open government in other countries by sharing best practices and expertise and by undertaking the commitments expressed in this declaration on a non-binding, voluntary basis. Member countries goal is to foster innovation and spur progress, and not to define standards to be used as a precondition for cooperation or assistance or to rank countries.

A summary of the Status of Kenya Participation in OGP Activities as a member Country

Kenya officially began participating in OGP in August 2011, when the former Minister for Foreign Affairs Hon. Moses Wetangula, declared the government's intent to join.

Kenya's draft action plan was prepared by the ICT Board an agency under the Ministry of Information and Communication tasked with supporting Kenya's commitment to the Open Government Partnership. In the same spirit, Kenya formed an Open Government Working Group

comprising government agencies, development partners (World Bank), civil society organizations and the private sector.

Overall, the Government of Kenya endeavored to organize broad consultation to develop its OGP action plan. Despite the fact that it established web and mobile phone-based channels for citizen engagement and interaction during the drafting of the action plan, the government did not provide advanced notice for consultations; nor did it ensure adequate stakeholder participation in the consultation process to develop OGP action plan.

After adopting the National Action Plan in March 2012, the Independent Reporting Mechanism Report Progress Report 2012/13 showed that Kenya only performed well in the public vetting of judges and case allocation systems, but is behind schedule in improving transparency in electoral processes, opening government for improving public service and implementing open budgets. Specifically:

- i. Commitments on access to information, participation of stakeholders in governance, accountability, technology and innovation for transparency and accountability;
- ii. Putting voting information online;
- iii. Promoting public participation through end to end service4 delivery portal, open data portal and public complaints portal; and
- iv. Increasing public participation in budgetary processes.

It is recommended that in developing the next action plan, the Kenyan government should take a more proactive approach to include the wider public, once a multi stakeholder consultative forum on OGP implementation is established. This would increase transparency and public participation in action plan development as well as future self-assessment and post implementation processes and activities. After more work is done for fuller implementation of the four initial commitments, the next action plan should focus on the following three areas:

- i. Increasing corporate accountability
- ii. Enacting a comprehensive access to information law

- iii. Implementing the new Constitution, to anchor the principles on which the first action plan commitments are built.

2.3 Office of the District of Columbia Auditor

The Office of the District of Columbia Auditor's (ODCA) is established to support the Council of the District of Columbia by making sound recommendations that improve the economy, efficiency, and accountability of the District government.

The Office fulfills this mandate by conduct performance audits, program evaluations, and revenue certifications. It a legislative agency that strives to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

The District Government includes other agencies that conduct audits. Such agencies include:

- i. Executive:**

The Office of the Inspector General (which has an Audit Division and the Office of the Chief Financial Officer). These two agencies oversee the District's Comprehensive Annual Financial Report (CAFR) performed by independent auditors.

- ii. Independent: Office of the Attorney General**

All of the above agencies have reporting mechanisms for complaints and websites containing information and reports of their work.

ODCA follows:

- i. The Government Accountability Office, Generally Accepted Government Auditing Standards (GAGAS);
- ii. Institute of Internal Auditors (IIA) Ethical Standards;
- iii. ODCA Internal Audit Policies; and
- iv. The District Government Code of Conduct and Ethical Standards.

Many of the auditors of the ODCA are Certified Public Accountants, Certified Government Auditing Professionals, and/or Certified Internal Auditors.

The District of Columbia Auditor every year conducts a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures under such rules and regulations as prescribed by the law.

Audit Procedure and Types

To start an audit, ODCA issues an engagement letter, which notifies the auditee of the scope and timing of the audit and establishes liaison between ODCA and the auditee gives opportunity for ODCA to request information and records.

Audits conducted by ODCA include both survey and fieldwork phases, during which ODCA conducts interviews and obtains information that is gathered from records.

To perform its functions effectively, ODCA requires access to agency records, files, and other information. ODCA's right to access information for audit purposes is detailed in the audit regulations and rules. The regulations empower District of Columbia Auditor to have access to all books, accounts, records, reports, findings, and all other papers, things or property belonging to or in use by any department, agency, or instrumentality of the District government and necessary to facilitate the audit.

Scope of the Audit

From recent audits and program evaluations, the scope covers the following. Audits that arise from fraud hotline (whistle blowers), requests for information and press release.

2.4 Open Contracting Partnership (World Bank HQs, Washington DC)

Open Contracting refers to norms and practices for increased disclosure and participation in public contracting including tendering, performance and completion. It includes the variety of contract types, from more basic contracts for the procurement of goods, to complex contracts, joint venture agreements, licenses and production sharing agreements. Open contracting encompasses all public contracting, including contracts funded by combinations of public, private and donor sources.

Contracts are fundamental to how governments generate and spend. Investments and agreements that governments enter for the citizens, as well as services, goods and projects that governments deliver to their people, typically involve contracts. Contracts are at the nexus of