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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

11<sup>TH</sup> PARLIAMENT: 2017



Paper laid by  
Hon. Nicholas Musumbi MP  
14 June 2017  
Public Accounts Committee  
on 14/6/2017 (pm)  
one

PUBLIC ACCOUNTS COMMITTEE  
LEGACY REPORT  
FOR THE  
ELEVENTH PARLIAMENT

Paper laid by Hon. Eng. Wesley Githaiga  
Chairman, Public Accounts Committee  
on 14/6/2017.

Published by:  
DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

JUNE, 2017

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## **LIST OF ABBREVIATIONS**

AFROPAC	African Organization of Public Accounts Committees
AK	Accountability Kenya
CAPAC	Commonwealth Association of Public Accounts Committees
DCI	Directorate of Public Prosecutions
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
NYS	National Youth Service
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

## **1.0 INTRODUCTION**

**Mr. Speaker, Sir,**

I beg to present the Legacy Report of the Public Accounts Committee of the 11<sup>th</sup> Parliament.

### **1.1 ESTABLISHMENT AND MANDATE**

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”.*

Mr. Speaker Sir, the Committee notes that there is a conflict between the functions of Public Investments Committee and Public Investments Committee. A specific instance of such conflict is the recent allocation of Khs. 5 billion to Kenya Airways under the watch of the Public Investments Committee.

The primary mandate of PAC is therefore to oversight the expenditure of public funds by Ministries, Departments and Agencies (MDAs) or any other entity. 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 on the basis of annual and special audit reports prepared by the Office of the Auditor General.

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.

### **GUIDING PRINCIPLES**

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

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.**

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

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”.***

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

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.”***

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.

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.”*

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.

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.

## **1.2 MEMBERSHIP**

The Committee comprises the following Honourable Members;

1. Hon. (Eng.) Nicolas Gumbo, MP - Chairman
2. Hon. Jackson K. Rop, MP - Vice- Chairman
3. Hon. Gonzi Rai, MP
4. Hon. Joel Onyancha, MP
5. Hon. (Capt.) Clement Wambugu, MP
6. Hon. John Mbadi, MP
7. Hon. Kareke Mbiuki, MP
8. Hon. Manson Nyamweya, MP
9. Hon. Julius Melly, MP
10. Hon. Joseph Manje, MP
11. Hon. Kangogo Bowen, MP
12. Hon. Timothy Bosire, MP
13. Hon. Fathia Mahbub, MP
14. Hon. Mwadime Andrew, MP
15. Hon. Sakwa Bunyasi, MP
16. Hon. Arthur Odera, MP
17. Hon. Abdikadir Aden, MP
18. Hon. Kanini Kega, MP
19. Hon. Kyengo Katatha Maweu, MP

20. Hon. Charles Geni Mong'are, MP
21. Hon. David Eseli, MP
22. Hon. Jessica Mbalu, MP
23. Hon. Alice Nyanchoka Chae, MP
24. Hon. Mathias Robi, MP
25. Hon. Stephen Manoti, MP
26. Hon. Junet Sheikh Nuh, MP
27. Hon. Silvance Onyango Osele, MP

The Committee was reconstituted during the third session, in April, 2015 following allegations of abuse of parliamentary privileges by some Members of the Committee. This was through a resolution of the House adopting recommendations of the Committee on Powers and Privileges. As a result of the reconstitution, the following five Members of the committee were removed from the Committee;

1. Hon. Ababu Namwamba, MP
2. Hon. Cecily Mbarire, MP
3. Hon. Edick Anyanga, MP
4. Hon. James Bett, MP
5. Hon. Mohamed Abass, MP

Earlier, Hon. Samuel Arama, MP had been de-whipped by his party from the Committee.

The Members removed from the Committee were replaced by the following new Members;

1. Hon. (Eng.) Nicolas Gumbo, MP
2. Hon. Abdikadir Mohammed Omar, MP
3. Hon. Kanini Kega, MP
4. Hon. Kangogo Bowen, MP
5. Hon. (Dr.) Eseli Simiyu, MP
6. Hon. Timothy Bosire, MP

In April 2016, the Jubilee Coalition made a further change in representation by replacing Hon. Jude Njomo, MP with Hon. (Capt.) Clement Wambugu, MP.

The Committee acknowledges the input of the previous membership and thanks them for their contribution.

### **1.3 COMMITTEE MEMBERSHIP TO REGIONAL BODIES**

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.

The Committee is up to date with its membership subscriptions for EAAPAC and AFROPAC. CAPAC is still in its formative stages and is yet to formalize modalities of membership.

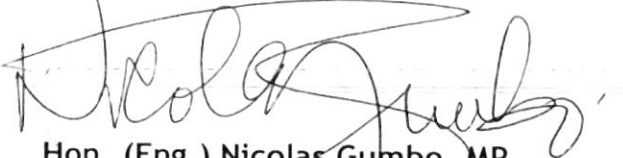
The Committee currently holds the position of Secretary General in both EAAPAC and AFROPAC. It also hosts the secretariats of both organizations. The Committee clerks have continued to go beyond their normal duties by offering their services in these organizations as the secretariat, until they are able to hire their own staff.



Mr. Speaker, Sir,

On behalf of the Members of the Committee, and pursuant to Standing Order no. 199(6), it is my distinguished honour and privilege to present the Legacy Report of the Public Accounts Committee of the 11<sup>th</sup> Parliament.

Signed:

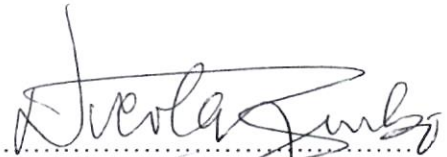




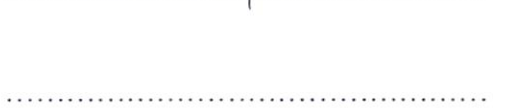


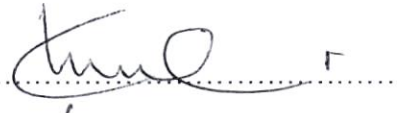
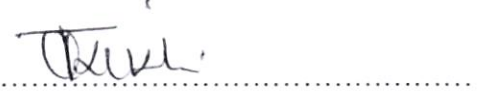


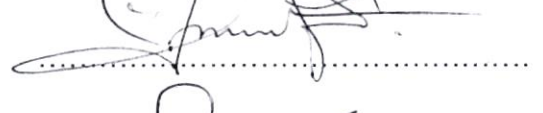
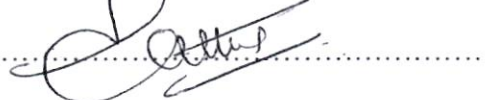


Hon. (Eng.) Nicolas Gumbo, MP  
Chairman, Public Accounts Committee

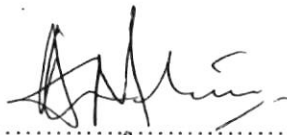
Date: 14/6/2017

## ADOPTION OF THE PUBLIC ACCOUNTS COMMITTEE LEGACY REPORT FOR THE ELEVENTH PARLIAMENT

The Honourable Members of the Public Accounts Committee (PAC), do hereby affix their signatures to this Legacy Report for the Eleventh Parliament to affirm their approval and confirm its accuracy, validity and authenticity:-

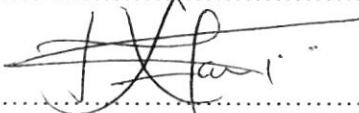
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  11. Hon. Julius Melly, MP ..... 
  12. Hon. Kangogo Bowen, MP ..... 
  13. Hon. Timothy Bosire, MP ..... 
  14. Hon. Fathia Mahbub, MP ..... 
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15. Hon. Andrew Mwadime, MP



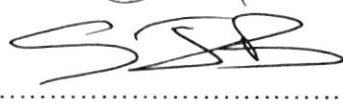
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16. Hon. Joseph Manje, MP



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17. Hon. Sakwa Bunyasi, MP



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18. Hon. Arthur Odera, MP

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19. Hon. Abdikadir Aden, MP



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20. Hon. Kanini Kega, MP



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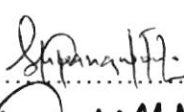
21. Hon. Kyengo Katatha Maweu, MP

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22. Hon. Charles Mong'are Geni, MP

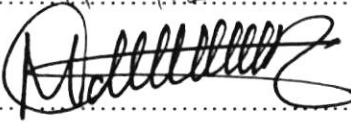
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23. Hon. Alice Nyanchoka Chae, MP



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24. Hon. Mathias Robi, MP



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25. Hon. Stephen Manoti, MP

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26. Hon. Junet Sheikh Nuh, MP

.....

27. Hon. Silvanice Onyango Osele, MP

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## **2.0 FIRST SESSION (MAY – DECEMBER, 2013)**

The Committee was constituted in May, 2013 following the 4<sup>th</sup> March, 2013 General Election and held its first sitting on 21<sup>st</sup> May, 2013 at which Hon. Ababu Namwamba, MP and Hon. Cecily Mbarire, MP were elected Chairperson and Vice-Chairperson respectively.

### **2.1 Number of Sittings held**

During the First Session, the Committee held twenty five (25) sittings. The agenda of the meetings was centered on audit reports of the Government of Kenya accounts for the financial years 2010/2011, 2011/2012 and 2012/2013.

### **2.2 Business transacted**

#### **2.2.1 Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Republic of Kenya (Financial Year 2010/11, 2011/12 & 2012/13)**

During the First Session, the Committee commenced its work on 1<sup>st</sup> August, 2013, the examination of the reports of the Auditor General on the Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Government of Kenya for the financial year 2010/2011, 2011/2012 and 2012/2013. This work was concluded in the Second Session and the report tabled.

#### **2.2.2 Request for a Special Audit by the Committee**

##### **(i) The Special Auditor General's report on procurement of a private jet by the Office of the Deputy President;**

Following public outcry over the reported corruption in the procurement of services of a private jet by the Office of the Deputy President and a subsequent request for a statement from the Leader of Majority Party by the Member for Ugenya Constituency, the Committee requested for a special audit from the Auditor General. The Committee received evidence from various witnesses and tabled its report in the House. This reported was however rejected by the House.

#### **2.2.3 Capacity Building and other events**

The Committee;

- (i) Attended Conferences of WAAPAC (July, 2013 in Banjul, the Gambia), EAAPAC (November, 2013 in Juba, South Sudan) and SADCOPAC (September, 2013 in Arusha, Tanzania). The objectives of these Conferences were to learn and share experiences in legislative oversight across the continent.

### **3.0 SECOND SESSION (JANUARY - DECEMBER, 2014)**

#### **3.1 Number of Sittings held**

In the period between January and December 2014 the Committee held forty five (45) sittings, ten (10) of which were in relation to the preliminary investigations into two matters arising from special audits requested by the Committee on the questionable expenditure by the Judiciary and the Judicial Service Commission (JSC); and the Independent Electoral and Boundaries Commission (IEBC) while the remaining ones were on three (3) audit reports on the Government of Kenya accounts for the financial years 2010/2011, 2011/2012 and 2012/2013.

#### **3.2 Business transacted**

##### **3.2.1 Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Republic of Kenya (Financial Years 2010/11, 2011/12 & 2012/13)**

The Committee concluded examination of the report of the Auditor General on the Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Government of Kenya for the financial years 2010/2011, 2011/2012 and 2012/2013. Examination of the reports commenced on 1<sup>st</sup> August, 2013 and the Committee presented the reports for tabling on 2<sup>nd</sup> December, 2014. The simultaneous examination of the three reports in four months was unprecedented. This facilitated clearing of backlog and put the Committee in a position to comply with Article 229 (8) of the Constitution.

##### **3.2.2 Special Audit reports requested by the Committee**

The Committee investigated two matters arising from special audits requested from the Auditor General. These were;

- (i) The expenditure of the Judiciary and the Judicial Service Commission, as highlighted in the Auditor General's Special Audit Report of May, 2014;
- (ii) Procurement of equipment and devices by the Independent Electoral and Boundaries Commission (IEBC) for use during the 4<sup>th</sup> March, 2013 General Election, namely;
  - Biometric Voter Registration (BVR) equipment;
  - Electronic Voter Identification Devices (EVIDs);
  - Electronic Results Transmission Devices (ERTDs);
  - Optical Mark Readers (OMR); and,
  - Metal detectors for security checks at polling stations.

On the IEBC, the Committee completed verification tours to countries that had interest in the procurement. These included Canada, South Africa, France and India.

### **3.2.3 Capacity Building and other events**

The Committee;

- (i) Held the 1<sup>st</sup> Annual Conference and Annual General Meeting (AGM) of Accountability Kenya (AK) on the 7<sup>th</sup> to 9<sup>th</sup> August 2014. This is an organization comprising of Public Accounts Committees of the House and County Assemblies and various stakeholders including the Institute of Certified Public Accountants of Kenya, Office of the Auditor General, Media Council, Donor Agencies and Diplomatic Missions in Kenya among others. However, the Committee observes that Accountability Kenya has been rendered dysfunctional by its constitutional provisions that seemed to make the organization a Non-Governmental Organization and the founding Chairman a life Chairman.
- (ii) Participated in the 11<sup>th</sup> Southern Africa Development Community Organization Of Public Accounts Committees (SADCOPAC) Conference in Lusaka, Zambia from 1<sup>st</sup> to 6<sup>th</sup> September, 2014. The Conference theme was 'The Role of the Legislature in Accountability'.
- (iii) Was represented at an Executive Committee sitting of the Eastern Africa Association of Public Accounts Committees (EAAPAC) in Kigali, Rwanda from 21<sup>st</sup> to 22<sup>nd</sup> October, 2014. This meeting was towards the preparation of the 8<sup>th</sup> Annual Conference and AGM.
- (iv) Participated in the 8<sup>th</sup> East Africa Association of Public Accounts Committees (EAAPAC) Annual Conference in Addis Ababa, Ethiopia from 24<sup>th</sup> to 28<sup>th</sup> November, 2014. The Conference's theme was 'Locking the Accountability Chain', and the objectives were to seal loopholes and weak links that exist between various bodies in the accountability process.

## **4.0 THIRD SESSION (JANUARY- DECEMBER 2015)**

The Committee was re-constituted in April, 2015 after the disbandment of the previous Committee by the House, and held its first Sitting on 28<sup>th</sup> April, 2015 where Hon. (Eng.) Nicolas Gumbo, MP and Hon. Jackson Rop, MP were elected Chairperson and Vice Chairperson respectively.

### **4.1 Number of Sittings held**

The Committee held forty five (45) Sittings, in relation to the workload inherited from the previous Committee, including investigations into the JSC and IEBC. The Committee also had to commence examination of the audit report on the Government of Kenya accounts for the financial year 2013/14.

### **4.2 Business transacted**

Due to the reconstitution, the new Committee took time to appraise itself with the business before it.

#### **4.2.1 Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Republic of Kenya (Financial Year 2013/14)**

The Auditor General's report on the financial statements for National Government for the financial year 2013/14 was tabled in the House and the Committee embarked on receipt of evidence from Accounting Officers. The Committee received responses from Accounting Officers during the session, and completed its report for tabling in July, 2016. The report was subsequently adopted by the House on 22<sup>nd</sup> August 2016.

#### **4.2.1 Other matters handled by the Committee**

##### **4.2.1.1 Auditor General's Special Audit report on the Judiciary and the Judicial Service Commission (JSC)**

The Committee completed its examination of the Special Auditor General's report on the Judiciary and the Judicial Service Commission (JSC) and tabled its report on 7<sup>th</sup> July, 2015. The report was subsequently adopted by the House in May, 2016.

#### **4.2.1.2 Auditor General's Special Audit report on the procurement of electronic kits for use in the 2013 General Election by the IEBC**

The Committee completed and tabled this report in April 2016. However, debate and adoption of this report is still outstanding.

#### **4.2.2 Capacity Building and other events**

The Committee;

- i. Being the Secretariat of the East African Association of Public Accounts Committees (EAAPAC), organized and held in Khartoum, Sudan on 26<sup>th</sup> – 30<sup>th</sup> October, 2015 the 9<sup>th</sup> Annual Conference and General Meeting. The theme of the Conference was 'Coordinated Oversight for Greater Accountability', and sought to strengthen synergy of various bodies in the accountability chain.
- ii. Attended the Executive Committee Meeting of the African Organization of Public Accounts Committees (AFROPAC) in Dar es Salaam, Tanzania on 30<sup>th</sup> June, 2015, as well as hosting one in Nairobi on 11<sup>th</sup> August, 2015. The purpose of these meetings was to organize the 2<sup>nd</sup> Conference and Annual General Meeting. Kenya was to host the 2014 Annual General Meeting and Conference in September, 2014 but this was hampered by the Ebola epidemic in the WAAPAC Countries.
- iii. Attended the Annual Conference of the Southern African Development Cooperation of Public Accounts Committees (SADCOPAC) in Mahe, Seychelles on 7<sup>th</sup> - 12<sup>th</sup> September, 2015.
- iv. Appointed a delegation of seven (7) Members of the Committee who undertook a benchmarking visit to Washington, USA on 2<sup>nd</sup> – 6<sup>th</sup> November, 2015 to gain insights in accountability best practices in that jurisdiction. The Committee tabled a comprehensive report of this visit on the floor of the House in December 2015.
- v. Appointed a delegation of three Members, who attended a capacity building workshop in the United Kingdom on 19<sup>th</sup> – 27<sup>th</sup> October, 2015. The delegation was equipped with skills and techniques of public inquiries in the audit process.



## **5.0 FOURTH SESSION (JANUARY- DECEMBER 2016)**

### **5.1 Number of Sittings held**

In total, the Committee held fifty nine (59) sittings, in tackling business before it, and consultative meetings with key stakeholders in the execution of its mandate.

### **5.2 Business transacted**

#### **5.2.1 Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Republic of Kenya (Financial Year 2014/15)**

The Committee embarked on the examination of the Auditor General's report on Books of Account of the National Government FY 2014/15 and received submissions from eight (8) Ministries, Departments and Agencies (MDAs) before year end.

#### **5.2.2 Other matters handled by Committee**

##### **5.2.2.1 Auditor General's Special Report on the Books of the National Youth Service (NYS)**

The Committee completed receipt of evidence in its examination of the Auditor General's Special Report on the Books of the NYS.

#### **5.2.3 Capacity Building and other events**

The Committee:-

- (i) Hosted an Executive Committee Meeting of the African Organization of Public Accounts Committees (AFROPAC) in Nairobi on 17<sup>th</sup> – 18<sup>th</sup> March, 2016. The agenda was preparation for the 2<sup>nd</sup> Conference and AGM that was to be held in Nairobi.
- (ii) Attended another AFROPAC EXCOM Meeting in Khartoum, Sudan on 23<sup>rd</sup> – 24<sup>th</sup> May, 2016, for further preparation of the 2<sup>nd</sup> Conference and General Meeting referred to above.
- (iii) Represented AFROPAC in a meeting of various regional bodies in Pretoria South Africa from 17<sup>th</sup> to 18<sup>th</sup> February, 2016 and 11<sup>th</sup> to 12<sup>th</sup> July, 2016. These bodies included African Tax Forum, Collaborative Africa Budget Reform Initiative and

African Organization of Supreme Audit Institutions. The meeting's agenda was to seek joint collaboration in the pursuit of accountability.

- (iv) Attended the Executive Committee meeting of the East Africa Association of Public Accounts Committees (EAAPAC) in Kigali, Rwanda from 9<sup>th</sup> – 10<sup>th</sup> May, 2016. The meeting was to review progress of the organization.
- (v) Undertook a bench marking tour of China from 18<sup>th</sup> to 22<sup>nd</sup> April, 2016. A report on the same detailing lessons learnt was tabled on the floor of the House on 7<sup>th</sup> June, 2016.
- (vi) Being the Secretariat, the Committee spearheaded the hosting of a very successful and high level Annual General Meeting and Conference of the AFROPAC held in Nairobi, Kenya from 29<sup>th</sup> August to 2<sup>nd</sup> September 2016 at the Safari Park Hotel & Casino. The meeting was officially opened by H.E. Uhuru Muigai Kenyatta, CGH, President and Commander in Chief of the Defence Forces of the Republic of Kenya. It was also attended by the Leader of the Opposition, the Rt. Hon. Raila Amollo Odinga, EGH, who delivered a key note address. The official closing ceremony was presided over by the Speaker of the National Assembly, Hon. Justin B. Muturi, EGH, MP. The theme of the Conference was 'Curbing Illicit Financial Flows in Africa', and this was successful in shining the spotlight and gaining political goodwill to stop outflow of much needed resources of the continent.
- (vii) Attended the 6<sup>th</sup> Biennial Association of Public Accounts Committees (APAC) Conference in Gauteng Province, South Africa between the 18<sup>th</sup> and 22<sup>nd</sup> September, 2016.
- (viii) Attended a Professional Certificate course for the work of Public Accounts Committees training offered by International Centre for Parliamentary Studies from 17<sup>th</sup> to 20<sup>th</sup> October 2016 in London, UK. The curriculum included scrutiny of audit reports, budgetary monitoring and control, witness handling among others.
- (ix) Undertook a bench marking tour to Germany on 18<sup>th</sup> – 22<sup>nd</sup> December, 2016. A report on the same detailing lessons learnt was tabled on the floor of the House in February, 2017.

## **6.0 FIFTH SESSION (JANUARY - AUGUST 2017)**

### **6.1 Number of Sittings held**

In total, the Committee held fifty nine (59) Sittings and consultative meetings with key stakeholders in the execution of its mandate.

### **6.2 Business transacted**

#### **6.2.1 Appropriation Accounts, other Public Accounts and the Accounts of the Funds of the Republic of Kenya (Financial Year 2014/15)**

The Committee continued with the examination of the Auditor General's Report on Books of Accounts of National Government FY 2014/15, and received responses from eighteen (18) MDAs. The Committee retreated to write its observations and recommendations on these MDAs. The succeeding Committee will examine the remaining 25 MDAs and table a comprehensive report which will incorporate the reports that have already been concluded.

#### **6.2.2 Other matters handled by the Committee.**

##### **6.2.2.1 Auditor General's Special report on the books of the National Youth Service (NYS)**

The Committee concluded and tabled its report on the Auditor General's Special Audit Report on the books of the NYS. The Report has since been debated and unanimously adopted, without any amendments, by the House.

#### **6.2.3 Capacity Building events**

The Committee undertook the following bench-marking and other capacity building events;

- i. WAAPAC Conference and AGM in Niamey, Niger, from 9<sup>th</sup> to 12<sup>th</sup> January, 2017. The Conference theme was 'Tackling Illicit Financial Flows in West Africa', a pointer to the continued push by African states to stamp out the vice.
- ii. AFROPAC Executive Committee meeting in Lome, Togo, from 16<sup>th</sup> to 19<sup>th</sup> January, 2017. This meeting and workshop developed the medium term work plan for the organization for the period 2017-2019.
- iii. Benchmarking tour in France from 18<sup>th</sup> to 25<sup>th</sup> February 2017. This report was tabled on the floor of the House in March, 2017, detailing lessons learnt.

- iv. Benchmarking tour in Canada from 18<sup>th</sup> to 25<sup>th</sup> March 2017. The report was tabled on the floor of the House in April 2017, with various recommendations for adoption.
- v. Various preparatory meetings hosted by GIZ in Pretoria, South Africa for development of a joint conference on Illicit Financial Flows Pretoria. These were held in January and March 2017.
- vi. Communication workshop for clerks of PACs that host Executive Committee offices of the various regional networks in May 2017.
- vii. Joint Conference with AFROSAI, ATAF and CABRI on Illicit Financial Flows held in Cameroon from 24<sup>th</sup> to 26<sup>th</sup> May 2017. The theme was still on the fight of Illicit Financial Flows, and sought to seek linkages between various bodies.

## **7.0 PENDING BUSINESS**

1. Examination of the Auditor General's Annual Report on Books of National Government Financial Year 2014/15.
2. Consideration and examination of the Auditor General's Reports on the Constituency Development Fund Accounts for the financial year 2014/2015.
3. Examination of the Auditor General's Reports on the Political Parties Accounts for the years between 2010 and 2016.
4. Special Audits on the Sovereign Bond and the Ministry of Health which are yet to be submitted to the National Assembly by the Office of the Auditor General.

## 8.0 SUMMARY OF ACHIEVEMENTS

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 has enabled sharing of revenue to be based on current audited accounts. This was made possible through unprecedented simultaneous examination of three (3) financial years' audited accounts.
2. 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.
3. Successfully prosecuted matters of grave public concern and made far reaching recommendations. These included its reports on the JSC and the Judiciary, the IEBC and the NYS.
4. Lobbied for, and won important seats in regional bodies. Kenya now holds the position of Secretary General in both the African Organization of Public Accounts Committees (AFROPAC) and the East African Association of Public Accounts Committees (EAAPAC). This signalled the confidence with which other countries view Kenya and put the country on the continental map in terms of accountability. The Committee also hosts the Secretariats of both organizations.
5. Successfully hosted the 2<sup>nd</sup> Annual General Meeting and Conference of AFROPAC from 29<sup>th</sup> August to 2<sup>nd</sup> September, 2016. The Conference was officially opened by H.E. Uhuru Muigai Kenyatta, CGH, President and Commander in Chief of the Defence Forces of the Republic of Kenya. It was also attended by the Leader of the Opposition Rt. Hon. Raila Amollo Odinga, EGH, who gave a key note address. The closing ceremony was presided over by the Speaker of the National Assembly, Hon. Justin B. Muturi, EGH, MP.
6. Brought together heads of various Government Agencies in the accountability chain in a round table meeting dubbed the 'Big 9'. These Agencies included Parliament, Office of the Attorney General, Auditor General, the National Treasury, Controller of Budget, Ethics and Anti-Corruption Commission (EACC), Director of Public Prosecutions (DPP), the Judiciary and the Presidency. These were attempts geared towards effective and timely implementation of the Committee's resolutions. Such annual meetings will create the much needed synergy towards the fight against wastage of public resources.

## **9.0 CHALLENGES FACED BY THE COMMITTEE**

### **1. 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, special audit reports, reports on special funds including Constituency Development Fund (CDF) and funding of political parties.

### **2. 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. It was these kinds of attacks which largely contributed to the disbandment of the previous Committee in 2015. Similar patterns of condemnation were witnessed in subsequent sittings of the Committee. The Committee Members however remained unbowed and true to their calling.

### **3. 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.

### **4. Misrepresentation by the Media:**

The Committee noted with concern numerous instances where the media deliberately went out of its way to misrepresent its work. Indeed there were several cases where the media appeared ill bent on setting the agenda for the Committee, including attempting to make conclusions on its behalf.

A case in point was when a leading media house in Kenya, wrote an editorial highly critical of the Committee's work hardly an hour after the Committee tabled its report on the NYS. The logical conclusion was that this editorial was prepared in advance under the guise and influence of those who were under investigation by the Committee.

### **5. 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.

6. 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.

7. Delayed Special Audits:

The Committee requested Special Audit reports from the Office of the Auditor General on the Sovereign Bond and Ministry of Health. 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.

8. Prioritization of PAC reports:

The Committee observed with concern the delay in scheduling for debate of its reports by the House Business Committee, particularly reports on special audits.

9. 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 through the use of 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.

10. Institutional memory:

The high turnover of Members of Parliament every election year remains a major challenge to the continuity of the work and implementation of the recommendations of Committee reports.

11. Encroachment on the mandate of PAC:

The Committee is concerned about the increasing cases of encroachment on its mandate by other Committees of the National Assembly and 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.



12. Composition of the Public Accounts committee:

The composition of PAC as currently constituted where majority Members and the Vice Chairperson come from the ruling party/coalition of parties remains a major impediment to the discharge of the mandate of this important oversight Committee.

## 10.0 WAY FORWARD

To improve the effectiveness and efficiency of the Oversight Committees in their functions, the Committee suggests the following remedial measures;

1. Creation of a Special Fund Accounts Committee to handle the audit queries relating to CDF, Political Parties Fund Accounts and other Fund Accounts audit reports.
2. Since Committees remain appendages of Parliament, any attack on the Committee must therefore be seen as 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 at all times guard against unwarranted attacks especially from persons or entities under scrutiny.
3. In any society, the Auditor General's 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.
4. The Appointing Authority should be decisive in dealing with those Accounting Officers who do not take their responsibilities to Parliament seriously. Indeed contempt of the institution of Parliament equates to the disrespect of the People of Kenya.
5. 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.
6. To capacitate the Office of the Auditor General in order to present timely reports on Special Audits, there is need for enhanced human capacity and resource allocation to this important Office. The Public Audit Act should therefore be amended to enable the OAG to directly submit its budget estimates to Parliament without passing through the National Treasury.
7. 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.
8. 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 public funds should be made punitive enough to discourage abuse of the judicial process.

9. The induction process of new PAC Members should preserve a prominent role for those who served in the previous Committees for continuity and institutional memory.

10. The clear provisions of Standing Order No. 205 and the second schedule should be strictly adhered to, to avoid Committee conflicts.

11. Future composition of all Oversight Committees should have a simple majority of Members drawn from the main Opposition Party/Coalition of Parties with both the Chairperson and the Vice Chairperson coming from the main Opposition Party/Coalition for effective oversight.

12. There is need to expedite Special Audits on the Sovereign Bond, accounts of the Ministry of Devolution and Planning from 2013 to date, Ministry of Health. Additionally, the succeeding Committee should request for a Special Audit on the effectiveness of IFMIS.

13. 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.

## 11.0 CONCLUSION

The Committee believes it attained its mandate as envisioned in the Constitution and the Standing Orders. The Committee notes that being the inaugural Committee after the new Constitution, 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.

