

Approved for tabling in the House.

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9/6/2022



REPUBLIC OF KENYA



TWELFTH PARLIAMENT – SIXTH SESSION

THE NATIONAL ASSEMBLY

PUBLIC ACCOUNTS COMMITTEE
EXIT REPORT
FOR THE
TWELFTH PARLIAMENT

FROM 2017 TO 2022

Directorate of Audit, Appropriations and Other Select Committees
The National Assembly
Parliament Buildings
NAIROBI

THE NATIONAL ASSEMBLY	
DATE:	09 JUN 2022 Thursday
TABLED BY:	Vice chairperson, Public Accounts Committee
CLERK-AT THE TABLE:	F. Muriuki

June, 2022



List of Abbreviations

AFROPAC	African Organization of Public Accounts Committees
CAPAC	Commonwealth Association of Public Accounts Committees
DCI	Directorate of Criminal Investigations
EAAPAC	East African Organization of Public Accounts Committees
EACC	Ethics and Anti-Corruption Commission
IEBC	Independent Electoral and Boundaries Commission
IPSAS	International Public Sector Accounting Standards
MDA	Ministries, Departments and Agencies
PAC	Public Accounts Committee
SADCOPAC	Southern Africa Development Community Organization of Public Accounts Committees
OAG	Office of the Auditor General
ODPP	Office of the Director of Public Prosecutions
WAAPAC	West African Association of Public Accounts Committees

CHAIRPERSON'S FOREWORD

The Public Accounts Committee (PAC) is one of the three Watchdog Committees in the twelfth Parliament that examines reports of the Auditor-General laid before the National Assembly to ensure probity, efficiency and effectiveness in the use of public funds. The Committee is established pursuant to Standing Order 205 is responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the committee may think fit". This ensures implementation of *Article 229(8)* of the Constitution of Kenya, 2010 on reports laid before the House by the Auditor- General which provides that "*Within three months after receiving an audit report, Parliament shall debate and consider the report and take appropriate action*".

The National Assembly exercises oversight over national revenue and its expenditure pursuant to Article 95(4) (c) of the Constitution through PAC which, in turn, derives its mandate from Standing Order 205. Article 229 (8) of the Constitution stipulates that, Parliament shall, within three months after receiving an audit report, debate and consider the report and take appropriate action. Further, Article 203(3) of the Constitution provides that the equitable share of the revenue raised nationally and allocated to the National Government and County Governments is to be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Honourable Speaker, PAC has continued to discharge its constitutional mandate with utmost diligence and objectivity whilst remaining cognizant of the onerous responsibility bestowed upon it by the Constitution and House Standing Orders. This responsibility, inevitably, comes with high public expectations. Further, Article 203(3) of the Constitution provides that the equitable share of the revenue raised nationally and allocated to the National Government and County Governments is to be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly. The National Assembly can only grant such approval on the basis of reports laid before it by the Committee.

One of the principles of public finance in Article 201 (d) is that public money shall be used in a prudent and responsible way. Under Article 229 (4), the Auditor General is required, within six months after the end of each financial year, to audit and report to Parliament on the accounts of the both levels of government and agencies. At Article 229 (6), an audit report shall confirm whether or not public money has been applied lawfully and in an effective way.

In discharging this role, the Committee held a total of five hundred and eighty six (586) sittings, under the unique circumstances occasioned by the COVID-19 pandemic, during which it received both written and oral evidence from Accounting Officers on audit queries raised by the Auditor-General. Minutes of the Committee's meetings are annexed to this report.

The Committee has continued to hold individual officers to account for their various acts of omission and/or commission that occasion allegations of loss of public funds. In a number of instances, the Committee has recommended specific follow-up actions including further investigations by the relevant investigative agencies. It is my hope that these recommendations will be implemented within the shortest time possible by all those who are concerned and that, in the final analysis, public interest will be safeguarded.

Honourable Speaker, in 2017 the inherited a backlog of several years unexamined audited reports on the Accounts of the National Government. This has since been reduced by the Committee to NIL. The Committee has examined and tabled reports on the audited accounts for the years 2014/2015, 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020. The Committee has commenced examination of the audited accounts for the financial year 2020/2021 which the latest report of the Auditor General. The Committee has examined to completion the audited accounts of twenty one (21) Ministries, Departments and Agencies and prepared handover notes for the Committee in the 13th Parliament.

In conclusion, Honourable Speaker, I wish to register my appreciation to fellow Honourable Members of the Committee, the Offices of the Speaker and the Clerk of the National Assembly and the Parliamentary Liaison Offices of the Auditor-General and the National Treasury for facilitating the work of the Committee and making the production report bringing the government accounts up to date. Special appreciation goes to the Directorate of Audit, Appropriations and Other Select Committees and, in particular, members of the Committee Secretariat for their commitment and devotion to duty.

I also extend my appreciation to my fellow Members of the Committee whose immense contributions and dedication to duty has enabled the Committee to examine the audit queries and produce this report.

Honourable Speaker, on behalf of PAC, and pursuant to Standing Order 200A, it is my pleasant duty and honour to present to the House the Exit report of the Committee and highlight of its landmark works covered for the period 2017 to 2022.

THE HON. JAMES OPIYO WANDAYI, CBS, M.P
CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

1.0 INTRODUCTION

1.1 Establishment and Mandate

- 1) The Public Accounts Committee (PAC) is a select Committee of the House deriving its mandate from Standing Order 205(1) which states;

“There shall be a select committee to be designated the Public Accounts Committee for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit”.

- 2) The primary mandate of PAC is therefore to oversight the expenditure of public funds by Ministries, Departments and Agencies (MDAs) Commissions and Independent Offices. PAC’s mandate is far reaching and wide and the Committee should be facilitated to promote realization of the mandate in which the Government has an interest, to ensure value for money and adherence to Government financial regulations and procedures. The Committee executes its mandate based on annual and special audit reports prepared by the Office of the Auditor General.
- 3) Books such as *“Called to Account”*, South African Report on State Capture should form key reference materials for the Public Accounts Committee. There is need for continuous research on PAC operations in various jurisdictions hence a conscious effort should be made to enrich the research unit of the Public Accounts Committee.

1.2 Membership

- 4) The Committee comprises the following Honourable Members;

1st Session

- | | | |
|--|---|-------------------------|
| 1. The Hon. James Opiyo Wandayi, MP | - | Chairperson |
| 2. The Hon. Jessica Nduku Kiko Mbalu, MP | - | Vice Chairperson |
| 3. The Hon. Junet Mohammed Nuh, MP | | |
| 4. The Hon. Maj. (Rtd.) (Dr.) Eseli Simiyu, MP | | |
| 5. The Hon. Dr. Sakwa J. Bunyasi, MP | | |
| 6. The Hon. Christopher Doye Nakuleu, MP | | |
| 7. The Hon. Patrick Makau King’ola, MP | | |
| 8. The Hon. (Dr.) Otiende Amollo, MP | | |
| 9. The Hon. Gideon KoskeKimutai, MP | | |

10. The Hon. Francis Kuria Kimani, MP
11. The Hon. Samson Ndindi Nyoro, MP
12. The Hon. Peter Francis Masara, MP
13. The Hon. Michael Thoyah Kingi, MP
14. The Hon. Florence Mwikai Mutua, MP
15. The Hon. James Gichuhi Mwangi, MP
16. The Hon. Daniel Kipkogei Rono, MP
17. The Hon. Mathias Robi Nyamabe, MP
18. The Hon. Qalicha GufuWario, MP
19. The Hon. Michael Mwangi Muchira, MP

2nd Session

1. The Hon. James Opiyo Wandayi, MP - **Chairperson**
2. The Hon. Jessica Nduku Kiko Mbalu, MP - **Vice Chairperson**
3. The Hon. Junet Mohammed Nuh, MP
4. The Hon. Maj. (Rtd.) (Dr.) Eseli Simiyu, MP
5. The Hon. Dr. Sakwa J. Bunyasi, MP/Tom J. F. Kajwang, MP
6. The Hon. Christopher Doye Nakuleu, MP
7. The Hon. Patrick Makau King'ola, MP
8. The Hon. (Dr.) Otiende Amollo, MP
9. The Hon. Gideon KoskeKimutai, MP
10. The Hon. Francis Kuria Kimani, MP
11. The Hon. Samson Ndindi Nyoro, MP
12. The Hon. Peter Francis Masara, MP
13. The Hon. Michael Thoyah Kingi, MP
14. The Hon. Florence Mwikai Mutua, MP
15. The Hon. James Gichuhi Mwangi, MP
16. The Hon. Daniel Kipkogei Rono, MP
17. The Hon. Mathias Robi Nyamabe, MP
18. The Hon. Qalicha GufuWario, MP
19. The Hon. Michael Mwangi Muchira, MP

3rd Session

1. The Hon. James Opiyo Wandayi, MP - **Chairperson**
2. The Hon. Jessica Nduku Kiko Mbalu, MP - **Vice Chairperson**
3. The Hon. Junet Mohammed Nuh, MP
4. The Hon. Maj. (Rtd.) (Dr.) Eseli Simiyu, MP
5. The Hon. Tom J. F. Kajwang, MP

6. The Hon. Christopher Doye Nakuleu, MP
7. The Hon. Patrick Makau King'ola, MP
8. The Hon. (Dr.) Otiende Amollo, MP
9. The Hon. Gideon Koske Kimutai, MP
10. The Hon. Francis Kuria Kimani, MP
11. The Hon. Samson Ndindi Nyoro, MP
12. The Hon. Peter Francis Masara, MP
13. The Hon. Michael Thoyah Kingi, MP
14. The Hon. Florence Mwikai Mutua, MP
15. The Hon. James Gichuhi Mwangi, MP
16. The Hon. Daniel Kipkogei Rono, MP
17. The Hon. Mathias Robi Nyamabe, MP
18. The Hon. Qalicha GufuWario, MP
19. The Hon. Michael Mwangi Muchira, MP

4th Session

1. The Hon. James Opiyo Wandayi, CBS, MP - **Chairperson**
2. The Hon. Jessica Nduku Kiko Mbalu, CBS, MP - **Vice Chairperson**
3. The Hon. Junet Mohammed Nuh, CBS, MP
4. The Hon. Maj. (Rtd.) (Dr.) Eseli Simiyu, CBS, MP
5. The Hon. Tom Joseph Francis Kajwang', MP /The Hon. Aden Bare Duale, EGH, MP
6. The Hon. Christopher Doye Nakuleu, MP
7. The Hon. Patrick Makau, MP/The Hon. Justus Gesito Mugali M'mbaya, MP
8. The Hon. Gedion Koske Kimutai, MP
9. The Hon. (Dr.) Otiende Amollo, MP
10. The Hon. Peter Francis Masara, MP
11. The Hon. Michael Thoyah Kingi, MP
12. The Hon. James Gichuhi Mwangi, MP
13. The Hon. Michael Mwangi Muchira, MP
14. The Hon. Florence Mwikali Mutua, MP/The Hon. Dr. Wilberforce O. Oundo, MP
15. The Hon. Qalicha Wario, MP/The Hon. Maj. (Rtd) Bashir Sheikh Abdullahi, MP
16. The Hon. Mathias Robi, MP/The Hon. Dr. Eve Akinyi Obara, MP
17. The Hon. Ndindi Nyoro, MP/The Hon. Joseph Nduati Ngugi, MP
18. The Hon. Kuria Kimani, MP/The Hon. Samuel Kinuthia Gachobe, MP
19. The Hon. Daniel Rono, MP/The Hon. Amina Gedow Gassan, MP

5th Session

1. The Hon. James Opiyo Wandayi, CBS, MP - **Chairperson**
2. The Hon. Jessica Nduku Kiko Mbalu, CBS, MP - **Vice Chairperson**
3. The Hon. Junet Mohammed Nuh, CBS, MP
4. The Hon. Maj. (Rtd.) (Dr.) Eseli Simiyu, CBS, MP
5. The Hon. Aden Bare Duale, EGH, MP
6. The Hon. Christopher Doye Nakuleu, MP
7. The Hon. Justus Gesito Mugali M'mbaya, MP
8. The Hon. Gedion Koske Kimutai, MP/The Hon. John Waluke Koyi, MP
9. The Hon. (Dr.) Otiende Amollo, MP
10. The Hon. Peter Francis Masara, MP
11. The Hon. Michael Thoyah Kingi, MP
12. The Hon. James Gichuhi Mwangi, MP
13. The Hon. Michael Mwangi Muchira, MP
14. The Hon. Dr. Wilberforce O. Oundo, MP
15. The Hon. Maj. (Rtd) Bashir Sheikh Abdullahi, MP
16. The Hon. Dr. Eve Akinyi Obara, MP
17. The Hon. Joseph Nduati Ngugi, MP
18. The Hon. Samuel Kinuthia Gachobe, MP
19. The Hon. Amina Gedow Gassan, MP

6th Session

1. The Hon. James Opiyo Wandayi, CBS, MP - **Chairperson**
2. The Hon. Jessica Nduku Kiko Mbalu, CBS, MP - **Vice Chairperson**
3. The Hon. Junet Mohammed Nuh, CBS, MP
4. The Hon. Maj. (Rtd.) (Dr.) Eseli Simiyu, CBS, MP
5. The Hon. Aden Bare Duale, EGH, MP
6. The Hon. Christopher Doye Nakuleu, MP
7. The Hon. Justus Gesito Mugali M'mbaya, MP
8. The Hon. John Waluke Koyi, MP
9. The Hon. (Dr.) Otiende Amollo, MP
10. The Hon. Peter Francis Masara, MP
11. The Hon. Michael Thoyah Kingi, MP
12. The Hon. James Gichuhi Mwangi, MP
13. The Hon. Michael Mwangi Muchira, MP
14. The Hon. Dr. Wilberforce O. Oundo, MP
15. The Hon. Maj. (Rtd) Bashir Sheikh Abdullahi, MP
16. The Hon. Dr. Eve Akinyi Obara, MP

17. The Hon. Joseph Nduati Ngugi, MP
18. The Hon. Samuel Kinuthia Gachobe, MP
19. The Hon. Amina Gedow Gassan, MP

5) Changes within the Committee membership during the term

- | | | |
|---|---|-----------|
| 1. The Hon. Dr. Sakwa J. Bunyasi, MP | - | 2017-2018 |
| 2. The Hon. Tom Joseph Francis Kajwang', MP | - | 2018-2020 |
| 3. The Hon. Patrick Makau, MP | - | 2017-2020 |
| 4. The Hon. Florence Mwikali Mutua, MP | - | 2017-2020 |
| 5. The Hon. Qalicha Wario, MP | - | 2017-2020 |
| 6. The Hon. Mathias Robi, MP | - | 2017-2020 |
| 7. The Hon. Ndindi Nyoro, MP | - | 2017-2020 |
| 8. The Hon. Kuria Kimani, MP | - | 2020-2020 |
| 9. The Hon. Daniel Rono, MP | - | 2019-2020 |
| 10. The Hon. Aden Bare Duale, EGH, MP | - | 2020-2022 |
| 11. The Hon. Justus Gesito Mugali M'mbaya, MP | - | 2020-2022 |
| 12. The Hon. Dr. Wilberforce O. Oundo, MP | - | 2020-2022 |
| 13. The Hon. Maj. (Rtd) Bashir Sheikh Abdullahi, MP | - | 2020-2022 |
| 14. The Hon. Dr. Eve Akinyi Obara, MP | - | 2020-2022 |
| 15. The Hon. Joseph Nduati Ngugi, MP | - | 2020-2022 |
| 16. The Hon. Samuel Kinuthia Gachobe, MP | - | 2020-2022 |
| 17. The Hon. Amina Gedow Gassan, MP | - | 2020-2022 |
| 18. The Hon. Gedion Koske Kimutai, MP | - | 2017-2021 |
| 19. The Hon. John Waluke Koyi, MP | - | 2021-2022 |

1.3 Committee Secretariat

6) The Secretariat supporting the Committee comprises of the following staff:

- | | | |
|--|---|------------------------------------|
| 1. Mr. Oscar Namulanda | - | Principal Clerk Assistant I |
| 2. Mr. Nebert Ikai | - | Second Clerk Assistant |
| 3. Mr. Josh Kosiba | - | Senior Fiscal Analyst |
| 4. Mr. Sydney Lugaga/ Mr. Peter Mwaura/ Ms. Brigitta Mati- | | Legal Counsel II |
| 5. Ms. Caroline M. Njue/ Mr. Charles Atamba | | - Research Officer III |
| 6. Salat Abdi Ali | - | Senior Serjeant At Arms |
| 7. Elijah Ichwra/Nimrod Ochieng/Dennis Mawira | | -Audio Officer |

1.4 Committee Membership to Regional Bodies

- 7) The Committee has taken active paid up membership and participation in regional bodies that seek to synergize the work of Public Accounts Committees. These are the East African Association of Public Accounts Committees (EAAPAC), African Organization of Public Accounts Committees (AFROPAC) and the Commonwealth Association of Public Accounts Committees (CAPAC). These are important bodies that provide a platform for peer review and exchanges across the continent and beyond.
- 8) The Committee currently holds the position of Secretary General in both EAAPAC and AFROPAC. It also hosts the Secretariats of both organizations. The Committee Clerks have continued to go beyond their normal duties by offering their services in these organizations as the Secretariats. This year, AFROPAC General Meeting and Conference will be held in Liberia from **31st October, to 4th November, 2022.**
- 9) The Committee is up to date with its membership subscriptions for EAAPAC and AFROPAC. CAPAC membership is presumed to be all Members of the Commonwealth Parliamentarians Association (CPA) and their affiliates. The Secretariat is hosted at the CPA UK currently membership. This year, the CAPAC Conference will be hosted in the **People's Majils (Parliament) of the Maldives on Tuesday 30 and Wednesday 31 August, 2022.**
- 10) The conference will take place over 2 days (30 - 31 August) and will include a half day general meeting and one day of substantive sessions. The general meeting will include elections for a new Chair, as Dame Meg Hillier MP has come to the end of her term as Chair and is therefore stepping down, and for new members of Executive Committee (ExCo). The substantive sessions will be a great opportunity to share learning with peers on the work of PACs during COVID-19 and the most effective ways of utilising PAC networks.

2.0 BACKGROUND INFORMATION

2.1 Legal framework

- 11) Art. 93 (1) of the Constitution of Kenya establishes Parliament of Kenya which consists of the National Assembly and the Senate. Further, Art 95 provides for the role of the National Assembly amongst others to:
- (i) deliberate on and resolve issues of concern to the people;
 - (ii) enact legislations
 - (iii) determine allocation of national revenue between the two levels of governments the National government and County governments;
 - (iv) appropriate funds for expenditure by the national government and national State organs;
 - (v) exercise oversight over national revenue and its expenditure;
 - (vi) exercise oversight over State organs; and
 - (vii) review the conduct in the office of the President, Deputy President and other State officers and initiate the process of removal from office.
- 12) In addition, Art 124 of the Constitution empowers Parliament to establish Committees and to make Standing Orders for orderly conduct of its proceedings including the proceedings of its Committee. The National Assembly Standing Orders has established various Committees of the House with distinct mandates.
- 13) The Public Accounts Committee is established under the National Assembly Standing Order (S.O.) 205 and is responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit.

2.2 Guiding Principles

- 14) In the execution of its mandate afore-stated, PAC is guided by core constitutional and statutory principles on public finance management, as well as established customs, traditions, practices and usages. These principles include the following:

1) Constitutional Principles on Public Finance

- 15) Article 201 enacts fundamental principles that “...*shall guide all aspects of public finance in the Republic...*” The principles are, *inter alia*, that:

201(a) *there shall be openness and accountability, including public participation in financial matters;*

201(d) *public money shall be used in a prudent and responsible way; and*

201(e) *financial management shall be responsible, and fiscal reporting shall be clear.*

- 16) PAC places a premium on these principles, among others, and has been guided by them in the entire process that has culminated in its reports.

2) Direct Personal Liability

- 17) Article 226(5) of the Constitution is emphatic that “***If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not***”.

- 18) PAC has hoisted high this constitutional provision as the basis for holding each individual Accounting Officer and other Public Officers directly and personally liable for any loss of public funds under their watch. The Committee invoked this provision in its recommendations to hold those responsible personally accountable. This was also intended to serve as a deterrent measure.

3) Obligations of Accounting Officers

- 19) Section 68 (1) of the Public Finance Management Act, 2012 provides, *inter alia*, that: “***An Accounting Officer for a national Government entity, Parliamentary Service Commission (the Senate and National Assembly) and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the Accounting Officer are used in a way that is lawful and authorized, and effective, efficient, economical and transparent.***”
- 20) This provision obligates all Accounting Officers to appear before the Public Accounts Committee of the National Assembly to respond to audit queries in their respective Ministries/Departments/Agencies.

21) And section 74 (2) of the same PFM Act stipulates that:

“If a Cabinet Secretary reasonably believes that an Accounting Officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall:

-Take such measures as may be provided in regulations; or

- Refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that Accounting Officer.”

22) This section empowers the appointing authority to discipline errant Accounting Officers, which could include revoking their appointment. This provision has sealed a long-standing loophole that has previously seen Accounting Officers continuously commit or preside over fiscal indiscipline and malpractice in their Ministries with impunity without sanction.

23) PAC strongly holds the view that these provisions of the law were intended to be fully deployed to give effect to the high principles in Article 201 of the Constitution stated herein above, to ensure prudent and responsible use of public funds. The Committee, accordingly, applied these provisions to recommend diverse disciplinary actions, investigations and surcharging of various persons found to bear responsibility for breaches of the law and/or responsible for the loss or wastage of public funds.

3.0 ACHIEVEMENTS

24) In the discharge of its mandate, the Committee held a total of five hundred and eighty six (587) as follows:

First session	-	1 sitting
Second session	-	123 sittings
Third session	-	141 sittings
Fourth session -	99 sittings	
Fifth session	-	158 sittings
Sixth session	-	64 sittings
Total	-	586 Sittings

3.1 Audit Reports Examined

25) The Committee has examined fourteen (14) audited reports of the National Government, four audited reports of the Office of the Auditor General and four Special Audit Reports as listed below:

A. Audited Accounts of the National Government

1. Report of the Auditor General on the financial statements for the National Government for the year 2014/2015;
 2. Report of the Auditor General on the financial statements for the National Government for the year 2015/2016;
 3. Report of the Auditor General on the financial statements for the National Government for the year 2016/2017;
 4. Report of the Auditor General on the financial statements for the National Government for the year 2017/2018;
 5. Report of the Auditor General on the financial statements for the National Government for the year 2018/2019; and
 6. Report of the Auditor General on the financial statements for the National Government for the year 2019/2020.
- 26) The Committee has tabled all its reports on the examination of the six (6) reports of the Auditor General listed above. All the six (6) tabled reports of the Committee have been debated and adopted by the House.

27) With regard to the Report of the Auditor General on the financial statements for the National Government for the year 2020/2021, the Committee has concluded examination of the accounts of the following Ministries, Departments, Agencies and Independent Offices:

1. State Department for Vocational and Technical Training
2. State Department for Sports
3. State Department for University Education and Research
4. State Department for Infrastructure
5. State Department for Interior and Citizen Services
6. Ministry of Energy
7. Ministry of Health
8. Teachers Service Commission
9. State Department of Labour
10. National Land Commission
11. State Department for Correctional Services
12. State Department for Early Learning and Basic Education
13. State Department for Information, Communication, Technology and Innovation
14. Ministry of Environment and Forestry
15. Ministry of Lands and Physical Planning
16. State Department for Social Protection
17. State Department for Public Service
18. Ministry of Defence
19. State Department for Transport
20. State Department for Cooperatives
21. The Presidency

28) The Committee has done handover notes on the above mentioned State Departments for the incoming Committee in the 13th Parliament.

B. Audited Accounts of the Office of the Auditor General

1. Report of the Auditor General on the financial statements for the Office of the Auditor General for the year 2014/2015;
2. Report of the Auditor General on the financial statements for the Office of the Auditor General for the year 2014/2016;
3. Report of the Auditor General on the financial statements for the Office of the Auditor General for the year 2016/2017; and
4. Report of the Auditor General on the financial statements for the Office of the Auditor General for the year 2017/2018.

- 29) The Reports on the above audited accounts of the Office of the Auditor General are pending adoption by the Committee and subsequent tabling on the floor of the House.

C. Special Audit Reports

1. Special Audit Report on the Medical Equipment Services, Ministry of Health;
2. Special Audit Report on the National Land Commission Payments for Land Purchases on Behalf of Other Government Entities for the Period 2014/2015 to 2016/2017;
3. Special Audit Report of the Auditor-General on Utilization of Covid-19 Funds by National Government Entities for the Period 13 March -31 July 2020; and
4. Special Audit Report of the Auditor General on the Procurement of Foodstuffs by the Ministry of Defence for the financial years 2014/2015 to 2017/2018.

3.2 Oversight

3.2.1 Audited Financial statements

- 30) The Committee examines all the accounts of the National Government Ministries, Departments, Agencies and Independent Offices and of such other accounts laid before the House as the Committee may think fit.

3.2.2 Inquiries

- 31) The Committee conducted a number of inquiries during the 12th Parliament as highlighted below:
- (i) Inquiry into the Procurement of the Medical Equipment Services by the Ministry of Health;
 - (ii) Inquiry into the Payments for Land Purchases on Behalf of Other Government Entities for the Period 2014/2015 to 2016/2017 by the the National Land Commission;
 - (iii) Inquiry into the Utilization of Covid-19 Funds by National Government Entities for the Period 13 March -31 July 2020;
 - (iv) Inquiry into the on Procurement of the Foodstuffs by the Ministry of Defence for the financial years 2014/2015 to 2017/2018.

3.2.3 Oversight Milestones

32) The Committee, operating under the mantra “*PAC: Beyond Reproach*” was able to achieve the following;

1. Cleared the backlog of the Auditor General’s report which is now up to date. This will enable sharing of revenue to be based on current audited accounts. This was made possible through unprecedented simultaneous examination of six (6) audited accounts of the National Government for the financial years 2014/2015, 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020 financial years.
2. Tabled the Report on the examination of the Report of the Auditor General for the Financial Year 2014/2015, 2015/2016, 2016/2017, 2017/2018, 2018/2019 and 2019/2020. The Reports have been adopted by the House.
3. Actualized the implementation of the very important provisions of Article 226 (5) of the Constitution by directly apportioning culpability to various public officers. This has further been enabled by examination of books of accounts in real time.
4. The Committee also through its Chairman as the Secretary General of the African Organization of Public Accounts Committees – AFROPAC has negotiated and agreed on an MoU to be signed between the Parliamentary Service Commission and AFROPAC with regard to the hosting and support given to AFROPAC Secretariat.
5. The Commission at its 303rd Meeting held on 25th May, 2022 agreed to the proposed MoU with amendments and sought the concurrence AFROPAC on the amendments and subsequently have the MoU signed by the Speaker of the National Assembly and Chairman of the Parliamentary Service Commission and the Chairman of the AFROPAC.

4.0 CHALLENGES AND OPPORTUNITIES

33) In conducting its mandate the Public Accounts Committee faced a number of challenges:

1. **Delayed submission of audit documents** - Failure by accounting officers to submit documents in time gave rise to a significant number of audit queries arise. This made it difficult for the Auditors and the Committee to examine the Reports efficiently.
2. **Covid-19 pandemic** - The Committee's work plan also was significantly affected by the disruptions caused by the COVID-19 pandemic. This was particularly so during periods when Government employees were advised to work from home. With virtual meetings restricted for audit committees, the Public Investments Committee had to cancel some sittings during the session.
3. **Abrupt changes in the government arising from the President's exercise of his function to reorganize government as and when necessary by appointing and or dismissing Cabinet Secretaries, Principal Secretaries and other key government Officers:** The Committee has consistently observed and negatively been affected by the reorganization of government whereby a number of Government Departments have been created, moved, separated or merged thereby affecting the audit reporting and accounting process resulting into unwarranted convolution of votes of accounts.
4. **Limited Time for examination of the performance audit reports** – The audit process pays very little focus on Performance-Based Budgeting/Performance Auditing that concentrates on the results that are being delivered for resources provided, rather than just how much money is being spent, with the aim of strengthening resource allocation, effectiveness, efficiency and accountability.
5. The Committee however sees several opportunities to enhance its efficiency on oversight of the financials of State Corporations. The split of the Public Accounts Committee into two Committees that focus on specific thematic sectors will greatly increase the ability of each Committee to reduce the backlog of unexamined audited accounts in the respective Ministries, Departments, Agencies and Independent Offices.
6. **Constrained Budget/funding for the Office of the Auditor General:** the Office of the Auditor General has a very critical role to play yet has been allocated very minimal budget. Additional funding to the Office of the Auditor General will enable the Committee to establish the results that are being delivered for resources provided to State Departments through performance-based auditing. This can advise resource allocation and enhance effectiveness, efficiency and accountability in use of public resources.

7. **Time constraints:** the Committee faced major time constraints in the execution of its mandate which included strict timelines in the examination of annual audit reports. Members have had to struggle a lot to adjust to that and make sacrifices.
8. **Undue influence:** the Committee faced constant attempts to derail its work through unsubstantiated and unwarranted claims, most of which were seemingly driven more by political expediency and malice made against Members of the Committee. This was experienced during the adoption of the Report of the Accounts of the IEBC for the year 2016/2017. The Committee Members however remained unbowed and true to their calling.
9. **Interference with the Independence of the Office of the Auditor General:** similar criticism was directed to a key partner of the Committee, the Office of the Auditor General. The Committee observed that this was part of a wider scheme to weaken the push for accountability in the prudent use of public funds.
10. **Auditing of Confidential Expenditure:** the Committee faced major challenges in the examination of reports of confidential expenditure/security items. While alive to the sensitivity of some of the Government operations, the Committee believes that all public funds should be subjected to review by the representatives of the people for the simple reason that while there may be need for confidential/security expenditure the monies involved are raised from the public.
11. **Flippancy by Accounting Officers:** most Accounting Officers were found not to take seriously the mandate of the Committee, and indeed the institution of Parliament. This included the Accounting Officers deliberately providing unsatisfactory/incomplete and sometimes misleading responses to audit queries, incessant requests for rescheduling of appearance before the Committee, and in some instances outright lack of familiarity with operations in their respective MDAs and International Public Sector Accounting Standards (IPSAS) as well as the Public Finance Management procedures and regulations.
12. **Delayed Special Audits:** the Committee requested Special Audit reports from the Office of the Auditor General on the Procurement of the Food stuff and other Consumables by the State Department of Defence, the Project of the Small Dams by the State Department for Irrigation and the National Fibre Optic Infrastructure – NOFBI by the State Department for ICT and Innovation⁸. Up to the time of preparing this report, the special Audit reports had not been presented to the Committee more than one year after they were requested. The Office of the Auditor General has always cited lack of capacity and inadequate funding for these delays.

13. Misuse/Abuse of legal process: the Committee is concerned with the growing habit by persons found culpable in its reports to delay and frustrate or even block implementation of its recommendations using the court system. The Committee considers this an affront on its role and the mandate of Parliament as the supreme oversight institution of the Nation.

14. Encroachment on the mandate of PAC: the Committee is concerned about the increasing cases of encroachment on its mandate by other Committees of the Senate. The Committee notes that there is a conflict between the functions of Public Accounts Committee and Public Investments Committee. Any money voted by Parliament for Government Ministries, Judiciary and the Legislature should fall within the purview of the PAC. The Standing Orders are clear on the mandate of PAC as cited earlier.

5.0 RECOMMENDATIONS

1. The Government of Kenya should build technical and financial capacity of Public Finance Management Officers in implementing projects through Public Private Partnerships (PPP). This will enhance efficiency and effectiveness in executing such projects.
2. Tracking of the implementation status of PAC/ PIC Reports: within three months after the adoption of the report of the Committee on the examination of the audited accounts of the National Government, The National Treasury submits to Parliament, by way of Treasury Memorandum, the status of implementation of recommendations of PAC and PIC reports. The Committee on Implementation should prioritize examination of this Treasury Memorandum to assist tracking of the progress of implementation of the recommendations made by the two Committees and also minimize audit queries that keep recurring in the Auditor General's annual reports as well as other recommendations made in special reports.
3. The Committee recommends that reorganization of government and reshuffling of the Cabinet should be done in tandem with respective financial years to reduce affection of audit process and change and/or allocation of various votes of accounts.
4. The Committee recognizes the integral role played by the Office of the Auditor General in ensuring prudent use of public resources. The OAG is however constrained in fully undertaking its mandate owing to shortage of technical staff and inadequate budgetary provisions. The Committee therefore recommends that the Office of the Auditor General be strengthened by way of enhancing its budgetary allocation and staffing levels to ensure that it enhances its public audit function.
5. Since Committees remain appendages of Parliament, any attack on the Committee must therefore be an affront on the institution of Parliament. Parliament must therefore robustly defend and protect its Committees particularly the ones that provide oversight of public funds if the watchdog role of Parliament is to be felt. The Presidium of Parliament should always guard against unwarranted attacks especially from persons or entities under scrutiny.
6. In any society, the Auditor Generals' Reports should never be mere allegories. It is therefore expected that from time to time, these reports will make some people in authority uncomfortable. Whether or not the Auditor General's reports make for uncomfortable reading, it is the duty of those in Authority to fiercely defend the independence of that Office if it is to effectively execute its constitutional mandate as per Article 249(2) (b) of the Constitution of Kenya.

7. The Appointing Authority should be decisive in dealing with those Accounting Officers who do not take their responsibilities to Parliament seriously. In deed contempt of the institution of Parliament equates to the disrespect of the People of Kenya.
8. In keeping with International Best Practise in auditing and reporting of confidential/ security expenditure, the Public Audit Act should be amended to create a high-level team drawn from Parliament, the Office of the Auditor General and the Auditee, who shall work under oath to comprehensively examine and report on this expenditure.
9. In keeping with International Best Practices, reports of the Oversight Committees particularly those on Special Audits should be given priority when it comes to debate and adoption. Additionally, the Implementation Committee of Parliament should prioritize the listing of the recommendations of these Committees for implementation.
10. To avoid misuse of the court system, the Principle of separation of powers should be respected. The courts ought not to entertain frivolous injunctions. Further, bonds applicable to those charged with abuse of office, economic crimes and misuse of publics funds should be made punitive enough to discourage abuse of the judicial process.
11. The ODPP, EACC and the DCI should second permanent officers to all Oversight Committees for purposes of speeding up investigations and ensuring real time action is taken on offenders.

6.0 CONCLUSION

The Committee believes it has attained its mandate as envisioned in the Constitution and the Standing Orders. The Committee notes that it has firmly rooted relevant provisions in accounting for public funds. The succeeding Committee will inherit a rich legacy that will help it attain its objectives.

Signature: ..



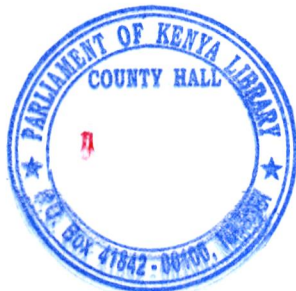
Date:.....09/06/2022.....

HON. JAMES OPIYO WANDAYI, CBS, MP
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

Approved for tabling in the House.



R. SNA
8/6/2022



TWELFTH PARLIAMENT – SIXTH SESSION

THE NATIONAL ASSEMBLY

SPECIAL FUNDS ACCOUNTS COMMITTEE

TWELFTH REPORT ON AUDITED FINANCIAL STATEMENTS FOR
THE LAND SETTLEMENT FUND FOR FINANCIAL YEARS 2019/2020 AND 2020/21

THE NATIONAL ASSEMBLY	
DATE:	08 JUN 2022
TABLED BY:	Hon. Dr. R. Purose, MP Member, SFAC.
CLERK AT THE TABLE:	Mwambi. W MW

Directorate of Audit, Appropriations and Other Select Committees
National Assembly
Parliament Buildings
NAIROBI

June, 2022

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LIST OF ABBREVIATIONS AND ACRONYMS

CoK	-	Constitution of Kenya, 2010
CRA	-	Commission on Revenue Allocation
FY	-	Financial Year
LSF	-	Land Settlement Fund
MDAs	-	Ministries, Departments and Agencies
PFM	-	Public Finance Management
OAG	-	Office of the Auditor-General

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CHAIRPERSON'S FOREWORD

Hon. Speaker, on behalf of the Special Funds Accounts Committee and pursuant to Standing Orders 199, it is my pleasant duty and honour to present to the House the report of the Committee on audited financial statements for the Land Settlement Fund for financial years 2019/2020 and 2020/21.

Oversight over national revenue and expenditure is amongst the roles of the National Assembly as stipulated under Article 95 (4) (c) of the Constitution of Kenya, 2010. Further, Article 226 of the Constitution provides that an Act of Parliament shall provide for the designation of an Accounting Officer in every public entity at the national level who is accountable to the National Assembly for its financial management. In addition, Article 229(8) mandates this House to debate and take appropriate action on audit reports from the Auditor-General.

In fulfillment of these constitutional provisions, the National Assembly has established various committees to examine reports of the Auditor-General to ascertain whether public funds have been utilized in a lawful, authorized, effective, efficient, economical and transparent manner. The Special Funds Accounts Committee which was established in the Fifth Session of the Eleventh Parliament following the review of the National Assembly's Standing Orders is amongst the Committees of the Twelfth Parliament that examines reports of the Auditor-General.

Examination of reports of the Auditor-General for Land Settlement Fund and the Equalization Fund is amongst the mandate of the Special Funds Accounts Committee as provided under the National Assembly Standing Order number 205A. The report of the Auditor-General on the financial statements of Land Settlement Fund for financial years 2019/2020 and 2020/2021 were committed to the Committee for examination to determine whether public money was used in a prudent and responsible way as provided under Article 201 of the Constitution of Kenya 2010.

The Committee held a total of three meetings where it received evidence from Dr. Nicholas Muraguri, the Principal Secretary, Ministry of Lands and Physical Planning who is the Accounting Officer of the Land Settlement Fund. The oral and written submissions received formed the basis of observations, findings and recommendations of the Committee as outlined in this report under each of the audit queries. These can also be obtained from the Minutes and Hansard Reports of Committee proceedings.

Hon. Speaker, I wish to express appreciation to my fellow Honourable Members of the Committee, the Office of the Speaker and the Clerk of the National Assembly and the Parliamentary Liaison Offices of the Auditor-General and the National Treasury for facilitating the Committee in the production of this report.

Hon. Speaker, on behalf of the Special Funds Accounts Committee, I now wish to table this report and urge the House to adopt it and its recommendations therein.



HON. KATHURI MURUNGI, M.P.

CHAIRPERSON, SPECIAL FUNDS ACCOUNTS COMMITTEE

CHAPTER ONE

1. PREFACE

1.1. Establishment and Mandate of Special Funds Accounts Committee

1. Article 124 of the Constitution of Kenya 2010 provides for the establishment of Committees of Parliament and empowers each House of Parliament to make Standing Orders for the orderly conduct of proceedings including Committee Proceedings. The National Assembly Standing Order 205A establishes the Special Funds Accounts Committee (SFAC) to examine audited accounts laid before the House of the Equalization Fund, the Political Parties Fund, the Judiciary Fund, the National Government Constituencies Development Fund and such other Fund established by law as the Speaker may direct.

1.2. Guiding Principles: Constitutional and Legal provisions on Public Finance

2. The principles of public finance under Article 201 of the Constitution of Kenya 2010 guided the Committee in the execution of its mandate. The principles require openness, accountability and public participation in financial matters as well as prudence and responsible use of public funds amongst others. Further, Article 226 (5) provides that *“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”*.
3. The various legal provisions as contained in various Acts of Parliament which include the PFM Act, 2012, the repealed Public Audit Act, 2003, the Public Audit Act, 2015, the repealed Public Procurement and Disposal Act, 2005, the Public Procurement and Asset Disposal Act, 2015 as well as established customs, traditions, practices and usages also guided the Committee. Section 68 (1) of the PFM Act, 2012 provides, inter alia, that- *“An accounting officer for a national government entity including Public Funds, Parliamentary Service Commission and the Judiciary is accountable to the National Assembly. The Accounting Officer is required to ensure that the resources of the respective entity for which he or she is responsible are used in a way that is lawful and authorized, and effective, efficient, economical and transparent.”*
4. The Committee relied on these constitutional and legal provisions as the basis for inviting the accounting officer of the Land Settlement Fund to respond to issues raised by the Auditor-General. During consideration of the audit reports, the Committee also relied on additional information submitted to it on the administration and performance of the Fund to come up with general recommendations geared towards effective management of this key Fund to ensure that its managed effectively in fulfilment of critical mandate of supporting the land sector in Kenya.

Committee Membership

5. The Committee comprises the following members: -

Chairperson

Hon. Kathuri Murungi, M.P.

Member for South Imenti Constituency

Independent Member

Vice-Chairperson

Hon. William Kamuren Chepkut, M.P.

Member for Ainabkoi Constituency

Independent Member

Members

Hon. Justus Gesito Mugali, M.P.

Member for Shinyalu Constituency

Orange Democratic Movement Party

Hon. Alfred Agoi Masadia, M.P.

Member for Sabatia Constituency

Amani National Congress Party

Hon. Dennitah Ghati, HSC, M.P.

Nominated Member (representing
Persons with Disabilities)

Orange Democratic Movement Party

Hon. Mark Lomunokol, M.P.

Member for Kacheliba Constituency

Party of Development and Reforms

Hon. Shakeel Shabbir, M.P.

Member for Kisumu Town East
Constituency

Independent Member

Hon. (Dr.) Robert Pukose, M.P.

Member for Endebess Constituency

Jubilee Party

Hon. Erastus Kivasu Nzioka, M.P.

Member for Mbooni Constituency

New Democrats Party

Hon. Esther M. Passaris, M.P.

Member for Nairobi County

Orange Democratic Movement Party

Hon. Geoffrey Omuse, M.P.

Member for Teso South Constituency

Orange Democratic Movement Party

Hon. Jared Okelo, M.P.

Member for Nyando Constituency

Orange Democratic Movement Party

Hon. Marwa Maisori Kitayama, M.P.

Member for Kuria East Constituency

Jubilee Party

Hon. Mohamed M. Ali, M.P.

Member for Nyali Constituency

Independent Member

Hon. Mwambu M. Mabongah, M.P.
Member for Bumula Constituency
Independent Member

Hon. Mohamed Ali Lokiru, M.P
Member for Turkana East Constituency
Orange Democratic Movement Party

Hon. Faith Gitau, MP
Member for Nyandarua County
Jubilee Party

Hon. (Dr.) Enoch Kibunguchy, M.P
Member for Likuyani Constituency
Ford Kenya Party

Hon. Koske Gideon Kimutai, M.P
Member for Chepalungu
Chama Cha Mashinani Party

1.3. Committee Secretariat

6. The Secretariat facilitating the Committee comprises of the following staff:

Ms. Lucy Kimathi
Principal Clerk Assistant I

Ms. Hellen Ekadeli
Clerk Assistant I

Ms. Emma Essendi
Legal Counsel I

Mr. Josphat Bundotich
Senior Serjeant-at-Arms

CPA. Joash Kosiba
Lead Fiscal Analyst

CPA. Kennedy Okinyi Owuoth
Fiscal Analyst III

Ms. Noelle Chelagat
Media Relations Officer III

Ms. Naserian Kaare
Serjeant-at-Arms II

Mr. Job Owaga
Audio Officer III

CHAPTER TWO

2. INTRODUCTION

2.1. Background Information

7. The National Assembly's roles include oversight over the national revenue and expenditure as per Article 95(4) (c) of the Constitution of Kenya. Article 229(8) mandates the National Assembly to debate and take appropriate action on audit reports within three months of receipt of the reports from the Auditor-General. Further, section 68(1) of the Public Finance Management (PFM) Act, 2012 requires accounting officers for national government entities including public funds, Parliamentary Service Commission and the Judiciary to be accountable to the National Assembly through the relevant Committee.
8. The Special Funds Accounts Committee is amongst the Committees of Parliament established pursuant to Article 124 of the Constitution of Kenya, 2010 to assist the National Assembly to undertake its constitutional mandates geared towards enhanced accountability in handling public funds. The Committee draws its mandate from Standing Order number 205A of the National Assembly's Standing Orders which amongst others, require it to examine accounts of such Funds established by law as the Speaker may direct.
9. The audited accounts of the Land Settlement Fund contained in this report is amongst the accounts that the Committee is mandated to examine. In addition, Standing Order 205A(2)(a) mandates the Committee to examine the accounts of the Equalization Fund.

2.2. Land Settlement Fund

10. The Land Settlement Fund is established under section 135 of the Land Act, 2012. Subsection (3) provides that the Fund shall be applied to the following purposes:
 - (a) *provision of access to land—*
 - (i) *to squatters;*
 - (ii) *to displaced persons;*
 - (iii) *for development projects;*
 - (iv) *for conservation; or*
 - (v) *such other causes that may lead to movement and displacement of persons;*
 - (b) *purchase of private land for settlement programmes;*
 - (c) *deleted by Act No. 28 of 2016, s. 90*
 - (d) *provision of shelter and a livelihood to persons in need of settlement programmes;*
 - (e) *research, documentation and dissemination of information on settlement programmes;*
 - and*
 - (f) *any other purpose that would enhance the development and promotion of settlement programmes that may be approved by the Commission.*

11. The Fund is administered by the Principal Secretary, Ministry of Lands and Physical Planning and its management is overseen by the Land Settlement Fund Board of Trustees which comprises of the following:-
- (i) the Cabinet Secretary responsible for land matters as the Chairperson;
 - (ii) the Cabinet Secretary responsible for National Treasury;
 - (iii) the Cabinet Secretary responsible for agriculture;
 - (iv) the Cabinet Secretary responsible for environment and natural resources;
 - (v) the Cabinet Secretary responsible for Internal Security; and
 - (vi) a representative of the National Land Commission.
12. The Fund's day-to-day operations are undertaken by the Director of Land Adjudication and Settlement assisted by staff and accountant teams. During the year under review, the Fund identified key strategic priorities which enabled it execute its mandate effectively. These included facilitation of discharge for issuance of Title Deeds, finalization of on-going land adjudication sections and settlement schemes and computerization of Settlement Trust Fund Billing and Accounting Systems.

CHAPTER THREE

3.1 REPORT OF AUDITOR-GENERAL ON AUDITED FINANCIAL STATEMENTS FOR THE LAND SETTLEMENT FUND FOR THE FINANCIAL YEAR 2019/2020

13. Dr. Nicholas Muraguri, the Principal Secretary, Ministry of Lands and Physical Planning, appeared before the Committee on 22nd November, 2021 to adduce evidence on audited financial statements for the Land Settlement Fund for the financial year 2019/2020. He was accompanied by:
1. Mr. Kennedy Njenga –Director of Land Adjudication and Settlement
 2. Mr. David Kimotho - Principal Accountant.

The basis for disclaimer of opinion

1) Unsupported Balances

14. The statement of changes in net assets reflects an opening balance as at 1 July, 2019 of Kshs. 13,266,170,244 which includes net transfers to or from accumulated surplus totalling to Kshs. 11,665,052,516. However, and as previously reported, the Management did not provide details on where the balances were transferred to or from.
15. Supporting schedules for the balances transferred were also not provided for audit verification. In the circumstances, the accuracy of the financial statements for the year ended 30th June, 2020 could not be confirmed.

Submission by the Accounting Officer

16. The accounting officer submitted that the statement of changes in net assets reflects an opening balance as at 1st July, 2019 of Kshs. 13,266,170,244 which includes net transfers to or from accumulated surplus totaling to Kshs. 11,665,052,516 which, as previously reported, the Management did not provide details on where the balances were transferred to or from. These amounts were realized after the Fund was allowed to reconstruct its accounts due to historical balances that could not be supported over the years.
17. He further submitted that the National Treasury in its approval of the reconstructed accounts vide Ref: AG.3/189/Vol.1/ (8) dated 1st March 2021, advised that the Fund effects prior period adjustments in the financial statements subject to the concurrence of the Office of the Auditor-General. The Fund had complied and presented the adjusted financial statements to the Auditor General for audit review.

Committee observations

18. The Committee observed that the query was carried from the previous financial year and had been resolved as contained in the adopted report by the House relating to the Audit Report for the FY 2018/2019.

2) Trade receivables

19. As disclosed in Note 9 to the financial statements, the statement of financial position reflects a balance of Kshs. 12,296,090,253 under trade receivables. The following observations were noted:

2.1 Accuracy of the opening balances

20. As reported in the previous year, the trade receivables balance excludes opening balance of various items as summarized below.

Item	Kshs
Land Loans Issued	278,975,885
Rescue Loan Issued	550,019
Land Loans Principal Billed	(610,055,404)
Billed amount settlers	3,494,524,091
Development Loans Principal Billed	(189,149,529)
Rescue Loans Principal Billed	(240,198)
Cane Development Costs – Suspense	(5,139,967)
Other Recoverable expenses	9,820,460
General Debtors	32,353,374
Trade Investment	59,263,387
Advances	10,567,668
Suspense Debit Items	64,507,005
Loan Repayment Collection	(2,161,547,241)
Agency Accounts (debits)	257,000

21. Although Management wrote to The National Treasury requesting for authority to write off the balances, the approval has not been granted.

Submission by the accounting officer

22. The accounting officer submitted that trade receivable balance excludes the stated opening balances. These balances constitute part of the un-analyzable balances which led to the reconstruction of the Fund's accounts.

23. He also submitted that the Fund's management wrote to the National Treasury vide Ref: MOLP /ADM/20/6(27) dated 15th June 2020 seeking to write off these historical balances and received the National Treasury's authority vide Ref: AG.3/189/vol.1/(8) of 1st March, 2021.

Committee observations

24. **The Committee observed that the query was carried from the previous financial year and had been resolved as contained in the adopted report by the House relating to the Audit Report for the FY 2018/2019.**

2.2 Imprest

25. The trade receivables balance also includes outstanding imprest of Kshs. 3,709,130 wrongly classified under trade receivables instead of receivables from on-exchange transactions. Further, the imprest balance of Kshs. 3,709,130 was due but had not been surrendered as at the time of audit in November, 2020. This is contrary to regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to the duty station.
26. Regulation 93(6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank rate. Although Management has written to the relevant institutions for recoveries to be effected from the officers' dues and remitted to the Fund, progress made has not been disclosed.

Submission by the accounting officer

27. The accounting officer submitted that receivables balance also included outstanding imprest of Kshs. 3,709,130 was wrongly classified under trade receivables instead of receivables from non-exchange transactions and that a balance of Kshs. 3,709,130 was due but had not been surrendered as at the time of audit in November, 2020.
28. He further submitted that the Fund was in the process of recovering the outstanding imprest and all had been accounted for as at the date of appearance before the Committee on 26th May 2021 save for that held by Justice Korir Kiprono from whose salary recovery was ongoing. Justice Kiprono eventually accounted for his imprests vide P.V. Nos. 495 & 496 and Miscellaneous Receipt Nos. D1594789 & D1594790 respectively, dated 29th October, 2021.

Committee observations

29. The Committee observed that the imprest has since been recovered hence the audit query stands resolved.

Committee recommendation

30. **The Committee recommends that the Accounting Officer must at all times ensure that the processing and surrender of imprest complies with provisions of regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015.**

2.3 Long Outstanding Land and Development Loans

31. The trade receivables balance further includes amounts of Kshs. 6,946,330,739 and Kshs. 70,555,451 in respect of land loans receivables and development loans receivables respectively. However, a review of the supporting schedules indicated that these loans were issued to settlers from the year 1962 but remained outstanding as at 30 June, 2020. No explanation has been provided for the long outstanding balances on land and development loans.

Submission by the accounting officer

32. The accounting officer submitted that trade receivables balance further includes amounts of Kshs. 6,946,330,739 and Kshs. 70,555,451 in respect of land loans receivables and development loans receivables respectively which remained outstanding as at 30 June, 2020. These amounts have remained outstanding for long due to the settlers' general slow pace of loan repayment caused by the tedious manual bill processing and dispatch processes previously in place. However, during the reconstruction of the Fund's accounts, the Fund digitized all settler data and has since been processing and dispatching bi-annual full balance statements to the debtors as a reminder of their obligations. It is now also possible for settlers to make their loan repayments via the Mpesa platform.
33. He further submitted that full and complete recoverability of amounts outstanding is assured through the Fund's loan clearance and discharge process which ensures that before a parcel is discharged for registration, all outstanding amounts are paid. This way, the Fund has always been able to recover all amounts due from settlers who wish to process land titles for their parcels and hence considers all dues as recoverable.

Committee observations

34. **The Committee observed that:**
- (i) **The long outstanding loans of Kshs. 6,946,330,739 and Kshs. 70,555,451 in respect of land loans receivables and development loans receivables respectively, were issued to settlers from the year 1962 but remained outstanding as at 30 June, 2020.**
 - (ii) **The long outstanding loans resulted from the slow pace of loan repayment caused by tedious manual bill processing and dispatch processes previously in place. The accounting officer had digitized billing and loan repayment processes geared towards improving loan recoverability;and**

- (iii) **The accounting officer had put adequate measures to ensure outstanding loans are settled before discharge and registration of land parcels to beneficiaries.**

Committee recommendations

35. The Committee recommends that:

- (i) **The Accounting Officer should within three (3) months of adoption of this report, submit to the National Assembly a list of all loanees, amount owed and land allotment details and take necessary action to fast track on loan repayments including repossession of the land to recover the outstanding loans;**
- (ii) **The Accounting Officer should within six months of adoption of this report submit a status report to National Assembly on the progress on loan recovery; and**
- (iii) **The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.**

2.4 Long Outstanding Interest Receivable

36. The trade receivables balance in addition, includes interest receivable of Kshs. 5,275,494,933 which has accumulated over the years on loans issued to settlers since 1962 and whose recoverability remains doubtful as at 30 June, 2020. In the circumstances and in the absence of the provisions against the long outstanding debts, the accuracy and recoverability of the reported trade receivables balance of Kshs. 12,296,090,253 could be confirmed.

Submission by the accounting officer

37. The accounting officer submitted that trade receivables balance in addition, includes interest receivable of Kshs. 5,275,494,933 which has accumulated over the years on loans issued to settlers since 1962.
38. He further submitted that on Land and Development loans outstanding, the amounts had remained outstanding for long due to the settlers' slow pace of loan repayment occasioned by the manual bill processing and dispatch processes that were previously in place. This has been addressed through digitization of settler data and the processing and dispatch of bi-annual full balance statements. Digitization has also ensured that settler data is accurate, complete, valid and verifiable with the physical settler file.
39. He also submitted that full and complete recoverability of amounts outstanding is assured through the Fund's loan clearance and discharge process which ensures that before a parcel is discharged for registration, all outstanding amounts are paid.

Committee observations

40. The Committee observed that due to slow pace on loan repayment by the settlers, interest on loan had accumulated to Kshs. 5,275,494,933 settlers since 1962.

Committee Recommendations

41. The Committee recommends:

- (i) The Accounting Officer should within three (3) months of adoption of this report, submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary action to fast track on loan interest repayments including repossession of the land to recover the outstanding loans interest;
- (ii) The Accounting Officer should within six months of adoption of this report, submit a status report to the National Assembly on the progress on loan interest recovery; and
- (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

3) Inaccuracy of Trade and Other Payables from Exchange Transactions

42. As disclosed in Note 12 to the financial statements, the statement of financial position reflects a nil balance under trade and other payables from exchange transactions. However, and as previously reported, the balance excludes unsupported opening balances as detailed below:

Item	Amount (Kshs.)
Refundable Deposits from customers	93,343,385
Provisions	11,676
Agency Accounts (credits)	125,425
Other Creditors	3,150,139
Accrued Interest on Loan	301,500
Reserve for Bad Debts	6,602,797
Suspense Credit Items	(122,806,862)
Fund Drawn from Treasury	5,153,814

43. Management has not explained the circumstances which led to a debit balance in payables, an indication that the creditors were overpaid. In the circumstances, the accuracy, completeness and validity of the trade and other payables from exchange transactions nil balance as at 30 June, 2020 could not be confirmed.

Submission by the accounting officer

44. The accounting officer submitted that he concurred that as disclosed in Note 12 to the financial statements, the statement of financial position reflects a nil balance under trade and other payables from exchange transactions. However, and as previously reported, the balance excludes unsupported opening balances as detailed above. These amounts are part of the un-analyzable balances for which the National Treasury's authority was sought and given vide Ref: AG.3/189/vol.1/(8) of 1st March, 2021 allowing the Fund to report on the analyzable figures resulting from the reconstruction exercise.

Committee observations

45. The issue was carried from the previous financial year and had been resolved as contained in the adopted report by the House relating to the Audit Report for the FY 2018/2019.

Committee Recommendation

46. **The Committee recommends that Accounting Officers must at all times ensure that they provide accurate records and other supporting documents pursuant to section 9 (1) (e) of the Public Audit Act, 2015.**

4. Non-Resettlement of Internally Displaced Persons

47. As per a sales agreement dated 3 October, 2012, the Fund purchased a parcel of land in Kisima Njoro L.R. No. 9216 at a cost of Kshs. 396,984,000 for resettlement of Internally Displaced Persons (IDPs). However, during a physical verification of the farm in the month of September, 2019, it was noted that the land had not been surveyed or sub-divided and therefore, the beneficiaries had not been resettled seven (7) years after the purchase of the land. The matter remained un-resolved as at the time this audit report was finalized. Consequently, the objective for which the land was acquired had not been achieved as at 30 June, 2020.

Submission by the accounting officer

48. The accounting officer submitted that Kisima Njoro L.R. No. 9216 was purchased at Kshs. 396,984,000 as per agreement for sale dated 3rd October 2012 for the re-settlement of internally displaced persons (IDPs). However, during physical verification of the farm in the month of September 2019 by the Auditor-General, the beneficiaries had not been re-settled since the land had not been surveyed nor sub-divided.

49. He further submitted that the farm had initially been planned and surveyed for re-settlement of 433 Internally Displaced Persons (IDPs). However, a group of forty-five (45) former employees of the farm felt that they had a stake in the farm since they were already squatters on the farm. They filed a suit at the High Court of Kenya in *Nakuru Environment and Land Court (ELC) Case No. 173 of 2012* thereby occasioning a delay. The matter was

subsequently settled out of court and the settlement agreement adopted by the Court through a consent order dated 19th May, 2016 whereby, the Court directed that the land be sub-divided and the 45 former workers be given One (1) acre each.

50. He also submitted that in observance of the Court orders, the Director of Physical Planning was requested to re-plan the farm to cater for the 45 farm workers. The plan was finalized on 23rd January 2020 and the process of survey and demarcation commenced.

51. Finally, he submitted that as re-survey was ongoing, another case was filed - *Environment and Land Court suit No.19 of 2020, (Maryanne Chepkorir and Nathan William Hinga vs Njenga Hinga, Charles Kibandi Kaguoya and others)* stopping sub-division of the land until the case is heard and determined. This case was still active in court.

Committee observations

52. The Committee observed that:

- (i) The beneficiaries had not been re-settled since the land at Kisima Njoro L.R No.9216 had not been surveyed nor sub-divided at the time of the Audit;**
- (ii) Another case was filed under *Environment and Land Court suit No.19 of 2020* stopping sub-division of the land; and**
- (iii) The matter was resolved as submitted by the Accounting Officer on 9th May, 2022.**

3.2 REPORT OF AUDITOR-GENERAL ON AUDITED FINANCIAL STATEMENTS FOR THE LAND SETTLEMENT FUND FOR THE FINANCIAL YEAR 2020/2021

53. Dr Nicholas Muraguri, the Principal Secretary, Ministry of Lands and Physical Planning, appeared before the Committee on 9th May, 2022 to adduce evidence on audited financial statements for the Land Settlement Fund for the financial year 2020/2021. He was accompanied by:

1. Mr. Kennedy Njenga –Director of Land Adjudication and Settlement
2. Mr. Ndung'u Kiarie - Chief Finance Officer
3. Mr. David Kimotho - Principal Accountant.

Basis for Qualified Opinion

1. Long Outstanding Trade Receivables

54. As disclosed in Note 9 to the financial statements, the statement of financial position reflects trade receivables of Kshs. 12,188,377,058. Included in this balance is land loans and development loan issued amounting to Kshs. 6,896,185,412 and Kshs. 69,819,548 respectively. Some of these loans were issued to settlers as far back as the year 1962 and have remained outstanding to date. In addition, the Fund management has no clear policy on evaluation of the account receivables from time to time to determine the recoverability of the outstanding loans. Consequently, the accuracy and recoverability of the trade receivables balance of Kshs. 12,188,377,058 as at 30 June, 2021 could not be confirmed.

Submission by the accounting officer

55. The accounting officer submitted that the statement of financial position reflected trade receivables balance of Kshs. 12,188,377,058 and also included in this amount is land loans and development loan issued amounting to Kshs. 6,896,185,412 and Kshs. 69,819,548 respectively with some issued to settlers as far back as the year 1962 and have remained outstanding to date. Further, the Fund management does not have a clear policy on evaluation of the account receivables from time to time to determine the recoverability of the outstanding loans.

56. He further submitted that the Fund assures recoverability of amounts outstanding through a Loan Repayment and Discharge process which ensures that before a parcel is discharged for registration, all outstanding amounts are paid. This way, the Fund has always been able to recover all amounts due from settlers who wish to process land titles for their parcels and hence considers all dues as recoverable, save for unforeseen executive pronouncements on waivers and issuance of free/charged titles.

Committee observations

57. **The Committee observed that the issue on outstanding loans was carried forward from the previous financial year and that the Committee had pronounced itself on the issue.**

2. Long Outstanding Interest Receivables

58. As disclosed in Note 9 to the financial statements, the trade receivables balance of Kshs. 12,188,377,058 also includes an amount of Kshs. 5,222,372,098 relating to interest receivable which has accumulated over the years on loans issued to settlers since 1962. It was observed that the Fund continued to compound cumulative interest as long as the loan remained outstanding without due consideration to the recoverability. In the circumstances, the accuracy and recoverability of the long outstanding interest receivable balance of Kshs. 5,222,372,098 as at 30 June, 2021 could not be confirmed.

Submission by the accounting officer

59. The accounting officer submitted that the statement of financial position reflected trade receivables balance of Kshs. 12,188,377,058 and also an amount of Kshs. 5,222,372,098 relating to interest receivable which had accumulated on loans issued to settlers which had been long outstanding and that the Fund continued to compound cumulative interest as long as the loans remained outstanding.

60. He further submitted that the discharge process which the Fund had put in place ensured that before a parcel is discharged for registration, all outstanding amounts are paid. In doing so, the Fund had been able to recover all outstanding amounts due from settlers who wished to process land titles for their parcels and hence considers all dues as recoverable, save for instances of unforeseen executive pronouncements on waivers and issuance of free/charged titles.

Committee observations

61. The Committee observed that the issue on outstanding interest receivables was carried forward from the previous financial year and that the Committee had pronounced itself on the issue.

OTHER MATTERS

1) Budgetary Control and Performance

62. The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects final budgeted expenditure and actual expenditure of Kshs. 1,078,018,391 and Kshs. 905,071,988 respectively resulting to under-expenditure of Kshs. 172,946,403 or about 16 % of the budgeted amount. The under-expenditure affected the planned activities and may have impacted negatively on the delivery of land settlement services to the public.

Submission by the accounting officer

63. It is true that the statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflected final budgeted expenditure and actual expenditure of Kshs. 1,078,018,391 and Kshs. 905,071,988 respectively, resulting to under-expenditure of Kshs. 172,946,403 or about 16 % of the budgeted amount.
64. The under expenditure was occasioned by delayed completion of land acquisition due to ongoing processes that had not been finalized as at the time of presentation of the financial statements for audit review. The management wishes to state that the variance will be utilized as soon as the process of acquisition is complete.

Committee Observation

65. **The Committee observed that the lengthy process on land acquisition was the basis for under-absorption on budgeted amount hence the audit query stands resolved.**

2) Undistributed land

2.1 Kisima Njoro for Resettlement of Internally Displaced Persons (IDPS) in Nakuru County

66. As previously reported, Kisima Njoro land was purchased at Kshs 396,984,000 as per agreement for sale dated 3 October, 2012 for resettlement of internally displaced persons (IDPS). However, during physical verification of the land in the month of September 2021, it was noted that the land had not been surveyed or sub-divided and therefore, the beneficiaries had not been resettled nine (9) years after the purchase of the land. The matter remained unresolved as at the time of this audit report. Consequently, the objective for which the land was acquired had not been achieved as at 30 June, 2021.

Submission by the Accounting Officer

67. The Accounting Officer submitted that Kisima Njoro Land was purchased at Kshs 396,984,000 as per agreement for sale dated 3rd October 2012 for the re-settlement of internally displaced persons (IDPs). It is also true that during physical verification of the farm in the month of September 2021, it was observed that the beneficiaries had not been resettled since the land had not been surveyed nor sub-divided.
68. He further submitted that the farm had initially been planned and surveyed for the re-settlement of 433 Internally Displaced Persons (IDPs). However, a group of forty-five (45) former employees of the farm felt that they had a stake in the farm since they were already squatters on the farm. They filed a suit at the *High Court of Kenya in Nakuru Environment and Land Court (ELC) Case No. 173 of 2012* thereby occasioning a delay. The matter was subsequently settled out of court and the settlement agreement adopted by the Court through

a consent order dated 19th May, 2016 whereby, the Court directed that the land be subdivided and the 45 former workers be given One (1) acre each.

69. In observance of the court orders, the Director of Physical Planning was requested to re-plan the farm to cater for the 45 farm workers. The plan was finalized on 23rd January 2020 and the process of survey and demarcation commenced. However, as the re-survey was ongoing, *E.L.C suit no. 19 of 2020 (Maryanne Chepkorir and Nathan William Hinga vs Nyoike Njenga Hinga, Charles Kibandi Kaguoya and others)* restraining the defendants from interfering with the land parcel was filed and the court ordered that the survey works be suspended until the case was heard and determined. As at the time of audit, the matter was still pending in court. However, the case has since been settled and survey work on the land is pending.

Committee observation

70. **The Committee observed that survey work on the land was on-going and was scheduled to be completed by the end of 2021/22 financial year as reported by the Accounting Officer.**

Committee recommendation

71. **The Committee recommends that within six months of adoption of this report, the Accounting Officer submits a status report to the National Assembly on the settlement of internally displaced persons.**

2.2 Mikanjuni Farm LR No. MN/IV/14 in Kilifi County

72. During the year under review the Fund purchased Mikanjuni Farm at a cost of Kshs 377,000,000 as per agreement for sale dated 22 April 2020 for resettlement of informal settlers. During field visit to the farm during the month of October 2021 a list of beneficiaries was availed by the Land Adjudication and Settlement officer (LASO) of Kilifi but the Farm was still listed as undistributed. No justification has been given for not distributing and settling the informal settlers. Consequently, the objective for which the land was acquired and value for money had not been achieved as at 30 June, 2021.

Submission by the Accounting Officer

73. The Accounting Officer submitted that during the year under review, the Fund purchased Mikanjuni Farm at a cost of Kshs 377,000,000 as per agreement for sale dated 22 April 2020 for resettlement of squatters. During the field visit to the farm in the month of October, 2021, the list of beneficiaries was availed by the Land Adjudication and Settlement Officer, Kilifi though the Farm was still listed as undistributed in the financial statements.
74. The reason for holding the land as inventory is because planning of the land to cater for amenities such as access roads and public utility parcels was still on-going and that the final

allocation of acreage per informal settler was yet to be determined. Once the exercise is finalized, it will be possible to distribute the land to the allottees and hence be able to determine and apply the amounts receivable from each beneficiary.

Committee observations

75. **The Committee observed that the Accounting Officer had provided satisfactory explanation on the reasons of holding the land to cater for shared social amenities, hence the audit query stands resolved as confirmed by the Auditor-General.**

2.3 Kadza Ndani LR NO 241/1MN (CR.849), 243/1/MN (CR.847) and 244/1/MN (CR.848) in Mombasa County

76. The Fund purchased Kadza Ndani LR NO 241/1MN (CR.849), 243/1/MN (CR.847) and 244/1/MN (CR.848) in Mombasa County at cost of Kshs. 378,000,000 as per sale agreement dated 11 September, 2020, for resettlement of informal settlers. However, during field visit to the farm during the month of October, 2021, the list of beneficiaries was availed by the Land Adjudication and Settlement Officer (LASO) of Mombasa but the land is still listed as undistributed. No justification has been given for not distributing and settling informal settlers. Consequently, the objective for which the land was acquired and value for money had not been achieved as at 30th June, 2021

Submission by the Accounting Officer

77. The Accounting Officer submitted that during the year under review the Fund purchased Kadza Ndani LR NO 241/1MN (CR.849), 243/1/MN (CR.847) and 244/1/MN (CR.848) in Mombasa County at a cost of Kshs. 378,000,000 as per agreement for sale dated 11 September 2020 for resettlement of informal settlers.
78. He further submitted that during a field visit to the farm in the month of October, 2021, the list of beneficiaries was availed by the Land Adjudication and Settlement Officer, Mombasa but the financial statements reflect the land as undistributed. As with the Mikanjuni farm, the land is held as inventory because planning of the land to cater for amenities and public utility plots is still on-going and the final allocation in terms of acreage per informal settler is yet to be determined. Once the exercise is finalized, it will be possible to distribute the land to the allottees and hence be able to determine and apply the amounts receivable from each beneficiary.

Committee observations

79. **The Committee observed that the Accounting Officer had provided satisfactory explanation on the reasons of holding the land for shared social amenities, hence the audit query stands resolved as confirmed by the Auditor-General.**

EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1) Inactive Audit Committee

80. A review of Internal Audit function revealed that the Ministry Audit Committee never met to discuss internal audit reports for Land Settlement Fund during the year under review. The Audit Committee was, therefore, not effective in providing oversight on financial and risk management including monitoring and reviewing of the effectiveness of the internal audit functions and internal controls, risk management systems and financial statements. In the circumstances, the internal control system is not working as intended.

Submission by the Accounting Officer

81. The Accounting Officer submitted that during the financial year under review, the Fund did not have an Audit Committee in place. However, the Fund is established under the Land Act, 2012 and hence falls under the ambit of the Ministerial Audit Committee whose members were appointed as noted in the minutes of Ministerial Human Resource Management Advisory Committee meeting held on 24th October, 2019. The chairperson of the Audit Committee was appointed vide letter Ref: MOLPP 11/79/8(84) dated 17th December, 2019.

Committee observations

82. The Committee observed that the Audit Committee was in place and the matter stands resolved as confirmed by the Auditor-General.

2) Lack of a risk management policy

83. During the year ending 30 June, 2021 despite the internal audit having a risk matrix that ranks risks and guides their annual internal audit plans, the management did not have in place an institutionalized risk management policy. As a result, there was no formal approved processes and guidelines on how to identify, assess and mitigate operations, legal and financial risks.

Submission by the accounting officer

84. The accounting officer submitted that the Fund did not have in place an institutional risk management policy, hence no formal approved processes and guidelines on how to mitigate operational, legal and financial risks. However, given that the Fund is established under the Land Act, 2012, it operates under the parent Ministry of Land and Physical Planning and is therefore covered under the Ministry's Institutional Risk Management Policy in line with Treasury Circular No. 3/2009 of 23rd February, 2009.

Committee observation

85. The Committee observed that the Fund is guided by the Ministry of Lands and Physical Planning Risk Management Policy given that its managed within the Ministry, hence the audit query stands resolved as confirmed by the Auditor-General

CHAPTER FOUR

4.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS ON LAND SETTLEMENT FUND

86. The Committee made the following general observations, findings and recommendations from the evidence tendered relating to the report of the Auditor-General on the financial statements for the Land Settlement Fund for the financial years 2019/2020 and 2020/2021.

4.1 Long Outstanding Land and Development Loans

87. The Committee observed that land loan receivables and development loan receivables which had accumulated over the years on loans issued to settlers in 1962 had reduced from Kshs. 6,946,330,739 and Kshs. 70,555,451 in FY 2019/2020 to Ksh. 6,896,185,412 and Ksh. 69,819,548 in FY 2020/2021 respectively.

88. This was attributed to various measures that the accounting officer of the Fund had put in place geared towards enhancing recoverability of the loans owed by settlers. They included digitization of settlers data and updating balance statements, incorporation of Mpesa mode of payment to ease loan repayment. In addition, a comprehensive discharge process which ensured full payment of outstanding amounts prior to commencement of title registration was adopted.

4.2 Loan Outstanding Interest Receivable


89. The Committee further observed that interest receivable had reduced from Kshs. 5,275,494,933 in FY 2019/2020 to Ksh. 5,222,372,098 in FY 2020/2021. This is attributed to a reduction in outstanding land and development loans due to on-going loan repayment. However, the slow pace on loan repayment, the interest on the loans will keep increasing.

Committee recommendation.


90. **The Committee recommends that:**

- (i) **The Accounting Officer should within three (3) months of adoption of this report, submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary action to fast track on loan repayments including repossession of the land to recover the outstanding loans;**

- (ii) The Accounting Officer should within six months of adoption of this report, submit a status report to National Assembly on the progress on loan recovery; and
- (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

Signed:  Date: 31-05-2022



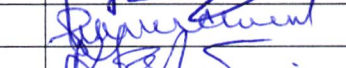
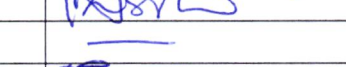
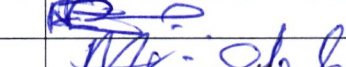
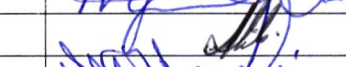
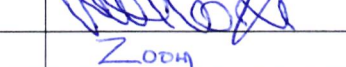
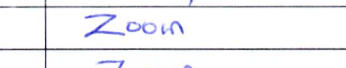
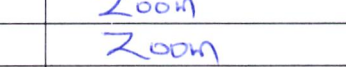
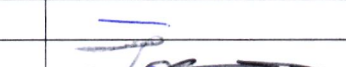





HON. KATHURI MURUNGI, MP
CHAIRPERSON, SPECIAL FUNDS ACCOUNTS COMMITTEE

 THE NATIONAL ASSEMBLY P.O. BOX 30000, NAIROBI	
DATE: 08 JUN 2022	
TABLED BY:	
CLERK-AT THE-TABLE:	

ANNEXURE 2

**THE SPECIAL FUNDS ACCOUNTS COMMITTEE
ADOPTION SCHEDULE**

We, the undersigned Members of the Special Funds Accounts Committee, today 31st May 2022 do hereby affix our signatures to this **TWELFTH REPORT ON AUDITED FINANCIAL STATEMENTS FOR THE LAND SETTLEMENT FUND FOR FINANCIAL YEARS 2019/2020 AND 2020/2021 AND THE STATUS REPORT OF THE EQUALIZATION FUND** to affirm our approval and confirm accuracy, validity and authenticity:

NAME	SIGNATURE
1. Hon. Kathuri Murungi, M.P. - Chairperson	
2. Hon. William Chirchir Chepkut, M.P. - Vice- Chairperson	
3. Hon. Justus Kizito Mugali, M.P.	
4. Hon. Shakeel Shabbir Ahmed, CBS, M.P.	
5. Hon. (Dr.) Robert Pukose, M.P	
6. Hon. Dennitah Ghati, HSC, M.P.	
7. Hon. Erastus Kivasu Nzioka, M.P.	
8. Hon. Alfred Agoi Masadia, M.P.	
* 9. Hon. Marwa Kitayama Maisori, M.P.	
10. Hon. Esther M. R. Passaris, OGW, M.P.	
11. Hon. Mwambu Mabongah, M.P.	Zoon
12. Hon. Geoffrey Omuse, M.P.	Zoon
13. Hon. Mark Lomunokol, M.P	Zoon
* 14. Hon. Mohamed Ali, M.P	Zoon
15. Hon. Faith Gitau, M.P.	
* 16. Hon. Jared Okello, M.P.	
17. Hon. Mohamed Ali Lokiru, M.P.	
18. Hon. (Dr.) Enock Kibunguchy, MP	
19. Hon. Koske Gideon Kimutai, M.P.	

MINUTES OF THE 1ST SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA COUNTY AT 9.30 A.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Jared Okelo, M.P.
12. Hon. Mark Lomunokol, M.P.
13. Hon. Geoffrey Omuse, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P.

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

EQUALIZATION FUND ADVISORY BOARD

1. Mr. Guyo Boru - CEO/Secretary to the Board
2. Ms. Tamima Ahmed Ali - Board Member/Council of Governors
3. Mr. Victor Odanga - Board Member/Senate
4. Mr. Joseph Mbatha - Board Member/Treasury

5. Mr. Abdullahi A Khalif - Board Member/Parliament
6. Dr. Lukabo Diana - Equalization Fund Secretariat

MIN.NO./NA/SFAC/2022/001 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 9.45 am with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Meeting with Equalization Fund Advisory Board
5. Adjournment

MIN.NO./NA/SFAC/2022/002 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/003 - MEETING WITH EQUALIZATION FUND ADVISORY BOARD

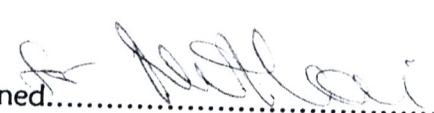

Mr. Guyo Boru, the CEO and Secretary to Equalization Fund Advisory Board appeared before the Committee on Friday, 13th May, 2022 and was accompanied by the following officers-

1. Ms. Tamima Ahmed Ali - Board Member
2. Mr. Victor Odanga - Board Member
3. Mr. Joseph Mbatha - Board Member
4. Mr. Abdullahi A Khalif - Board Member
5. Dr. Lukabo Diana - EFB Secretariat

The CEO took the Committee through the operations of the Fund since the appointment of the new Board Members. A summary of appropriations into the Equalization Fund since inception up to date was tabled before the Committee. It was stated that the disbursements was based on the first policy on marginalization which identified 14 Counties as marginalised areas.

MIN.NO./NA/SFAC/2022/004 - ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm.

Signed.......... Date..........

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 2ND SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA COUNTY AT 2.30 P.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P.

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

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THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

EQUALIZATION FUND ADVISORY BOARD

1. Mr. Guyo Boru - CEO/Secretary to the Board
2. Ms. Tamima Ahmed Ali - Board Member/Council of Governors
3. Mr. Victor Odanga - Board Member/Senate
4. Mr. Joseph Mbatha - Board Member/Treasury

5. Mr. Abdullahi A Khalif - Board Member/Parliament
6. Dr. Lukabo Diana - Equalization Fund Secretariat

MIN.NO./NA/SFAC/2022/005 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 2.40 pm with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Meeting with Equalization Fund Advisory Board
5. Adjournment

MIN.NO./NA/SFAC/2022/006 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/007 - MEETING WITH EQUALIZATION FUND ADVISORY BOARD

Mr. Guyo Boru, the CEO and Secretary to Equalization Fund Advisory Board appeared before the Committee on Friday, 13th May, 2022 and was accompanied by the following officers-

1. Ms. Tamima Ahmed Ali - Board Member
2. Mr. Victor Odanga - Board Member
3. Mr. Joseph Mbatha - Board Member
4. Mr. Abdullahi A Khalif - Board Member
5. Dr. Lukabo Diana - EFB Secretariat

The Committee was informed that the Board plans to develop a structure to oversee the projects under the First Policy to be completed before implementing the projects under the Second Policy. It was noted that the ongoing projects financed from the Equalization are implemented by specific MDAs who periodically forward status reports on these projects to the National Treasury.

MIN.NO./NA/SFAC/2022/008 - ADJOURNMENT

There being no other business the meeting was adjourned at 4.30 pm.

Signed.....  Date..... 5/11/22

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 3RD SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA COUNTY AT 9.30 A.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P.

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

MIN.NO./NA/SFAC/2022/009 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 9.40 am with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of draft report on Status of Equalization Fund
5. Adjournment

MIN.NO./NA/SFAC/2022/010 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/011 - CONSIDERATION OF DRAFT REPORT ON STATUS OF EQUALIZATION FUND

1.0 Status of Projects Undertaken by implementing MDAs identified in Financial Years 2016/17, 2017/18 and 2018/19 in the 14 Counties

The Committee was informed that as at 31st October, 2021, and based on submission by MDAs, a total of 352 projects are financed by the Equalization Fund and are at different stages of implementation as shown in the following table:

Status of all the Equalization Projects as at 31st October, 2021.

Implementing MDA	No. of Projects	Tendering/ Awarded	Stalled/Not started	Inception	< 50%	50%-75%	76%-99%	100% (completed)
Ministry of Health	84	11	2	0	7	19	35	10
State Department for Infrastructure; through KeRRA	84	7	8	0	8	22	12	27
State Department for Irrigation	24	0	0	0	0	1	2	21
Ministry Water and Sanitation	128	0	6	0	30	20	35	37
State Department for Technical and Vocational Training	2	0	0	0	1	1	0	0
State Department of Early Learning Basic Education	10	0	0	10	0	0	0	0
Ministry of Energy	20	0	3	0	0	0	0	17
TOTAL	352	18	19	10	46	63	84	112

2.0 Challenges Encountered

The Fund was operationalized in the FY 2015/16 and projects to be financed from the Fund identified in December 2016. The operationalization and implementation of the Fund has faced the following challenges since inception to date:

- (a) First policy on identifying marginalized areas was intended to cover the FY 2011/12, 2012/13 and 2013/14. However, there was a delay in approval of the policy (the policy was approved in December, 2015), the policy covered FY 2014/15, 2015/16 and 2016/17;

- (b) There was an initial delay in grant of approval of the guidelines for administration of the Equalization Fund. The guidelines were approved by the National Assembly in 2016;
- (c) Delayed disbursement of funds from Equalization Fund due to lapse of the Equalization Appropriation Act, 2017. Although Article 204 of the Constitution does not foresee lapse of funds appropriated to the Equalization Fund until completion of all projects identified for funding from the Fund, the Attorney General gave a legal opinion that the Act as approved then had to lapse on 30th June, 2018;
- (d) On 5th November 2019 the High Court made a ruling in *Petition no. 292 of 2016*. The ruling declared the Equalization Fund guidelines as unconstitutional, null and void. This in effect disbanded the Equalization Fund Advisory Board (EFAB) and stopped any further expenditure from the Equalization Fund. The Board and Fund secretariat was dissolved and hence could not and did not transact any further business on Equalization Fund including, but not limited to decisions on disbursement and payment of monies relating to ongoing projects. This has had a negative bearing including stalling of ongoing projects and exposing government to litigation by contractors based on going contracts which are binding;
- (e) The National Treasury was directed to develop new statutory instrument on the administration of the Equalization Fund and the lengthy nature of the process of developing new statutory instrument has caused more delay in operationalizing of Equalization Fund; and
- (f) The implementation and completion of projects under the First Policy of Marginalization will commence tentatively in the month of June 2021.

3.0 Current Governance Status

1. The PFM (Equalization Fund Administration) Regulations, 2021 were published through Kenya Gazette Supplement No. 69, Legal Notice No 54 of 29th April 2021 and subsequently approved by the Parliament. The publication and approval of the Regulations paved the way for the full operationalization of the Equalization Fund Board.
2. The regulations were developed to:
 - (a) Establish an unincorporated Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
 - (b) Provide guidance on the administration and management of the Equalization Fund;
 - (c) Facilitate completion of ongoing projects under the first policy through payment of pending certificates;
 - (d) Provide for identification and implementation of new projects under the Second Policy and all subsequent policies; and
 - (e) Provide for the procedures in relation to winding up of the Fund.
3. The National Treasury has fully constituted Equalization Fund Advisory Board. Accordingly, the National Treasury and Planning Cabinet Secretary has:
 - (a) Appointed to the Board nominees from the Council of Governors, the Senate and the National Assembly, in accordance with Regulations 4(d), 4(e) and 4(f) of the PFM (Equalization Fund Administration) Regulations, 2021;

- (b) Appointed chairperson and three (3) members of the Advisory Board as per the Regulation 4(1)(a) and 4(1)(h) respectively of PFM (Equalization Fund Administration) Regulations 2021 through Special Issue Gazette Notice No.12382 and No 12382 dated 16th, November, 2021 and also through Gazette Notice No 3 of 7th January, 2022;
- (c) Nominated alternate to the PS-National Treasury to the Board; and
- (d) Appointed the Interim Chief Executive Officer/Secretary to support the Board and constitute the secretariat.
- (e) *The nomination of the alternate to the PS-Devolution is outstanding.*

4.0 Operational Status

1. The Cabinet Secretary has appointed the CEO/Secretary who is also the Fund Administrator. Consequently, the Secretariat of the Fund has been operationalized.
2. National Government staff have been deployed to the Fund. Nine (9) critical human resources personnel have reported to the Fund on interim basis to support in the full operationalization of the Fund. All Human Resource Instruments for the Fund have been developed, awaiting review by the Board and subsequent forwarding to the CS for approval.
3. The 8th Floor of the National Bank Building, Harambee Avenue had been procured under a lease agreement to provide office space for the secretariat and boardroom. The deployed staff are already working from the leased space and have an approved recurrent budget and hence it has resources to fully operationalize
4. The Fund has established contacts and linkage with respective MDAs on implementation status of projects more so for completion of projects from First Policy. The Equalization Fund appropriation Act, 2018 that does not lapse and cover FY 2014/15, 2015/16 and 2016/17 will see successful implementation of projects under the First Policy.
5. The Fund was allocated KSh 6,825,317,433 for FY 2021/2022 and KSh 7.2 billion for FY 2022/2023 and was in the process of initiating allocation of the Equalization Fund into the appropriation/grant bill for approval by Parliament.

MIN.NO./NA/SFAC/2022/012 - ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm.

Signed.....  Date..... 

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 4TH SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA COUNTY AT 2.30 P.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P.

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

MIN.NO./NA/SFAC/2022/013 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 2.45 pm with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers
2. Confirmation of minutes
3. Matters Arising
4. Consideration of draft report on Status of Equalization Fund
5. Adjournment

MIN.NO./NA/SFAC/2022/014 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/015 - CONSIDERATION OF DRAFT REPORT ON STATUS OF EQUALIZATION FUND

The Committee made the following observations and recommendations on the Equalization Fund:

1.0 Allocations to the Equalization Fund

Article 204 (1) of the Constitution of Kenya, 2010 (CoK) requires that the Fund be allocated one half per cent (0.5%) of all the revenue collected by the National Government each year, calculated on the basis of the most recent audited revenue received. Further, Article 216(4) requires that the Commission on Revenue Allocation (CRA) determines, publishes and regularly reviews a policy in which it sets out the criteria by which to identify marginalized areas.

Committee Observations

- (i) The Committee observed that the first policy, which covers FYs 2011/12, 2012/13 and 2013 /14, was approved in December 2015. Consequently, there were no allocations made to the Fund in the three financial years.
- (ii) The Committee further observed that the Fund was initially administered through the defunct Equalisation Fund Advisory Board (EFAB) under "*The Guidelines on Administration of the Equalisation Fund of March 2015*" which were declared unconstitutional, null and void by the High Court ruling made in November 2019 on *Petition no. 292 of 2016*. In the ruling, the National Treasury was directed to develop new statutory instrument on the administration of the Equalization Fund.
- (iii) The Committee also observed that the National Treasury in compliance with the ruling developed the Public Finance Management (Equalization Fund Administration) Regulations, 2021 which were published and gazetted on 29th April, 2021. As a result, there were no allocations made to the Fund in FYs 2017/18, 2018/19, 2019/20; and
- (iv) The total entitlement to the Fund since establishment is Kshs. 47,383,520.543. However, the Fund has only been allocated Kshs. 19,225,317,433 as at FY 2021/2022 out of which Kshs. 12.4 billion has been released to the Fund, resulting to a shortfall of Kshs. 34.9 billion as at May 2022.

Committee Recommendation

The Committee recommends that the Cabinet Secretary in charge of the National Treasury expedite allocation of funds to the Equalization Fund as provided in the Constitution.

2.0 Implementation of projects

The Committee observed that projects under the Equalization Fund are implemented by MDAs, and that payments are based on requests accompanied by certificates which are ready for payment with approval by the Controller of Budget. The Committee further observed that:

- a. The total disbursements made to MDAs implementing projects in the fourteen counties was Ksh. 10,346,573,051.
- b. Implementing MDAs have been able to spend a cumulative of Ksh. 7,042,468,880, which comprise of Ksh. 6,920,918,828 on payments and commitments to projects and Ksh. 121,550,052 as administrative cost, resulting to balances/pending bills of Ksh. 3,097,400,277 as at November 2019.
- c. A total of 352 projects had been identified in the 14 Counties, with only 112 (32%) reported as completed.
- d. The Ministry of Water and Sanitation was implementing the highest number of projects, with 37 reported as complete as at October 2021. The State Department of Early Learning Basic Education had not initiated any of the 10 projects whilst Ministry of Energy had completed 17 out of the 20 projects.

Committee Recommendation

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

3.0 Administration of the Equalization Fund

Section 18(1) of the Public Finance Management Act, 2012 provides that "*the National Treasury shall administer the Equalisation Fund in accordance with Article 204 of the Constitution*". Further, Section 24 (5) provides that "*the Cabinet Secretary shall designate a person to administer every national public fund*". In addition, Regulation 20 (i) of the Public Finance Management (National Government) Regulations, 2015 designates the role of administration of the Equalization Fund amongst others to the Accountant-General.

Committee Observations

- (i) The Public Finance Management (Equalization Fund Administration) Regulations, 2021 have not expressly provided for an Administrator of the Fund/Accounting Officer.

- (ii) Regulation 20 (i) of the Public Finance Management (National Government) Regulations, 2015 designates the role of administration of the Equalization Fund amongst others to the Accountant-General.
- (iii) The Chief Executive Officer/Secretary to Equalization Advisory Board had been appointed by the Cabinet Secretary for the National Treasury vide Letter NT/EFAB/GEN/01/A dated 17th February, 2022 as the Administrator of the Fund in line with section 18 (1) and 24 (5) of the PFM Act, 2012.

Committee recommendation

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

4.0 Representation to the Equalization Fund Advisory Boards

Regulation 4(1) (d) and (e) provides for a person nominated by the National Assembly and Senate respectively as Members of the Equalization Fund Board for a period of six years, non-renewable, on such terms and conditions as may be specified in the instrument of appointment. Further, regulation 10 (3) provides for Board expenses of not more than three percent of annual approved equalization fund allocation.

Committee observation


The Committee observed that there were no formal structures in place to support linkage between the two representatives and Parliament as an institution. This includes timely feedback to Members of Parliament concerns on issues pertaining to implementation of projects under the Equalization Fund.

Committee recommendations

- (i) The Equalization Fund Advisory Board to consider providing physical offices to the representatives of Parliament at the secretariat to ensure that they undertake their mandate effectively; and
- (ii) Each House of Parliament to provide liaison services with the representatives at the Board for the effective resolution of concerns that may arise from Members.

MIN.NO./NA/SFAC/2022/016 - ADJOURNMENT

There being no other business the meeting was adjourned at 4.30 pm.

Signed.......... Date..........

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 5TH SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR
REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA
COUNTY AT 9.30 A.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P.

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

MIN.NO./NA/SFAC/2022/017 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 9.45 pm with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers

2. Confirmation of minutes
3. Matters Arising
4. Consideration of draft report on Lands Settlement Fund
5. Adjournment

MIN.NO./NA/SFAC/2022/018 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/019 - CONSIDERATION OF DRAFT REPORT ON LANDS SETTLEMENT FUND

The Committee deliberated on the report and resolved on the observations and recommendations as stated below:

1.0 LAND SETTLEMENT FUND FOR THE FINANCIAL YEAR 2019/2020

1. Unsupported Balances

The statement of changes in net assets reflects an opening balance as at 1 July, 2019 of Kshs. 13,266,170,244 which includes net transfers to or from accumulated surplus totalling to Kshs. 11,665,052,516. However, and as previously reported, the Management did not provide details on where the balances were transferred to or from. Supporting schedules for the balances transferred were also not provided for audit verification. In the circumstances, the accuracy of the financial statements for the year ended 30th June, 2020 could not be confirmed.

Committee observations

The Committee observed that:

- (i) The query was carried from the previous financial year and had been resolved as contained in the adopted report by the House relating to the Audit Report for the FY 2018/2019.
- (ii) The Committee marked the matter as resolved.

2. Trade receivables

As disclosed in Note 9 to the financial statements, the statement of financial position reflects a balance of Kshs. 12,296,090,253 under trade receivables.

Committee observations

The Committee observed that the query was carried from the previous financial year and had been resolved as contained in the adopted report by the House relating to the Audit Report for the FY 2018/2019.

2.2 Imprest

The trade receivables balance also includes outstanding imprest of Kshs. 3,709,130 wrongly classified under trade receivables instead of receivables from on-exchange transactions. Further, the imprest balance of Kshs. 3,709,130 was due but had not been surrendered as at the time of audit in November, 2020. This is contrary to regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015

which states that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to the duty station.

Regulation 93(6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank rate. Although Management has written to the relevant institutions for recoveries to be effected from the officers' dues and remitted to the Fund, progress made has not been disclosed.

Committee observations

The Committee observed that the imprest has since been recovered hence the audit query stands resolved.

Committee recommendation

The committee recommends that the Accounting Officer must at all times ensure that the processing and surrender of imprest complies with provisions of regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015.

2.3 Long Outstanding Land and Development Loans

The trade receivables balance further includes amounts of Kshs. 6,946,330,739 and Kshs. 70,555,451 in respect of land loans receivables and development loans receivables respectively. However, a review of the supporting schedules indicated that these loans were issued to settlers from the year 1962 but remained outstanding as at 30 June, 2020. No explanation has been provided for the long outstanding balances on land and development loans.

Committee observations

The Committee observed that:

- (i) The long outstanding loans of Kshs. 6,946,330,739 and Kshs. 70,555,451 in respect of land loans receivables and development loans receivables respectively, were issued to settlers from the year 1962 but remained outstanding as at 30 June, 2020.
- (ii) The long outstanding loans resulted from the slow pace of loan repayment caused by tedious manual bill processing and dispatch processes previously in place. The accounting officer had digitized billing and loan repayment processes geared towards improving loan recoverability; and
- (iii) The accounting officer had put adequate measures to ensure outstanding loans are settled before discharge and registration of land parcels to beneficiaries.

Committee recommendations

- (i) Within three (3) months of adoption of this report, the Accounting Officer should submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary actions to fast track on loan repayments including repossession of the land to recover the outstanding loans;

- (ii) Within six months of adoption of this report, the Accounting Officer shall submit a status report to National Assembly on the progress on loan recovery; and
- (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

2.4 Long Outstanding Interest Receivable

The trade receivables balance in addition, includes interest receivable of Kshs. 5,275,494,933 which has accumulated over the years on loans issued to settlers since 1962 and whose recoverability remains doubtful as at 30 June, 2020. In the circumstances and in the absence of the provisions against the long outstanding debts, the accuracy and recoverability of the reported trade receivables balance of Kshs. 12,296,090,253 could be confirmed.

Committee observations

The Committee observed that:

- (i) Interest receivable of Kshs. 5,275,494,933 has accumulated over the years on loans issued to settlers since 1962.
- (ii) The Settlers had slow pace of loan repayment.

Committee Recommendations

The Committee recommended:

Within three (3) months of adoption of this report, the Accounting Officer should submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary actions to fast track on loan interest repayments including repossession of the land to recover the outstanding loans interest;

- (i) Within six months of adoption of this report, the Accounting Officer shall submit a status report to National Assembly on the progress on loan interest recovery; and
- (ii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

3. Inaccuracy of Trade and Other Payables from Exchange Transactions

As disclosed in Note 12 to the financial statements, the statement of financial position reflects a nil balance under trade and other payables from exchange transactions. However, and as previously reported, the balance excludes unsupported opening balances as detailed below:

Committee observations

The issue was carried from the previous financial year and had been resolved as contained in the adopted report by the House relating to the Audit Report for the FY 2018/2019.

Committee Recommendation

The committee recommended that Accounting Officers must at all times ensure that they provide accurate records and other supporting documents pursuant to Section 9 (1) (e) of the Public Audit Act, 2015.

4. Non-Resettlement of Internally Displaced Persons

As per a sales agreement dated 3 October, 2012, the Fund purchased a parcel of land in Kisima Njoro L.R. No. 9216 at a cost of Kshs. 396,984,000 for resettlement of Internally Displaced Persons (IDPs). However, during a physical verification of the farm in the month of September, 2019, it was noted that the land had not been surveyed or sub-divided and therefore, the beneficiaries had not been resettled seven (7) years after the purchase of the land. The matter remained un-resolved as at the time this audit report was finalized. Consequently, the objective for which the land was acquired had not been achieved as at 30 June, 2020.

Committee observations

The Committee observed that:

- (i) The beneficiaries had not been re-settled since the land at Kisima Njoro L.R No.9216 had not been surveyed nor sub-divided at the time of the Audit.
- (ii) Another case was filed under Environment and Land Court suit No. 19 of 2020 stopping sub-division of the land.
- (iii) The matter was resolved as submitted by the Accounting Officer on 9th May, 2022.

2.0 LAND SETTLEMENT FUND FOR THE FINANCIAL YEAR 2020/2021

1. Long Outstanding Trade Receivables

As disclosed in Note 9 to the financial statements, the statement of financial position reflects trade receivables of Kshs. 12,188,377,058. Included in this balance is land loans and development loan issued amounting to Kshs. 6,896,185,412 and Kshs. 69,819,548 respectively. Some of these loans were issued to settlers as far back as the year 1962 and have remained outstanding to date. In addition, the Fund management has no clear policy on evaluation of the account receivables from time to time to determine the recoverability of the outstanding loans. Consequently, the accuracy and recoverability of the trade receivables balance of Kshs. 12,188,377,058 as at 30 June, 2021 could not be confirmed.

Committee observations

The Committee observed that the issue on outstanding loans was carried forward from the previous financial year and that the Committee had pronounced itself on the issue.

Committee recommendations

The Committee recommended that:

- (i) Within three (3) months of adoption of this report, the Accounting Officer should submit a list of all loanees, amount owed and land allotment details

to the National Assembly and take necessary actions to fast track on loan repayments including repossession of the land to recover the outstanding loans;

- (ii) Within six months of adoption of this report, the Accounting Officer shall submit a status report to National Assembly on the progress on loan recovery; and
- (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

2. Long Outstanding Interest Receivables

As disclosed in Note 9 to the financial statements, the trade receivables balance of Kshs. 12,188,377,058 also includes an amount of Kshs. 5,222,372,098 relating to interest receivable which has accumulated over the years on loans issued to settlers since 1962. It was observed that the Fund continued to compound cumulative interest as long as the loan remained outstanding without due consideration to the recoverability. In the circumstances, the accuracy and recoverability of the long outstanding interest receivable balance of Kshs. 5, 222,372,098 as at 30 June, 2021 could not be confirmed.

Committee observations

The Committee observed that the issue on outstanding interest receivables was carried forward from the previous financial year and that the Committee had pronounced itself on the issue.

Committee Recommendations

- (i) Within three (3) months of adoption of this report, the Accounting Officer should submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary actions to fast track on loan interest repayments including repossession of the land to recover the outstanding interest loans;
- (ii) Within six months of adoption of this report, the Accounting Officer shall submit a status report to National Assembly on the progress on loan recovery; and
- (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

OTHER MATTERS

1. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year ended 30 June, 2021 reflects final budgeted expenditure and actual expenditure of Kshs. 1,078,018,391 and Kshs. 905,071,988 respectively resulting to under-expenditure of Kshs. 172,946,403 or about 16 % of the budgeted amount. The under-expenditure affected

the planned activities and may have impacted negatively on the delivery of land settlement services to the public.

Committee Observation

The committee observed that:

- (i) Fund absorption rate was approximately 84% in relation to its final budget and actual expenditure; and
- (ii) The explanation by the accounting officer on the failure to spend budgetary provision as required was persuasive and therefore marked the matter resolved.

2.0 Undistributed land

2.1 Kisima Njoro for Resettlement of Internally Displaced Persons (IDPS) in Nakuru County

As previously reported, Kisima Njoro land was purchased at Kshs 396,984,000 as per agreement for sale dated 3 October, 2012 for resettlement of internally displaced persons (IDPS). However, during physical verification of the land in the month of September 2021, it was noted that the land had not been surveyed or sub-divided and therefore, the beneficiaries had not been resettled nine (9) years after the purchase of the land. The matter remained un-resolved as at the time of this audit report. Consequently, the objective for which the land was acquired had not been achieved as at 30 June, 2021.

Committee observation

The Committee observed that survey work on the land was on-going and was scheduled to be completed by the end of 2021/22 financial year.

Committee recommendation

Committee recommended that within six months of adoption of this report, the accounting officer expedite the process of resettlement of the internally displaced persons.

2.2 Mikanjuni Farm LR No. MN/IV/14 in Kilifi County

During the year under review the Fund purchased Mikanjuni Farm at a cost of Kshs 377,000,000 as per agreement for sale dated 22 April 2020 for resettlement of informal settlers. During field visit to the farm during the month of October 2021 a list of beneficiaries was availed by the Land adjudication and Settlement officer (LASO) of Kilifi but the Farm was still listed as undistributed. No justification has been given for not distributing and settling the informal settlers. Consequently, the objective for which the land was acquired and value for money had not been achieved as at 30 June, 2021.

Committee observations

The Committee observed that the accounting officer had provided satisfactory explanation on the reasons of holding the land as an inventory to cater for shared

social amenities, hence the audit query stands resolved as confirmed by the Auditor-General.

2.3 Kadza Ndani LR NO 241/1MN (CR.849), 243/1/MN (CR.847) and 244/1/MN (CR.848) in Mombasa County

The fund purchased Kadza Ndani LR NO 241/1MN (CR.849), 243/1/MN (CR.847) and 244/1/MN (CR.848) in Mombasa County at cost of Kshs. 378,000,000 as per sale agreement dated 11 September, 2020, for resettlement of informal settlers. However, during field visit to the farm during the month of October, 2021, the list of beneficiaries was availed by the Land adjudication and Settlement officer (LASO) of Mombasa but the land is still listed as undistributed. No justification has been given for not distributing and settling informal settlers. Consequently, the objective for which the land was acquired and value for money had not been achieved as at 30th June, 2021

Committee observations

The Committee observed that the accounting officer had provided satisfactory explanation on the reasons of holding the land as an inventory to cater for shared social amenities, hence the audit query stands resolved as confirmed by the Auditor-General.

MIN.NO./NA/SFAC/2022/020 - ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm.

Signed.....

Kathuri

Date.....

31/8/22

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 6TH SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR
REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA
COUNTY AT 2.30 P.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P. OGW

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

MIN.NO./NA/SFAC/2022/021 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 2.45 pm with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers

2. Confirmation of minutes
3. Matters Arising
4. Consideration of draft report on Lands Settlement Fund
5. Adjournment

MIN.NO./NA/SFAC/2022/022 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/023 - CONSIDERATION OF DRAFT REPORT ON LANDS SETTLEMENT FUND

The Committee made the following general observations, findings and recommendations from the evidence tendered relating to the report of the Auditor-General on the financial statements for the Land Settlement Fund for the financial years 2019/2020 and 2020/2021.

1.0 Long Outstanding Land and Development Loans

The committee observed that trade receivables balance further includes amounts of Kshs.6,946,330,739 and Kshs.70,555,451 in respect of land loans receivables and development loans receivables and were issued to settlers from the year 1962 but remained outstanding as at 30 June, 2020.

The Committee recommended that:

- (i) Within three (3) months of adoption of this report, the Accounting Officer should submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary actions to fast track on loan repayments including repossession of the land to recover the outstanding loans;
- (ii) Within six months of adoption of this report, the Accounting Officer shall submit a status report to National Assembly on the progress on loan recovery; and
- (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

2.0 Loan Outstanding Interest Receivable

The committee observed that trade receivables balance in addition, includes interest receivable of Kshs.5,275,494,933 which has accumulated over the years on loans issued to settlers since 1962 and whose recoverability remains doubtful as at 30 June, 2020.

The Committee recommended that:

- (i) Within three (3) months of adoption of this report, the Accounting Officer should submit a list of all loanees, amount owed and land allotment details to the National Assembly and take necessary actions to fast track on loan

- interest repayments including repossession of the land to recover the outstanding loans interest;
- (ii) Within six months of adoption of this report, the Accounting Officer shall submit a status report to National Assembly on the progress on loan interest recovery; and
 - (iii) The Accounting Officer should within three (3) months of tabling of this report, ensure that the list of all loanees and other documents mentioned above are submitted to the Auditor-General for review and subsequent reporting in the next audit cycle.

3.0 Non-Resettlement of Internally Displaced Persons

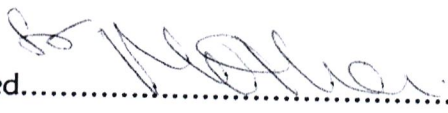

The committee observed that the Fund purchased a parcel of land in Kisima Njoro L.R. No. 9216 at a cost of Kshs.396,984,000 for resettlement of Internally Displaced Persons (IDPs). However, during a physical verification of the farm in the month of September,2019, it was noted that the land had not been surveyed or sub-divided and therefore, the beneficiaries had not been resettled seven (7) years after the purchase of the land.

Committee Observations

1. The committee observed that:
 - (i) The beneficiaries had not been re-settled since the land at Kisima Njoro L.R No.9216 had not been surveyed nor sub-divided at the time of the Audit.
 - (ii) Another case was filed under Environment and Land Court suit No.19 of 2020 stopping sub-division of the land.
 - (iii) The matter was resolved as submitted by the Accounting Officer on 9th May,2022.

MIN.NO./NA/SFAC/2022/024 - ADJOURNMENT

There being no other business the meeting was adjourned at 4.30 pm.

Signed.......... Date.....

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 7TH SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA COUNTY AT 9.30 A.M. IN PRIDE INN HOTEL.

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P. OGW

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

MIN.NO./NA/SFAC/2022/025 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 9.45 am with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers

2. Confirmation of minutes
3. Matters Arising
4. Consideration of draft Exit Report
5. Adjournment

MIN.NO./NA/SFAC/2022/026 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/027 - CONSIDERATION OF DRAFT EXIT REPORT

The Committee applauded the work done in 2021 and urged the Secretariat to highlight its effects to the citizenry and the audited Funds.

The summary of activities done during the year under review:-

Jan/June 2021

- (a) Work Plan Retreat on 18th to 21st February, 2021 in Machakos County, Hilton Garden Inn Hotel to prepare its work plan for the period February to June, 2021.
- (b) Retreat on 4th to 8th March, 2021 in Machakos County, Hilton Garden Inn Hotel to consider the audited financial statements of LAPFUND for the financial years 2018/19 and the draft reports of its financial years 2016/17 and 2017/18.
- (c) Field Visit on 18th to 21st March, 2021 in Kisumu County to undertake a physical verification of the demolitions and disposal of asbestos materials on the demolition of houses in Makasembo Estate following the consideration of audited financial statements of LAPFUND for the financial year 2018/19.
- (d) Inspection Visits by two sub-committees on 24th to 28th May, 2021 to Kwale and Taita Taveta Counties to inspect the National Government Constituencies Development Fund projects funded on the status of completion and value for money.

July/Dec 2021

The Committee undertook the following retreats:-

- (e) Report writing retreat held on 28th July to 3rd August, 2021 in Mombasa County to consider the audited accounts of the following reports:-
 - (i) Local Authorities Provident Fund FY 2016/17/18.
 - (ii) Unclaimed Assets Trust Fund FY 2016/17/18.
 - (iii) Agricultural Settlement Fund FY 2016/17/18.
 - (iv) Petroleum development Fund FY 2016/17/18.
 - (v) National Environment Fund FY 2016/17/18.

- (f) Inspection Visits by two sub-committees on 19th to 24th August, 2021 in Kisii/Migori Counties and Busia/Kakamega Counties to inspect the Energy Centres funded by Petroleum Development Levy Fund.
- (g) Report writing retreat held on 12th to 19th September, 2021 in Mombasa County to consider the draft report of 26 NGCDF Constituencies for Coastal Region.
- (h) Inspection Visits by two sub-committees on 21st to 23rd October, 2021 to Mombasa and Kilifi Counties to inspect the National Government Constituencies Development Fund projects.
- (i) Report writing retreat held on 24th to 30th October, 2021 in Mombasa County to consider the report of 26 NGCDF Constituencies in Coastal Region.

1.1 Capacity building

The Committee also participated in the following regional forums during the period under review

- a. The 2nd Annual Conference of the Institute of Certified Secretaries held on 15th – 18th August, 2018 in Mauritius.
- b. The Regional Public Financial Management Training for improved Budget Oversight and Accountability held in Accra, Ghana on October, 22-26, 2018.
- c. The 3rd General Meeting and Conference of the African Organisation of Public Accounts Committees (AFROPAC) held in Kampala, Uganda on 19th– 23rd November, 2018

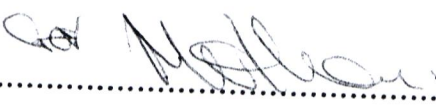

The Committee undertook two international activities geared towards enhancing the capacity of its Members during the period under review.

- (a) Capacity building programme in Leadership and Governance held in Dubai, United Arab Emirates at Hilton, Garden Inn Hotel from 14th to 18th June, 2021.
- (b) Training in value for money on management of public finances as the role of Parliamentary Audit Committees in Addis Ababa, Ethiopia at Golden Tulips from 7th to 11th June, 2021.
- (c) January 21-25, 2019: Attendance to the Regional Public Financial Management Training for Improved Budget Oversight and Accountability organized by AFROPAC in Mombasa County;
- (d) February 11-15, 2019: Capacity Building training on Policy- Formation and Consensus –Building in the Framework of Agenda 2030 and Agenda 2063 in Kigali, Rwanda;
- (e) April 8 - 12, April, 2019: Attendance To Effective Leadership and Governance Seminar held on 8th to 12th April, 2019 in Kuala-Lumpur, Malaysia; and
- (f) 4th Chapter Seminar by the Institute of Certified Public Accountants of Kenya held in United Kingdom.
- (g) International Conference on Effective Governance and Leadership Practice in Kuala Lumpur, Malaysia on 26th to 30th August, 2019; and

(h) Participation to the 24th Executive Seminar organized by the Institute of Certified Public Accountants of Kenya in Istanbul, Turkey on 25th to 29th November, 2019.

MIN.NO./NA/SFAC/2022/028 - ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 pm.

Signed.....  Date..... 

HON. KATHURI MURUNGI, M.P.
(Chairperson)

**MINUTES OF THE 8TH SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE FOR
REPORT WRITING RETREAT FOR LANDS SETTLEMENTS FUND IN MOMBASA
COUNTY AT 2.30 P.M. IN PRIDE INN HOTEL.**

Present

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Erastus Kivasu, M.P.
3. Hon. Dr. Robert Pukose, M.P.
4. Hon. Marwa Kitayama, M.P.
5. Hon. Mohamed Ali, M.P.
6. Hon. Shakeel Shabbir, M.P. CBS
7. Hon. Gideon Kimutai Koske, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Alfred Agoi Masadia, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Geoffrey Omuse, M.P.
13. Hon. Jared Okelo, M.P.
14. Hon. Justus Kizito Mugali, M.P.
15. Hon. Esther Passaris, M.P. OGW

Apologies

1. Hon. William Chepkut, M.P. - Vice Chairperson
2. Hon. Faith Gitau, M.P.
3. Hon. Dennitah Ghati, M.P. HSC
4. Hon. Dr. Enock Kibungucy, M.P.

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - PCA I
2. Ms Hellen Ekadeli - FCA
3. Ms. Emma Essendi - Legal Counsel
4. Mr. Kennedy Owuoth - Fiscal Analyst III
5. Mr. Josephat Bundotich - Senior SAA
6. Mr. Job Owaga - Audio Officer

OFFICE OF THE AUDITOR GENERAL AND NATIONAL TREASURY

1. Mr. Francis Kabui - Principal Auditor
2. Mr. Walter Owele - Principal Auditor

THE NATIONAL TREASURY

1. Simon K. Kiriiba - Deputy Accountant General

MIN.NO./NA/SFAC/2022/029 - PRAYER AND ADOPTION OF AGENDA

The Chairperson called the meeting to order at 2.45 pm with a word of prayer. The agenda was adopted as circulated in the programme as proposed and seconded by Hon. Mohamed Ali, M.P. and Hon. Marwa Kitayama, M.P.

1. Prayers

2. Confirmation of minutes
3. Matters Arising
4. Status of Pending Business before the Committee
5. Adjournment

MIN.NO./NA/SFAC/2022/030 - CONFIRMATION OF MINUTES

The agenda was deferred to the next meeting and therefore no matters arose.

MIN.NO./NA/SFAC/2022/031 - STATUS OF PENDING BUSINESS BEFORE THE COMMITTEE

The Committee noted the status of pending business and observed that the stand alone funds shall easily be dispensed by the next Parliament owing to the split of the Committee.

The status appears as follows:



BUSINESS BEFORE THE SPECIAL FUNDS ACCOUNTS COMMITTEE AS AT FEB. 2022			
	Fund Name	FINANCIAL YEAR	REMARKS
1.	Commodities Fund	30 th June 2018 & June, 2019v & 2020	
2.	Railway Development Levy Fund Holding Account	June 2018	
3.	Railway Development Levy Fund (Operations Accounts)	30 th JUNE 2017 & 2018	
4.	Railway Development Levy Fund (Operations Accounts)	30 th JUNE 2018 & 2019	
5.	Consolidated Fund Services(Public Debt)	2015/16 & 2016/17	
6.	Civil Servants Housing Scheme Fund	30 June 2018	
7.	Constituency Development Fund -Central Bank of Kenya Account	2015/2016	
8.	Kenya Slums Low Cost Housing and Kenya Slum upgrading low Cost Housing and infrastructure trust fund	2015/2016, 2016/17, 2017/18 & 2018/19	
9.	Orange Democratic Movement (ODM)	2015/16, 2016/2017 & 2017/2018	
10.	Wiper Democratic Movement Kenya	2016/17, 2017/2018, 2018/19 & 2019/20	
11.	Amani National Congress Party	Jan. 2016 to December 2017	
12.	National Sports Fund	30 th June 2018 & 2019	
13.	Relief and Rehabilitation Cash transfer Fund	2016/17	
14.	National Government Constituencies Development Fund Board	2016/17 to 2020/21	
15.	Women enterprise Fund	2019 & 2020	
16.	Petroleum Training Levy fund for the State Department for Petroleum	30 June 2018	
17.	Petroleum Development Levy Fund	30 June 2018, 2019 & 2020	
18.	Petroleum Development Levy Fund Holding Account (Managed by PS, Treasury)	30 June 2019 & June 2020	

19.	Equalization Fund	30 JUNE 2018 June, 2018 & June 2020	
20.	Estimates of Revenue to and expenditure from the Equalization Fund (PS National Treasury)	2017/2018	
21.	State Officers and Public Officers Car Loan Scheme Fund	30 th June 2017 & 2018/19	
22.	Rural Enterprise Fund	30 th June 2017/18 & 2018/19, 2019	
23.	Asian Officers Family Pension Fund	June 2020	
24.	Asiatic Widows and Orphans Pension Fund	30 th June 2018	
25.	Kenya Local Loans Support Fund	June 2017/18 & 2018/19	
26.	National Youth Service- Mechanical and Transport Fund (PS, State Dept. of Public Service and Youth)	2019	
27.	Parliamentary Mortgage Scheme Fund	30 th June 2018, & 2021	
28.	Parliamentary Service Commission Car Loan Scheme Fund	30 th June 2018 & 2021	
29.	Parliamentary Catering Fund	June 2021	
30.	Communication Authority of Kenya- Universal Service Fund	30 June 2018	
31.	Occupational Safety and Health fund	2016/17, 2018/19 & 2019/2020	
32.	National Government Affirmative Action Fund	30 th June 2016/17, 2017/18 and 2018/19, 2019/20Uwezo	
33.	National Environment Trust Fund	30 th June 2017 & June 2019	
34.	Tourism Fund	30 th June 2016/17 & 2017/18	
35.	National Government Constituencies Development Fund reports for constituencies for financial years	2016/17 2017/18	
36.	State Officers and Public Officers Motor Car Loan Scheme Fund	30 th June 2018	
37.	Political Parties Fund	30 June 2018, 2019&2020	
38.	Office of Registrar of Political Parties	30 th June 2018	
39.	Policy Holder Compensation Fund	30 th June 2018 & 2020	
40.	Agricultural Information Resource Centre Revolving Fund	30 th June 2020	
41.	Imarisha Naivasha Trust (public private partnership initiative under the Ministry of Environment and Natural Resources)	30 th June, 2013,2014,2015 & 2016	
42.	Veterinary Services Development Fund	30 June 2017/18, 2018/19, 2019/2020 & 2020/21	
43.	NACADA Alcoholic Drinks Control Fund	30 June 2018	
44.	Stores and Services Fund	30 June 2018	
45.	Strategic Grain Reserve Fund	30 June 2018	
46.	Strategic Food Reserve Fund	30 June 2020	
47.	Street Families Rehabilitation Trust Fund	30 June 2017/18 & 2018/19 & 2019/20	

48.	NACADA Alcoholic Drinks Control Fund	30 June 2018	
49.	Water Sector Trust Fund	30 th June 2019 & 2020	
50.	Kenya Energy Sector Environment and Social Responsibility Programme Fund	30 th June, 2019 & 2020	
51.	Prison Farm Revolving Fund	30 th June, 2019 Tabled 10 th Feb.2021	
52.	Prison Industries Revolving Fund	June 2019	
53.	Uwezo Fund	June 2019, June 2020	
54.	Mechanical and Transport Fund (State Department for Infrastructure)	June 2019, June 2020	
55.	Land Settlement Fund	2018/19 & 2019/2020	
56.	FC TALANTA	30 th JUNE 2019	Laid on 31 st Sept. 2021
57.	Management and Supervision Fund	June, 2013 to June 2020	Laid on 15 th June 2021
58.	Road Annuity Fund	June 2020	
59.	National Research Fund	June 2020	
60.	University Fund	June 2020	
61.	Petroleum Development Fund	June 2021	

MIN.NO./NA/SFAC/2022/032 - ADJOURNMENT

There being no other business the meeting was adjourned at 4.30 pm.

Signed.......... Date..........

HON. KATHURI MURUNGI, M.P.
(Chairperson)

MINUTES OF THE 6TH SITTING OF SPECIAL FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 31ST MAY, 2022 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 10.00 A.M.

PRESENT

- | | | |
|------------------------------------|---|-------------------------|
| 1. Hon. Kathuri Murungi, M.P. | - | Chairperson (Zoom) |
| 2. Hon. William K. Chepkut, M.P. | - | Vice Chairperson (Zoom) |
| 3. Hon. Esther Passaris, M.P. OGW | | |
| 4. Hon. Mohamed Ali, M.P. | - | Zoom |
| 5. Hon. Mark Lomunokol, M.P. | - | Zoom |
| 6. Hon. Geoffrey Omuse, M.P. | - | Zoom |
| 7. Hon. Erastus Kivasu, M.P. | - | Zoom |
| 8. Hon. Jared Okelo, M.P. | - | Zoom |
| 9. Hon. Justus Kizito, M.P. | - | Zoom |
| 10. Hon. Alfred Agoi, M.P. | - | Zoom |
| 11. Hon. (Dr.) Robert Pukose, M.P. | - | Zoom |
| 12. Hon. Marwa Kitayama, M.P. | - | Zoom |
| 13. Hon. Shakeel Shabbir, M.P. CBS | - | Zoom |
| 14. Hon. Mwambu Mabongah, M.P. | - | Zoom |

APOLOGIES

1. Hon. Faith Gitau, M.P.
2. Hon. Dennitah Ghata, M.P. HSC
3. Hon. Mohamed Ali Lokiru, M.P.
4. Hon. Dr. Enock Kibunguchy, M.P.
5. Hon. Gideon Koskei Kimutai, M.P.

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|-----------------------|
| 1. Ms. Hellen Ekaeli | - | First Clerk Assistant |
| 2. Ms. Emma Essendi | - | Legal Counsel |
| 3. Mr. Kennedy Okinyi | - | Fiscal Analyst |
| 4. Mr. Job Owaga | - | Audio Officer |
| 5. Mr. Meshack Mutali | - | Office Attendant |

MIN.NO./NA/SFAC/2022/025 - PRAYER AND ADOPTION OF AGENDA

The Hon. Esther Passaris, M.P. called the meeting to order at 10.10 a.m. with a word of prayer. The Agenda of the meeting was adopted as circulated on a proposal by Hon. Jared Okelo, M.P. and seconded by Hon. Shakeel Shabbir, M.P.

1. Prayers
2. Confirmation of minutes.
3. Adoption of Report on Lands Settlement Fund for FY 2020/2021.

4. Adoption of status Report of Equalization Fund.
5. Adjournment/Date of next meeting.

MIN.NO./NA/SFAC/2021/026 - CONFIRMATION OF MINUTES

The minutes of the 5th Sitting of the Committee was confirmed as true records of the proceedings of the meeting having been proposed by Hon. Shakeel Shabbir, M.P. and seconded by Hon. Jared Okelo, M.P.

MIN.NO/NA/SFAC/2022/027 - ADOPTION OF REPORT ON LANDS SETTLEMENT FUND FOR FY 2020/2021.

Having gone through the report, the Committee adopted the report as true proceedings as proposed by Hon. Shakeel Shabbir, M.P. and seconded by Hon. Dr. Robert Pukose, M.P.

MIN.NO/NA/SFAC/2021/028 - ADOPTION OF STATUS REPORT OF EQUALIZATION FUND

The Committee confirmed and adopted the report as the true proceedings as proposed by Hon. Jared Okelo, M.P. and seconded by Hon. Marwa Kitayama, M.P.

MIN./NO./NA/SFAC/2022/029 - ADJOURNMENT/DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 10.40 a.m. and the next meeting will be on notice.

Signed..........Date..........

HON. KATHURI MURUNGI, M.P.
(Chairperson)



**MINISTRY OF LAND AND PHYSICAL PLANNING
OFFICE OF THE PRINCIPAL SECRETARY**

Telegraphic Address: "LANDCON"
Telephone: Nairobi 2718050
When replying please quote

LAND ADJUDICATION AND
SETTLEMENT DEPARTMENT
P.O. Box 30297
NAIROBI

Ref. No. **DS.3/25 Vol. VI (90)**

Date: 11th May, 2022

**The Chairman,
Special Funds Accounts Committee,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.**

Dear, *Chairman*

**RE: CONSIDERATION OF THE REPORT OF THE AUDITOR- GENERAL ON
FINANCIAL STATEMENTS FOR THE LAND SETTLEMENT FUND FOR THE
YEAR ENDED 30TH JUNE, 2021**

Please refer to our appearance before the Special Funds Accounts Committee on 9th May, 2022 to deliberate on the above captioned matter.

The report of the Auditor-General on the financial statements of the Land Settlement Fund for the Financial Year ended 30th June, 2021 elicited a 'Qualified Opinion' on the basis of two issues, namely:-

- 1) Long outstanding trade receivables of KShs.6,896,185,412 and Kshs.69,819,548 being Land Loans and Development Loans issued respectively.
- 2) Long outstanding Interest Receivables of Kshs.5,222,372,098 which has accumulated over the years on loans issued to Settlers since the year 1962.

The genesis of the scenario can be traced back to the then Settlement Fund Trustees' SFT Paper No.479 which indicates that the then President, H. E. Daniel T. Arap Moi had in May of 1995, directed that all Settlers owing money to the Settlement Fund Trustees be exempted from payment of their outstanding land and development loans.

The amount in question at the time would have been in excess of KShs.1,183,983,000/= (One Billion, One Hundred and Eighty Three Million, Nine Hundred and Eighty Three Thousand) excluding accrued interests and ongoing new settlement schemes.

As a result of the directive, most of the farmers in Settlement schemes generally stopped servicing their loans with the resultant trend being that the Fund's expenditure soon outstripped the declining levels of revenue collection.

After consultations, it was clarified that the Head of State had only exempted settlers who had benefitted from Land and Development Loans between the years 1961 and 1967. However, the impact of this directive reverberates to date with both lethargy and genuine incapacity to pay on the part of the settlers leading to the current determined total outstanding trade receivable amount of Kshs.12,188,377,058 (Twelve Billion, One Hundred and Eighty Eight Million, Three Hundred and Seventy Seven Thousand and Fifty Eight Shillings).

Given the current state of the global economy coupled with the impact that the Covid-19 pandemic has had on individual incomes plus the adverse effects of global warming on agrarian economies, the capacity of the ordinary Kenyan Settler to repay the outstanding loans owed to the Land Settlement Fund cannot be guaranteed in the short term and indeed, in the foreseeable future.

The situation, therefore, calls for consideration of interventions that would lead to a win-win situation for both the Kenyan Settler and the facilitating Fund (The Land Settlement Fund).

A proposal for the outright write-off of both the outstanding Land and Development Loans plus interests accruing thereof comes to mind as this would enable the Government to process title deeds to the owing settlers who can then use them as collateral for raising capital for income generating activities.

However, this approach might set an unsustainable precedent that future settlers may seek to exploit to avoid paying of their dues, and secondly, it does not constitute sound financial management.

Further, the very existence of the Fund will be comprised and the noble purpose for which it was initially set up will not be achieved.

In the circumstances therefore, it is our considered opinion that the matter be approached from the perspective of the Government paying off the outstanding loans and plus the attendant interests on behalf of the settlers and the Fund thereafter discharges the beneficiaries of their loan obligations and commences the process of title issuance in line with the regulations and procedures in place.

This approach will allow for capitalization of the Fund and therefore boost its capacity to purchase more land for settlement of needy Kenyans in a better structured, systematic and impactful manner.

Submitted for your consideration.



Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

DLAS/1/18/A/45

22nd April,

98

47

Mr. Mohamed Kaittany,
Permanent Secretary,
Ministry of Lands & Settlement,
P.O. Box 30450,
NAIROBI.

RE: S.F.T. PAPERS & CABINET MEMO

Enclosed herewith please find the following:-

- (i) Draft Cabinet Memo on SFT Land and Development Loans write off.
- (ii) Draft SFT Paper No.479 on SFT Land and Development Loans write off to accompany No. (i) above.
- (iii) Draft SFT Paper No.478 on Task Force on Review of Government Lands Amendment Act 1988 and the Agricultural Settlement Fund; The paper had been finalised by your office and signed by your predecessor. It is not clear why it was not forwarded to the Trustees. The Deputy Secretary/Revenue, Mrs. Mwangi has the details.

Kindly have the matters finalised as they have been outstanding for quite some time.

A. K. CHERWON
AG: DIRECTOR OF LAND ADJUDICATION & SETTLEMENT

Encs.

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SETTLEMENT FUND TRUSTEES (SFT) LAND AND DEVELOPMENT LOANS WRITE OFF -
SFT PAPER NO.479

DRAFT CABINET MEMO

In May 1995 His Excellency President Daniel Toroitich Arap Moi directed that all settlers owing money to the Settlement Fund Trustees (from the Agricultural Settlement Fund) would be exempted from payment of the balance of their land and development loans. The amount involved according to Settlement Fund Trustees records would have been in excess of Kshs.1,183,983,000/= (One Billion, One Hundred and Eighty Three Million, Nine Hundred and Eighty Three Thousands) excluding accrued interests and ongoing new settlement schemes.

As a result of the above, most of the farmers in settlement schemes generally stopped servicing their loans with the resultant trend that the expenditure of the Agricultural Settlement Fund soon outstripped the declining levels of revenue collection. This situation generated apprehension as to the future capacity of the Fund to service both the British and Kenya Government loans and secondly the possible worst scenario of the eventual collapse of the Settlement Fund Trustees' Programmes which would greatly compromise the Government's role of Settlement of Kenyans through these programmes.

After more consultations between my Ministry and the Office of the President it was clarified that the Head of State had only exempted settlers who benefited with Land Development Loans from Settlement Fund Trustees between the years 1961 and 1967. That is, those farmers who had benefited with Land and Development Loans in our first settlement schemes prior to and in the early independence days and whose contracts of 30 years with Settlement Fund Trustees had lapsed before the loans were fully serviced. Other than extension of the contracts the other options, which would be socially and politically unpalatable would be to evict them from the land or auction it to recover the amount owed.

Subsequently early last year (1997) I placed the following advertisement in the Print Media, that is:-

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48/1 DLAS
Note folio 47 and
note that the
issues are still
outstanding.

16/9/99

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PRESS RELEASE

SETTLEMENT FUND TRUSTEES LOANS

IT HAS COME TO MY NOTICE THAT THE FARMERS WHO OWE THE GOVERNMENT MONEY UNDER THE SETTLEMENT FUND TRUSTEES ARRANGEMENT ARE NOT REPAYING THEIR LOAN AS A RESULT OF MISUNDERSTANDING ARISING OUT OF A GOVERNMENT ANNOUNCEMENT MADE IN MAY, 1995. I WISH TO MAKE THE FOLLOWING CLARIFICATION REGARDING THIS PAYMENT OF SFT LOANS.

- 1) THE ANNOUNCEMENT WHICH WAS MADE BY HIS EXCELLENCY, THE PRESIDENT RECENTLY EXEMPTED ONLY THOSE FARMERS WHO OWE THE GOVERNMENT MONEY IN TERMS OF LAND AND DEVELOPMENT LOANS UNDER SETTLEMENT FUND TRUSTEES BETWEEN THE YEARS 1961 TO 1967.
- 2) THAT ALL THOSE FARMERS WHO OWE THE GOVERNMENT LAND AND DEVELOPMENT LOANS UNDER SETTLEMENT FUND TRUSTEES FROM THE YEAR 1968 TO DATE ARE REQUIRED TO PAY BACK THEIR LOAN IN ACCORDANCE WITH THE SETTLEMENT FUND TRUSTEES AND PROCEDURES GOVERNING LOAN REPAYMENTS UNDER CAP 318 OF THE LAWS OF KENYA TO ENABLE OTHER KENYANS TO BENEFIT FROM THIS SCHEME.

HON. N. K. NGALA, EGH, MP
MINISTER FOR LANDS & SETTLEMENT

MINISTRY OF LANDS & SETTLEMENT
P.O. BOX 30450,
NAIROBI.

TEL.718050

The details of the areas involved and the approximate outstanding amounts owed to Settlement Fund Trustees by the farmers settled between 1961 and 1967 are as follows:-

A - EAST OF RIFT VALLEY

SCHEME NO.	NAME OF SCHEME	DISTRICT	YEAR OF ALLOCA-TION	NO. OF DEFAULTERS	AMOUNT
200	KARAGOINI	NYANDARUA	1967	34	231,538.00
201	BAHATI	NAKURU	1967	49	327,679.00
202	SILIBWET	NYANDARUA	1967	107	1,854,337.00
203	OL JORO OROK (W)	NYANDARUA	1965	184	3,480,490.00
204	SABUGO	NYANDARUA	1965	120	1,808,483.00
205	ORAIMUTIA	NYANDARUA	1965	40	792,206.00
206	NYAHURURU	NYANDARUA	1967	26	667,201.00
208	MELANGINE	NYANDARUA	1964	100	1,178,889.00
209	MATINDIRI	NYANDARUA	1964	10	229,137.00
210	NYAIROKO	NYANDARUA	1964	8	307,248.00
211	LESIRKO	NYANDARUA	1965	88	1,545,055.00
212	UPPER GILGIL	NYANDARUA	1964	7	196,496.00
213	PASSENGA	NYANDARUA	1963	18	431,812.00
214	SILANGA	NYANDARUA	1963	9	79,908.00
215	OL'KALOU WEST	NYANDARUA	1963	23	236,574.00
217	GILGIL WEST	NYANDARUA	1965	13	219,534.00
218	OL'KALOU SOUTH	NYANDARUA	1965	49	718,221.00
219	NGORIKA	NYANDARUA	1965	37	1,577,811.00
220	MARMANET	LAIKIPIA	1967	176	3,877,707.00
221	KANYAGIA	NYANDARUA	1965	23	394,071.00
222	NDARAGWA	NYANDARUA	1965	24	341,502.00
223	SIMBARA	NYANDARUA	1965	12	121,248.00
224	SHAMATA	NYANDARUA	1964	107	1,563,559.00
225	PESI	NYANDARUA	1965	8	151,287.00
227	WANJOHI	NYANDARUA	1965	148	690,415.00
228	MALEWA	NYANDARUA	1963	38	257,845.00
229	KIPIPIRI	NYANDARUA	1964	54	225,135.00
230	TURASHA	NYANDARUA	1964	25	382,469.00
232	MAWINGO	NYANDARUA	1964	50	733,299.00
233	OL ARAGWAI	NYANDARUA	1963	20	400,469.00
251	MKUNGI	NYANDARUA	1963	20	300,603.00
252	NANDARASI	NYANDARUA	1963	11	107,412.00

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253	KAHURU	NYANDARUA	1965	11	299,899.00
254	KITIRI	NYANDARUA	1963	54	1,006,764.00
255	MURUAKI	NYANDARUA	1963	82	11,012,421.00
256	TULAGA	NYANDARUA	1963	26	527,952.00
257	GITHIORO	NYANDARUA	1965	3	453,514.00
258	KARATI	NYANDARUA	1964	83	989,627.00
259	NJABINI	NYANDARUA	1963	54	941,272.00
260	SOUTH KINANGOP	NYANDARUA	1962	90	589,813.00
271	LAIKIPIA SOUTH	NYANDARUA	1964	12	176,640.00
272	OBSERVATION HILL	NYERI	1963	24	185,961.00
273	ENDARASHA	NYERI	1963	87	771,313.00
274	UASIN NYIRO	NYERI	1963	56	912,594.00
275	MWEIGA	NYERI	1964	70	694,644.00
276	NARO MORU	NYERI	1963	52	1,212,572.00
277	WARAZA	NYERI	1965	28	508,660.00
278	TIMAU	MERU	1966	24	1,187,459.00
279	MARAGWA RIDGE	MURANGA	1963	10	51,778.00
280	ISLAND FARMS	NYERI	1962	35	443,632.00
285	LARI	KIAMBU	1964	3	66,598.00
289	MUA HILLS	MACHAKOS	1963	96	1,452,794.00
290	KITANGA	MACHAKOS	1965	19	162,022.00
293	KIIMA KIMWE	MACHAKOS	1966	20	133,793.00
300	OL ARABEL	LAIKIPIA	1967	187	3,106,932.00
301	LARIAK	LAIKIPIA	1967	23	440,672.00
<u>TOTAL EAST OF RIFT</u>				<u>2787</u>	<u>42,763,966.00</u>

B - WEST OF RIFT VALLEY

2	CHERANGANI	TRANS NZOIA	1965	121	1,866,621.00
3	SUWERWA	TRANS NZOIA	1964	205	2,218,574.00
4	SINYERERE	TRANS NZOIA	1965	134	3,994,272.00
5	EX-SITATI	TRANS NZOIA	1967	1	28,755.00
6	KAMUKUYWA	BUNGOMA	1964	195	3,385,708.00
7	NAITIRI	BUNGOMA	1964	149	2,563,545.00
8	KIMININI	BUNGOMA	1965	135	2,601,123.00
9	NDALU	BUNGOMA	1966	74	1,742,100.00
11	MOI'S BRIDGE	BUNGOMA	1967	102	2,333,654.00
12	KABISI	BUNGOMA	1964	400	5,121,243.00

13	KABUYEFWE	BUNGOMA	1964	150	1,149,978.00
14	TONGAREN	BUNGOMA	1965	155	2,811,571.00
15	SOYSAMBU	BUNGOMA	1966	156	1,981,888.00
16	KONGONI	BUNGOMA	1967	75	1,108,911.00
18	MABUSI	BUNGOMA	1966	40	1,188,160.00
21	LUGARI	KAKAMEGA	1967	170	1,421,618.00
22	MAUTUMA	KAKAMEGA	1963	125	1,402,265.00
24	SANGO	KAKAMEGA	1965	168	1,516,516.00
25	CHEKALINI	KAKAMEGA	1963	135	1,293,531.00
26	LUMAKANDA	KAKAMEGA	1966	127	1,163,711.00
28	SERGOIT	KAKAMEGA	1967	23	347,990.00
29	SOY	KAKAMEGA	1966	20	325,834.00
43	NDALAT	NANDI	1963	288	5,224,257.00
44	SOSIANI	UASIN GISHU	1965	43	580,099.00
45	ELGEYO BORDER	UASIN GISHU	1963	310	4,617,209.00
46	KAPTAGAT	UASIN GISHU	1964	132	2,337,730.00
47	LESSOS	NANDI	1963	34	320,081.00
48	KEBEN	NANDI	1962	81	1,255,770.00
49	AINABKOI WEST	UASIN GISHU	1965	76	1,044,777.00
50	TIMBOROA *	UASIN GISHU	1962	28	790,406.00
51	AINABKOI EAST	UASIN GISHU	1963	56	1,196,277.00
52	AINABKOI NORTH	UASIN GISHU	1963	63	1,119,319.00
53	KOYLAT	NANDI	1963	32	296,900.00
61	GOD ABUORO	KISUMU	1966	120	881,985.00
62	SONGHOR	KISUMU	1965	240	2,479,757.00
64	MUHORONI	KISUMU	1965	225	2,405,016.00
65	TAMU	KISUMU	1964	163	1,213,710.00
67	KORU	KISUMU	1966	211	2,537,610.00
68	FORT TERNAN	KISUMU	1966	163	3,076,861.00
69	CHEPSIR	KERICHO	1965	6	83,332.00
70	TUGENON	KERICHO	1967	10	107,514.00
71	KITARU	KISII	1965	49	1,233,178.00
80	NYANSIONGO	NYAMIRA	1965	43	623,843.00
82	GESIMA	NYAMIRA	1965	93	1,932,349.00
84	MANARET	KERICHO	1965	57	898,245.00
86	KIPSONOI	KERICHO	1964	114	1,378,099.00
87	SOTIK EAST	KERICHO	1963	152	1,606,904.00
88	MANGA	NYAMIRA	1965	133	1,776,342.00

89	ISOGE	NYAMIRA	1966	43	361,564.00
91	GELEGELE	KERICHO	1962	49	749,294.00
92	KOYET	KERICHO	1965	29	280,695.00
93	CHEPLEWA	NAKURU	1963	24	99,743.00
94	LIETEGO	KISII	1964	12	156,465.00
95	MATUTU	KISII	1965	58	1,316,258.00
98	NGOINA	KERICHO	1964	16	138,574.00
101	PERKERA	KOIBATEK	1964	100	1,950,292.00
102	RAVINE	KOIBATEK	1965	84	860,106.00
103	SABATIA	KOIBATEK	1965	64	<u>471,445.00</u>
	TOTAL WEST OF RIFT			<u>6339</u>	<u>91,497,147.00</u>
	TOTAL EAST AND WEST OF RIFT				<u>134,261,113.00</u>

The total amount defaulted in both categories is therefore as hereunder:-

A - KSHS.42,763,966.00
B - <u>KSHS.91,497,147.00</u>
TOTAL - <u>SHS.134,261,113.00</u>

Under the circumstances I am requesting for formal authorisation of the Cabinet for the Trustees of the Agricultural Settlement Fund to write off the Kshs.134,261,113.00 inclusive of any interest that may have accrued thereon and other cases falling on this category and may not be properly documented. This will exclude cases where there are other legal complications unrelated to loan repayments.

The write off would be based on the provisions of section 169 (2) of the Agriculture Act, Chapter 318 of the Laws of Kenya which provides that:-

"The Trustees may grant relief with regard to repayment of capital of, and payment of interest on, advances and write off such debts as they may from time to time determine".

Under Section 167 of the same Act, the Trustees of the Fund are the Ministers responsible for Finance, Agriculture and Lands while the Permanent Secretary, Ministry of Lands and Settlement is the Public Officer appointed as the Officer Administering the Fund.

It is expressly stated that this authorisation will not be used as a precedent to write off any other debts owed to Settlement Fund Trustees by farmers in Settlement Schemes other than for those small scale farmers whose debts date back to between the years 1961 and 1967.

- 7 -

A draft SFT Paper No.479 is enclosed herewith for your perusal.

Noah K. Ngala EGH. MP.
MINISTER FOR LANDS & SETTLEMENT
TRUSTEE