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Editor's Note

Welcome to the *Journal of Conflict Management and Sustainable Development*, Volume 11, No.5. The Journal is an interdisciplinary publication that focuses on key and emerging themes in Conflict Management, Sustainable Development and other related fields of knowledge.

Sustainable Development has been embraced at both the global and national levels as the blue print for socio-economic development and governance. The Journal interrogates and offers solutions to some of the current concerns in the Sustainable Development Agenda. It also explores the role of Conflict Management in the attainment of Sustainable Development.

The Journal has witnessed significant growth since its launch and is now a widely cited and authoritative publication in the fields of Conflict Management and Sustainable Development. The Editorial Team welcomes feedback and suggestions from our readers across the globe to enable us to continue improving the Journal.

The Journal is peer reviewed and refereed in order to adhere to the highest quality of academic standards and credibility of information. Papers submitted to the Journal are taken through a rigorous review by our team of internal and external reviewers.

This volume contains papers on various themes including: *Protecting Our Endangered Species for Sustainability; Changing The Narrative on the Right to a Clean and Healthy Environment: Analysing Ecocentrism as a Possible Method of Environmental Governance in Kenya; Integrating Environmental Social & Governance (ESG) Principles into Corporate Governance in Kenya: Trends, Challenges, and Best Practices; Problematic Overlaps and Duplication of Mandates of State and Governmental Agencies in Kenya: Proposals for Legal and Institutional Reform; Lesson Study: Towards an Improved Instruction in Stem Education in Junior Secondary Schools In Kenya; Management of Industrial Waste water in Kenya: Case study of Mavoko; Does the Law Work? A Case of Kenyan Prison Congestion and the Witchcraft Act; Fostering Sustainable Lifestyles for Posterity;*

Legislating to Protect and Compensate Whistleblowers in Kenya: An Appraisal of the Proposed Whistleblower Protection Bill, 2023; The Phenomena of Resource Curse and How to Navigate around it; Primary Teacher Education and Kenya's Vision 2030. The Lacuna in the Transformation Agenda; Mitigating the Environmental Impact of Oil: Strategies for Sustainable Development; and The Implications of Implementing Kenya's Electronic Travel Authorisation (eTA) System: A Comparative Appraisal. The Journal also contains a book review of *Towards Human Rights and Prosperity for All* and a review of *Journal of Appropriate Dispute Resolution (ADR) & Sustainability Volume 2 Issue 3*.

We welcome feedback, comments and critique from our readers to enable us to continue improving the Journal.

I wish to thank all those who have made this publication possible including reviewers, editors and contributors.

The Editorial Team also welcomes the submission of articles to be considered for publication in subsequent issues of the Journal. Submissions can be channeled to admin@kmco.co.ke and copied to editor@journalofcmsd.net. Our readers can access the Journal online at <https://journalofcmsd.net>.

Hon. Prof. Kariuki Muigwa Ph.D, FCIArb, Ch.Arb, OGW.
Professor of Environmental Law and Conflict Management
Editor, Nairobi,
November, 2024.

Problematic Overlaps and Duplication of Mandates of State and Governmental Agencies in Kenya: Proposals for Legal and Institutional Reform

*By: Michael Sang **

Abstract

This paper examines the pervasive issue of overlapping and duplicative mandates among state and governmental agencies in Kenya, highlighting how these inefficiencies hamper public service delivery and waste public resources. By exploring case studies such as conflicts between the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI), and the regulatory overlaps involving the Kenya Medical Laboratory Technicians and Technologists Board (KMLTTB) and the Pharmacy and Poisons Board (PPB), the paper underscores the adverse consequences of such duplicity. The study proposes comprehensive legal and institutional reforms to rationalize agency mandates, promote policy coherence, and enhance inter-agency cooperation. It advocates for the adoption of clear legislation, continuous monitoring by the Kenya Law Reform Commission, and capacity building for public officers, drawing lessons from international best practices to streamline Kenya's public sector.

Keywords: *Overlapping Mandates; Public Service Efficiency; Institutional Reform; Duplication of Mandates, State Agencies, Legal Reform*

1. Introduction

The effectiveness of public service delivery in Kenya is critically undermined by overlapping and duplicative mandates among state and governmental agencies.¹ This issue manifests through the duplicity of roles and responsibilities, leading

** LLM, University of Cape Town, South Africa; LLB, Moi University; PG Dip. in Law Kenya School of Law. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated.*

¹ Alfred Ong'era & Beverly Muthoki Musili 'Public Sector Reforms in Kenya: Challenges and Opportunities' Kenya Institute for Public Policy Research and Analysis (KIPPR) Working Paper No. 29 2019

to collisions, collusion, and inefficiencies that not only affect the quality of service delivery but also result in significant wastage of public resources.² The very taxpayers purportedly protected by the establishment of these institutions bear the financial burden of such inefficiencies.³

Instances of duplicity in roles create conflicts between agencies, as seen in various sectors, including corruption-related investigations, policing, counterfeiting, and public debt management.⁴ For example, the conflict between the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) Economic and Corporate Crime Unit⁵ highlights how overlapping mandates can lead to incoherent policies and inter-agency conflicts, ultimately wasting public resources and misdirecting institutional efforts. The overlapping mandates between EACC and DCI create confusion, as both agencies often launch separate investigations into the same corruption cases, leading to inconsistencies and delays. This duplication of efforts results in significant wastage of public funds and reduces overall effectiveness. Instead of complementing each other, the two institutions' concurrent roles in investigating economic crimes cause inefficiency and misdirection in addressing corruption issues. Similarly, the overlapping functions between the Independent Policing Oversight Authority (IPOA), the DCI, and the Internal Affairs Unit (IAU) of the National Police Service illustrate the inefficiencies and redundancies caused by unclear delineation of responsibilities.⁶

The problematic consequences of these overlaps are multifaceted. They include the duplication of functions, fragmentation of public authority, inefficiency of implementation, and wastage of public resources.⁷ For instance, the recent court

² Ibid

³ Ibid

⁴ Ibid

⁵ Daud, Y. M. (2024). A Review of Effectiveness of Anti-Corruption Strategies and Institutions in Kenya. *African Journal of Commercial Studies*, 4(4), 303-318.

⁶ Ibid

⁷ Ibid

ruling in ELRC Petition No. E006/2023, *KMPDU v. SRC, PSC, CoG, and 47 Counties*, underscored the unconstitutional nature of the SRC's attempt to abolish the non-practice allowance, demonstrating the need for clear legislative boundaries to prevent overreach and ensure effective governance. This will be discussed later in detail.

To address these challenges, this paper proposes comprehensive legal and institutional reforms aimed at rationalizing the mandates and functions of state and governmental agencies. This includes the adoption of legislation to govern operational conflicts and promote policy coherence, the development of efficient coordination mechanisms for cross-agency priorities, continuous monitoring and early intervention by the Kenya Law Reform Commission, and the training and capacity building of public officers to enhance operational flexibility and inter-agency cooperation. Drawing lessons from successful international examples, such as the United States' Consolidating and Reforming Government Act of 2012, the paper underscores the importance of clear, well-defined roles and responsibilities in enhancing the efficiency and effectiveness of Kenya's public sector.

2. Public Sector Governance and the Necessity of Distinct Institutional Mandates

2.1 Efficient Division of Labour

An efficient division of labour ensures that each agency focuses on its core functions, enhancing specialization and expertise. Clear mandates prevent redundancy and enable agencies to build capacity in their specific areas, leading to better service delivery.⁸

2.2 Clarity of Functions

Clarity of functions allows agencies to operate with a clear understanding of their roles, responsibilities, and boundaries. This minimizes the risk of encroachment

⁸ Ibid

on other agencies' duties, ensuring smooth and coordinated public service delivery.⁹

2.3 Adverse Effects of Overlapping and Duplicative Mandates Incoherence of Policies and Directives and Confusion When Implementing Them

Overlapping mandates lead to conflicting policies and directives, creating confusion among public servants and the public. This incoherence hampers effective implementation and undermines the credibility of governmental initiatives.¹⁰

Inter-Agency Conflicts

Agencies with overlapping functions often engage in turf wars, leading to conflicts that disrupt collaboration and cooperation. These conflicts waste time and resources that could be better utilized in serving the public.¹¹

Wastage of Public Resources

Duplicative mandates result in multiple agencies performing the same tasks, leading to unnecessary expenditure and resource wastage. This inefficiency burdens the exchequer and, ultimately, the taxpayers.¹²

Misdirection and Duplication of Institutional Effort

When multiple agencies undertake similar initiatives, efforts are duplicated, and institutional focus is diluted. This misdirection leads to fragmented efforts that fail to achieve the desired impact.¹³

Inefficiency and Redundancy

The existence of overlapping mandates breeds inefficiency and redundancy

⁹ Ibid

¹⁰ The Commonwealth (2016), *Key Principles of Public Sector Reforms; Case Studies and Frameworks*.

¹¹ Ibid

¹² Ibid

¹³ Ibid

within the public sector. Resources are spread thin across various agencies, reducing their effectiveness and the overall efficiency of public service delivery.¹⁴

3. The Problem of Overlapping and Duplicative Mandates of State and Governmental Agencies in Kenya: Examples and Consequences

3.1 Corruption-related Investigations

3.1.1 Conflict between EACC and DCI Economic and Corporate Crime Unit Ethics and Anti-Corruption Commission (EACC)

Section 3(1) of the EACC Act establishes the Ethics and Anti-Corruption Commission (EACC). This sets up a dedicated body specifically aimed at combating corruption.¹⁵ Section 11(1) details the functions of the EACC, including developing standards in integrity and anti-corruption,¹⁶ investigating and recommending prosecutions of corruption and economic crimes,¹⁷ and monitoring public bodies to detect corrupt practices.¹⁸ Section 13(2) (c) further empowers the EACC to conduct investigations on its own initiative or upon complaint.

Directorate of Criminal Investigations (DCI) Economic and Corporate Crime Unit Mandate

The DCI, under the National Police Service Act, is tasked with investigating serious crimes, including economic crimes and corruption.¹⁹ The DCI collects criminal intelligence and conducts forensic analysis, supporting prosecutions as directed by the DPP.

¹⁴ Ibid

¹⁵ Ethics and Anti-Corruption Commission Act, section 3 (1)

¹⁶ Ibid, Section 11(1)(a)(i)

¹⁷ Ibid, Section 11(1)(d)

¹⁸ Ibid, Section 11(1)(i)

¹⁹ National Police Service Act, section 35

Problematic Consequences

The overlapping mandates between EACC and DCI lead to conflicting policies and directives, creating confusion during implementation.²⁰ For example, both agencies may initiate separate investigations into the same case, leading to inconsistencies and delays in resolving corruption issues. Jurisdictional overlaps often result in turf wars between the EACC and DCI, as both agencies assert their authority over corruption-related investigations.²¹ This can be particularly problematic when both agencies have concurrent mandates to investigate economic crimes, as per Section 11(1)(d) of the EACC Act and Section 35 of the National Police Service Act.

Duplication of efforts leads to significant wastage of public funds.²² Both the EACC and DCI allocate resources to investigate and prosecute the same corruption cases, which is an inefficient use of taxpayer money.²³ Efforts by the EACC and DCI are often duplicated, leading to misdirection. Instead of complementing each other, their overlapping mandates cause both institutions to expend resources on similar tasks, reducing overall effectiveness.²⁴ The redundancy created by overlapping functions leads to inefficiency within the public sector. Resources are spread thin as both the EACC and DCI independently pursue similar corruption cases, diminishing their collective capacity to effectively address these issues.

²⁰ Daud, Y. M. (2024). A Review of Effectiveness of Anti-Corruption Strategies and Institutions in Kenya. *African Journal of Commercial Studies*, 4(4), 303-318.

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

3.2 Police Excesses

3.2.1 Conflict between IPOA, DCI, and Internal Affairs Unit of National Police Service Directorate of Criminal Investigations (DCI)

The DCI is responsible for:

Collecting and providing criminal intelligence; Investigating serious crimes such as homicide, narcotics, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime; Maintaining law and order; Detecting and preventing crime; Apprehending offenders; Maintaining criminal records; Conducting forensic analysis; Executing directions from the Inspector-General given by the Director of Public Prosecutions; Coordinating Interpol affairs; Investigating matters referred by the Independent Policing Oversight Authority (IPOA).²⁵

Internal Affairs Unit (IAU)

The IAU is tasked with: Receiving and investigating complaints against police officers; promoting uniform standards of discipline and good order in the police service and; Keeping records of complaints and investigations.²⁶

Independent Policing Oversight Authority (IPOA)

The IPOA's responsibilities include: Investigating complaints related to disciplinary or criminal offences by police officers, either on its own motion or upon receipt of a complaint, and making recommendations for prosecution, compensation, internal disciplinary action, or other relief; Receiving and investigating complaints by police officers and; Monitoring, reviewing, and auditing investigations and actions taken by the Internal Affairs Unit in response to complaints against police officers.²⁷ The IPOA can recommend prosecutions to the Director of Public Prosecutions and take over internal investigations if they

²⁵ National Police Service Act, section 35

²⁶ Ibid, section 87

²⁷ Independent Policing Oversight Authority Act, section 6

are inordinately delayed or unreasonable.²⁸

3.2.2 Problematic Consequences

The overlapping mandates of IPOA, DCI, and IAU lead to conflicting policies and directives.²⁹ For instance, both IPOA and IAU can initiate investigations into police misconduct, leading to confusion and inconsistent outcomes. Jurisdictional overlaps cause conflicts among IPOA, DCI, and IAU. This is especially evident when IPOA takes over ongoing investigations from the IAU due to delays or perceived inefficiency, leading to tension and lack of cooperation.³⁰ The duplication of efforts by IPOA, DCI, and IAU results in wastage of resources. Multiple agencies investigating the same incidents lead to unnecessary expenditure and inefficiency.³¹

Efforts are duplicated when IPOA and IAU conduct parallel investigations into the same cases of police misconduct. This misdirection of institutional effort reduces the overall effectiveness of policing oversight. The redundancy created by overlapping functions leads to inefficiency within the police oversight system. Resources are spread thin, reducing the capacity of each agency to effectively address police misconduct and excesses.

Conflict and Mandate Overreach

The Law Society of Kenya (LSK) issued a press statement regarding the establishment of a Presidential Taskforce on Forensic Audit of Public Debt, as outlined in Gazette Notice No. 8261 of 2024.³² The LSK argued that this taskforce is unconstitutional, emphasizing that the mandate to audit public debt lies with

²⁸ Ibid, section 7

²⁹ Omondi, M. (2021). *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi).

³⁰ Ibid

³¹ Ibid

³² Law Society of Kenya (LSK) press statement on the establishment of a Presidential Taskforce on Forensic Audit of Public Debt, as outlined in Gazette Notice No. 8261 of 2024.

the Auditor-General, as per Articles 226 and 229 of the Constitution of Kenya.³³ Article 229 of the Constitution mandates the Auditor-General to audit public debt within six months after the end of each financial year. This includes auditing the accounts of national and county governments, courts, commissions, independent offices, political parties funded from public funds, and any other entities required by legislation.³⁴

The press statement referenced a High Court ruling in the case of *Ondago v Ntembeya & 15 others*,³⁵ which underscored the exclusive role of the Auditor-General in public audit matters. The court nullified a taskforce created to audit county government debts, asserting that such audits should be conducted by the Auditor-General upon request. The LSK resolved that neither its president nor its members will participate in the taskforce. They advised the President to allow the Auditor-General to perform her constitutional duties and refrain from creating parallel structures that usurp established constitutional roles. The LSK also highlighted the role of the Office on Public Debt Management, which should support the Auditor-General with necessary information for forensic audits.³⁶ This highlights issues of mandate overreach and conflicts similar to those between IPOA, DCI, and IAU, leading to inefficiencies and conflicts among law enforcement agencies. The press statement underscores the importance of respecting constitutional mandates to prevent wastage of public funds and ensure efficient governance.

³³ Ibid

³⁴ Constitution of Kenya, 2010, art 229

³⁵ *Ondago v Ntembeya & 15 others* [2023] KEHC 22268 (19 September 2023)

³⁶ Law Society of Kenya (LSK) press statement on the establishment of a Presidential Taskforce on Forensic Audit of Public Debt, as outlined in Gazette Notice No. 8261 of 2024.

3.3 War on Counterfeits, Uncustomed Goods, and Tax Evasion

3.3.1 Conflict between Anti-Counterfeit Authority, Kenya Revenue Authority (KRA), DCI, and KEBS

Anti-Counterfeit Authority (ACA)

The ACA is tasked with: Enlightening and informing the public on matters relating to counterfeiting; Combating counterfeiting and trade in counterfeit goods; Coordinating with organizations involved in combating counterfeiting; Advising the government on policies and measures for intellectual property protection and; conducting inquiries, studies, and research on counterfeiting.³⁷

Kenya Bureau of Standards (KEBS)

KEBS is responsible for: Promoting standardization in industry and commerce; providing facilities for testing and calibration of precision instruments; Examining and testing commodities; Controlling the use of standardization marks and; Encouraging educational work related to standardization.³⁸

Kenya Revenue Authority (KRA)

KRA's functions include: Collecting and receiving all government revenue; Administering and enforcing revenue laws and; Advising the government on revenue matters.³⁹

In *Chen v R*,⁴⁰ the appellant, Chen Xiangzhong, was initially convicted by the Milimani Chief Magistrate's Court for possession of counterfeit goods under the Anti-Counterfeit Act. He was sentenced to a fine of Kshs. 292,222,560 or, in default, two years imprisonment. On appeal, the High Court reduced the fine to Kshs. 10,000,000 or, in default, 12 months imprisonment. The High Court found the initial sentencing excessive due to the lack of proper valuation of the

³⁷ Anti-Counterfeit Act, section 5

³⁸ Standards Act, section 4

³⁹ Kenya Revenue Authority Act, section 5

⁴⁰ *Chen vs. R* Criminal Appeal E183 of 2023

counterfeit goods.⁴¹ Specifically, the case highlights the operational challenges and conflicts between agencies such as the Anti-Counterfeit Authority (ACA) and the Kenya Industrial Property Institute (KIPI).

3.3.2 Problematic Consequences

The overlapping mandates of the ACA, KRA, DCI, and KEBS create inconsistencies in policies and directives, leading to confusion during implementation.⁴² For instance, both ACA and DCI may initiate separate investigations into counterfeit goods, resulting in conflicting enforcement actions. The case exemplifies the confusion arising from the overlapping functions of the ACA and KIPI. The appellant's defence hinged on the registration of the GHT trademark, highlighting a potential conflict between ACA's enforcement actions and KIPI's trademark registrations.⁴³ Jurisdictional overlaps result in conflicts among ACA, KRA, DCI, and KEBS. These agencies may compete for authority over counterfeit goods and tax evasion cases, leading to a lack of cooperation and inefficient enforcement.

Duplicative efforts by these agencies lead to wastage of resources. Multiple agencies conducting parallel investigations on the same counterfeit goods or tax evasion cases result in unnecessary expenditure and inefficiencies. Paragraph 24 of the case outlines the efforts to identify and prosecute counterfeit goods, which can be resource-intensive. The duplication of efforts between different agencies in combating counterfeits can lead to inefficient use of public resources.⁴⁴ Efforts are duplicated when ACA and DCI, for example, both investigate counterfeit goods. Similarly, KRA and KEBS may conduct separate inspections for compliance with standards and tax laws, leading to redundant actions and misdirected resources.

⁴¹ Ibid, paragraphs 28-34

⁴² Omondi, M. (2021). *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi).

⁴³ *Chen vs. R* Criminal Appeal E183 of 2023, paragraph 23

⁴⁴ Ibid, para 24

The case underscores the need for a thorough review of the Anti-Counterfeit Act and related laws to ensure clear delineation of responsibilities between ACA and KIPi, preventing the kind of confusion and legal battles seen in this appeal.⁴⁵ The judgement illustrates the necessity of legislation that clearly defines the roles of various agencies involved in intellectual property and counterfeiting issues. This can help in avoiding situations where agencies overstep their mandates, as the court found with SRC in the context of non-practice allowances.⁴⁶ The case demonstrates the need for comprehensive training of public officers in understanding and applying the legal frameworks governing counterfeit goods. This could enhance inter-agency cooperation and reduce operational conflicts.

3.4 In-Vitro Diagnostic Systems

3.4.1 Conflict between Pharmacy and Poisons Board, Kenya Medical Laboratory Technicians & Technologists Board, and National Quality Control Laboratory Pharmacy and Poisons Board (PPB)

The PPB is responsible for regulating health products, technologies, and the profession of pharmacy. This includes: Ensuring all medicinal products conform to prescribed standards of quality, safety, and efficacy; Licensing the manufacture, importation, exportation, distribution, and sale of medicinal substances and; conducting post-market surveillance of the safety and quality of medical products.⁴⁷

Kenya Medical Laboratory Technicians & Technologists Board (KMLTTB)

The KMLTTB oversees: Supervising and controlling the training, business, practice, and employment of laboratory technicians and technologists in Kenya; Licensing and regulating the practice of registered laboratory technicians and technologists and; regulating professional conduct and maintaining professional standards.⁴⁸

⁴⁵ Ibid, paragraphs 19-24

⁴⁶ *KMPDU v. SRC, PSC, CoG, and 47 Counties* ELRC Petition No. E006/2023

⁴⁷ Pharmacy and Poisons Act, Section 3B

⁴⁸ Medical Laboratory Technicians and Technologists Act, Section 5

National Quality Control Laboratory (NQCL)

The NQCL is established for: Examining and testing drugs to ensure quality control of drugs and medicinal substances; performing chemical, biological, biochemical, physiological, and pharmacological analysis and; Testing locally manufactured and imported drugs to determine compliance with the Act.⁴⁹

3.4.2 Problematic Consequences

The overlapping mandates of the PPB, KMLTTB, and NQCL create inconsistencies in policies and directives, leading to confusion.⁵⁰ For instance, both PPB and NQCL might engage in post-market surveillance and testing of medical products, resulting in duplicated efforts and potentially conflicting outcomes. Jurisdictional overlaps result in conflicts among PPB, KMLTTB, and NQCL.⁵¹ Each agency might claim authority over certain aspects of in-vitro diagnostic systems, such as the licensing and quality control of medical devices, leading to disputes and lack of cooperation. Duplicative efforts by these agencies lead to wastage of resources. Multiple agencies conducting similar inspections, testing, and licensing processes result in unnecessary expenditure and inefficiencies. Efforts are duplicated when PPB, KMLTTB, and NQCL independently regulate and supervise overlapping areas of in-vitro diagnostic systems. This misdirection of institutional effort reduces the overall effectiveness of regulatory oversight.

In *Republic vs. Zhou Wu Alias William T/A Zonken Medical Supplies Limited*⁵², the accused was charged with stocking and distributing unvalidated laboratory reagents and failing to send samples for validation as required by the Medical Laboratory Technicians and Technologists Act. The prosecution called seven

⁴⁹ Pharmacy and Poisons Act, Section 35D

⁵⁰ Onyango, G. (2024). Social Processes of Public Sector Collaborations in Kenya: Unpacking Challenges of Realising Joint Actions in Public Administration. *Journal of the Knowledge Economy*, 1-31.

⁵¹ Pharmacy and Poisons Act, Section 35D

⁵² *Republic vs. Zhou Wu Alias William T/A Zonken Medical Supplies Limited* Criminal Case No. 1457 of 2020

witnesses, and the defense argued that the accused had obtained necessary validations from the Pharmacy and Poisons Board, not the Kenya Medical Laboratory Technicians and Technologists Board (KMLTTB). The defense presented evidence that the accused had obtained validation from the Pharmacy and Poisons Board and KEMRI, and the accused was not required to seek validation from KMLTTB as he was not a laboratory technologist or technician. The court found that the accused had complied with the validation requirements of the Pharmacy and Poisons Board. The KMLTTB's mandate did not extend to validating the accused's activities since he was not a registered laboratory technologist or technician. The court acquitted the accused on all counts, citing a misinterpretation of KMLTTB's mandate.

The case exemplifies the confusion arising from overlapping regulatory mandates between the Pharmacy and Poisons Board and KMLTTB. There was a clear misinterpretation of which body had the authority to validate medical test kits, leading to the wrongful prosecution of the accused. This case illustrates the operational conflicts and inefficiencies that result from overlapping mandates. The prosecution's reliance on KMLTTB's regulations despite the accused having valid certifications from the Pharmacy and Poisons Board and KEMRI demonstrates a lack of coordination and clarity in regulatory responsibilities. The prosecution of the accused, based on an incorrect interpretation of the regulatory framework, represents a significant waste of public resources. This misdirection of efforts and resources could have been avoided with clear delineation of responsibilities between the relevant agencies.

Pharmacy and Poisons Board v. Wanjala & 7 Others [2021] KECA 348 (KLR)

The case involves an appeal by the Pharmacy and Poisons Board (PPB) against a High Court decision which ruled in favor of the National Quality Control Laboratory (NQCL), stating that NQCL had the mandate to carry out inspections for Good Manufacturing Practices (GMP) and issue compliance certificates.⁵³ The

⁵³ *Pharmacy and Poisons Board v. Wanjala & 7 Others* [2021] KECA 348 (KLR) Civil Appeal No. 211 of 2017

appellant argued that this role belonged to the PPB. The PPB argued that according to Rule 10 of the Pharmacy and Poisons (Registration of Drugs) Rules, it had the mandate to conduct GMP inspections.⁵⁴ The High Court, however, held that NQCL should carry out these inspections based on the functions outlined in sections 35A (5) and 35I (b) of the Pharmacy and Poisons Act.

The judgment highlighted that, subsequent amendments to the Pharmacy and Poisons Act clarified the mandate. Section 34 of the Clinical Officers (Training, Registration, and Licensing) Act, 2017, vested GMP inspection and compliance responsibilities solely with the PPB.⁵⁵ This rendered the conflict moot and aligned the legal framework with the PPB's position. The court concluded that the NQCL was intended to function as a support facility under the PPB, rather than an independent regulatory body. This was emphasized in paragraph 61, where the court interpreted the legislative intent to keep NQCL subordinate to the PPB for tasks such as sampling and testing of medicinal substances.⁵⁶

The case illustrates the confusion arising from overlapping regulatory mandates between the PPB and NQCL. As seen in paragraph 10, the conflicting circular from the Ministry of Health further complicated the regulatory environment. The legal tussle between PPB and NQCL highlights the operational conflicts and inefficiencies resulting from unclear mandates. Paragraph 59 outlines the fundamental disagreement on who should conduct GMP inspections, showcasing the inter-agency friction. The prolonged legal dispute and duplicated efforts between PPB and NQCL represent a significant waste of resources. The amendments clarified the roles, but the initial conflict led to unnecessary expenditure and inefficiencies. The case underscores the importance of a detailed legislative review to clarify agency mandates. The amendments to the Pharmacy and Poisons Act were crucial in resolving the mandate overlap.⁵⁷

⁵⁴ Ibid, paragraph 9

⁵⁵ Ibid, paragraphs 49-50

⁵⁶ Ibid, para 61

⁵⁷ Ibid, paragraph 49

3.5 Public Service Governance

3.5.1 Conflict between Salaries and Remuneration Commission (SRC) and Public Service Commission (PSC) Kenya

The conflict between the SRC and PSC revolves around the determination and implementation of remuneration and allowances for public officers. The SRC, established under Article 230(4) of the Constitution, is mandated to set and regularly review the remuneration and benefits of all state officers and advise the national and county governments on the remuneration of other public officers. This includes proposing adjustments to allowances such as non-practice and car grants for judges and other public service professionals.⁵⁸

On the other hand, the PSC, responsible for the overall human resource management in the public service, asserted that the SRC's mandates should not interfere with the contractual terms agreed upon between the public service and its employees. For example, the PSC opposed the SRC's proposal to abolish the non-practice allowance, which is paid to doctors and lawyers in public service to attract and retain specialized skills. The PSC argued that the SRC does not have the authority to unilaterally alter contractual agreements between employers and employees without due consultation.⁵⁹

KMPDU v. SRC, PSC, CoG, and 47 Counties

On November 17, 2023, Lady Justice Stellah Ruto of the Employment and Labour Relations Court (ELRC) delivered a significant judgment in the case of *KMPDU v. SRC, PSC, CoG, and 47 Counties*. The court declared that the Salaries and Remuneration Commission's (SRC) proposal to abolish the non-practice allowance was unconstitutional.⁶⁰ The court ruled that the SRC acted outside its mandate by attempting to abolish the non-practice allowance. According to the

⁵⁸ Allan Odhiambo (2023) 'PSC rejects proposal to cut out non-practice allowance' *Nation* available at https://nation.africa/kenya/business/psc-rejects-proposal-to-cut-out-non-practice-allowance-4150036#google_vignette accessed 11 July 2024

⁵⁹ Ibid

⁶⁰ *KMPDU v. SRC, PSC, CoG, and 47 Counties* ELRC Petition No. E006/2023

judgment, SRC's role is advisory, particularly regarding terms of service that have been set by the employer or negotiated and agreed upon through collective bargaining processes. Thus, SRC's unilateral decision to abolish the allowance was beyond its authorized powers.⁶¹

Justice Stellah Ruto emphasized that the SRC's actions interfered with the Kenya Medical Practitioners, Pharmacists and Dentists Union's (KMPDU) right to collective bargaining. The non-practice allowance, which is critical for attracting and retaining specialized professionals in public service, was a product of collective bargaining and not subject to unilateral abolition by SRC. The PSC supported KMPDU in the petition, arguing that the non-practice allowance is vital for retaining professionals in public service roles. The PSC maintained that such allowances are negotiated terms of service and should not be altered without proper consultation and agreement.⁶²

This judgment underscores the importance of respecting the collective bargaining process and the defined roles of various public service bodies. It reinforces that any changes to negotiated terms of service should involve all relevant stakeholders to ensure legality and fairness in public sector employment practices.

3.5.2 Problematic Consequences

The overlapping mandates of SRC and PSC lead to conflicting policies and directives.⁶³ This creates confusion during the implementation of remuneration packages and allowances, as seen in the disagreement over the non-practice allowance and car grants for judges.⁶⁴ The jurisdictional overlaps between SRC and PSC often result in conflicts. Each commission may assert its authority over

⁶¹ Ibid

⁶² Ibid

⁶³ Onyango, G. (2024). Social Processes of Public Sector Collaborations in Kenya: Unpacking Challenges of Realising Joint Actions in Public Administration. *Journal of the Knowledge Economy*, 1-31.

⁶⁴ Ibid

remuneration issues, leading to disputes that hamper effective governance.⁶⁵ This is evident in the ongoing court battles over allowances for public officers, where both commissions have opposing views on the legitimacy and sustainability of certain benefits.⁶⁶

Efforts are duplicated when SRC and PSC independently pursue their mandates regarding public service remuneration.⁶⁷ This misdirection of institutional effort reduces their overall effectiveness in managing and regulating public service benefits and allowances.⁶⁸

4. Proposals for Legal and Institutional Reform to Minimize Overlapping and Duplicative Mandates of State and Governmental Agencies in Kenya

4.1 Rationalization of Mandates and Functions of State and Governmental Agencies

A comprehensive assessment and review of the structures and functions of state and governmental agencies is essential for identifying and addressing overlapping and duplicative mandates.⁶⁹ This rationalization process should focus on the following key areas:

- 1. Detailed Mapping of Mandates and Functions**
Conducting a detailed mapping of the mandates and functions of all state and governmental agencies can help identify areas of overlap and duplication.⁷⁰ This mapping should include an analysis of existing laws, regulations, and policies that define the roles and responsibilities of each

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Onyango, G. (2019). Organizational trust and accountability reforms in public management: Analysis of inter-agency implementation relations in Kenya. *International Journal of Public Administration*.

⁷⁰ Ibid

agency.⁷¹

2. Stakeholder Engagement and Consultation

Engaging stakeholders, including government officials, agency representatives, and civil society organizations, is crucial for gaining insights into the practical challenges posed by overlapping mandates.⁷² Consultations can help gather valuable feedback and suggestions for streamlining functions.

3. Legal and Regulatory Reforms

Based on the findings of the comprehensive assessment, legal and regulatory reforms should be proposed to clearly delineate the roles and responsibilities of each agency. This may involve amending existing laws, drafting new legislation, and repealing redundant regulations to eliminate conflicts and overlaps.⁷³

4. Institutional Realignment and Coordination Mechanisms

Implementing institutional realignment, where necessary, to consolidate functions and enhance coordination among agencies can help reduce duplication.⁷⁴ Establishing clear coordination mechanisms and inter-agency protocols can facilitate better collaboration and resource sharing.⁷⁵

5. Continuous Monitoring and Evaluation

Establishing a framework for continuous monitoring and evaluation of agency functions and performance can ensure that the rationalization efforts are effective and sustainable.⁷⁶ Periodic reviews and audits can help identify any emerging overlaps and address them promptly.

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

6. Capacity Building and Training

Investing in capacity building and training for agency staff can enhance their understanding of their specific roles and responsibilities.⁷⁷ This can help prevent encroachment on the functions of other agencies and promote a culture of accountability and efficiency.

4.2 Adoption of Legislation to Govern Operational Conflict and Cooperation

To address operational conflicts and promote cooperation between state and governmental agencies, Kenya should develop and adopt comprehensive legislation.⁷⁸ This legislation should outline clear protocols for conflict resolution and establish frameworks for inter-agency cooperation. By doing so, it will ensure that all agencies work harmoniously towards common goals, thereby reducing inefficiencies and resource wastage. The legislation should also aim to enhance policy coherence across various sectors. This involves aligning the policies and directives of different agencies to avoid contradictions and ensure that they complement each other.⁷⁹ Clear guidelines and standardized procedures can help in achieving this coherence, making public administration more effective and unified.⁸⁰

The United States' approach with the Consolidating and Reforming Government Act of 2012⁸¹ offers valuable lessons. This Act empowers the President to propose reorganization plans to Congress aimed at reducing duplication and fragmentation within the federal government. The goal is to create a leaner and more efficient government by consolidating agencies and eliminating redundant functions. Kenya can draw from this model by empowering a central authority to propose and implement similar consolidation and reform measures, ensuring that government operations are streamlined and efficient.

⁷⁷ Onyango, G. (2022). Understanding dis-functionalities in multi-agency policy collaborations for public accountability in Kenya. *Qeios*.

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Consolidating and Reforming Government Act, 2012

Guidelines for the Management of State Corporations were issued by the Public Service Commission (PSC) of Kenya, addressing the legal and institutional framework for the management of state corporations.⁸² The guidelines cover various aspects such as terms of service, establishment and dissolution of state corporations, and human resource management. The guidelines provide a comprehensive framework for managing state corporations, including the establishment, operationalization, and dissolution of these entities. It highlights the role of the PSC in overseeing human resource management and ensuring compliance with the Public Service Commission Act and the Constitution of Kenya.⁸³

The guidelines point out the inconsistency of the guidelines with Article 234 of the Constitution and previous court decisions, emphasizing that only the PSC has the authority to establish offices and approve human resource instruments in the public service. The guidelines are said to violate constitutional provisions and court decisions by overstepping the PSC's mandate and relying on sections of the State Corporations Act that have been found unconstitutional. It suggests the need for stakeholder consultation and compliance with statutory requirements for the development and implementation of such guidelines.

The PSC's guidelines and the associated legal conflicts highlight the need for a comprehensive review of the mandates and functions of state corporations. This ensures clear delineation of responsibilities and avoids overreach or duplication of roles. The legal conflicts between the PSC's guidelines and constitutional mandates underscore the necessity of adopting clear legislation to govern operational conflicts. This aligns with the proposal for legislative reforms to enhance inter-agency cooperation and ensure policy coherence. The guidelines' emphasis on the PSC's role in coordinating human resource management across state corporations supports the proposal for mechanisms to ensure efficient coordination of cross-agency priorities.

⁸² Guidelines for the Management of State Corporations, 2024

⁸³ Ibid

In addition, The Security Services Laws (Amendment) Bill, 2023, aims to amend various security laws to clarify the investigative powers of the National Police Service (NPS) and the Independent Policing Oversight Authority (IPOA). The bill also seeks to expand the civilian oversight functions of the IPOA.⁸⁴ The Security Services Laws (Amendment) Bill, 2023, exemplifies the kind of legislative reforms needed to clarify roles and reduce operational conflicts between investigative bodies. By clearly defining the powers of the NPS and IPOA, the bill aims to ensure smoother cooperation and more efficient handling of security issues.

The Bill's provisions for expanding IPOA's oversight functions underscore the need for robust mechanisms to coordinate cross-agency priorities. Enhanced civilian oversight can help align the objectives of different security agencies, ensuring they work towards common goals without redundancy. The ongoing legislative efforts, such as those seen in the Security Services Laws (Amendment) Bill, highlight the importance of continuous monitoring and legal reforms to prevent and resolve conflicts between state agencies.

4.3 Coordination of Cross-Agency Priorities

There is a critical need for a robust mechanism to efficiently coordinate cross-agency functions.⁸⁵ This mechanism should ensure that all agencies are aligned towards the same objectives and outcomes.⁸⁶ It could include the establishment of inter-agency committees or task forces that focus on specific cross-cutting priorities, facilitating regular communication, and collaborative planning sessions among agencies.⁸⁷ This would enhance synergy, reduce redundancy, and promote unified efforts in achieving national goals.⁸⁸

⁸⁴ The Security Services Laws (Amendment) Bill, 2023

⁸⁵ Onyango, G. (2022). Understanding dis-functionalities in multi-agency policy collaborations for public accountability in Kenya. *Qeios*.

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

4.4 Continuous Monitoring, Prevention, and Early Intervention

The Kenya Law Reform Commission should be tasked with continuous monitoring of the functions and interactions of state and governmental agencies. This proactive approach would help in identifying and preventing potential conflicts early. The Commission could develop a framework for regular audits and assessments, ensuring that any emerging issues are addressed promptly. Early intervention strategies would include mediation and facilitation of inter-agency dialogues to resolve conflicts before they escalate.

4.5 Training and Capacity Building of Public Officers

There is a need to invest in the retraining of public officers to enhance their operational flexibility and inter-agency cooperation. Training programs should focus on developing skills in collaborative governance, conflict resolution, and integrated service delivery. Capacity building initiatives could include workshops, joint training sessions, and exchange programs to foster a culture of cooperation and understanding among different agencies. This would not only improve efficiency but also build a workforce capable of adapting to dynamic public service challenges.

Conclusion

The overlapping and duplicative mandates among state and governmental agencies in Kenya present a significant challenge to the efficiency and effectiveness of public service delivery. This issue results in conflicts, inefficiencies, and the wastage of public resources, ultimately burdening the taxpayers.⁸⁹ The case studies and examples discussed in this paper, such as the conflicts between the EACC and DCI, IPOA and the National Police Service, and the overlapping roles in regulating in-vitro diagnostic systems, underscore the urgent need for comprehensive legal and institutional reforms.

To mitigate these challenges, it is essential to undertake a thorough rationalization of agency mandates and functions, adopt clear legislation to

⁸⁹ Ibid

govern operational conflicts, and establish robust coordination mechanisms. Continuous monitoring and early intervention by the Kenya Law Reform Commission, coupled with targeted training and capacity-building initiatives for public officers, will further enhance operational efficiency and inter-agency cooperation.⁹⁰ Drawing lessons from international practices, such as the United States' Consolidating and Reforming Government Act of 2012, Kenya can develop a more streamlined and effective public sector.

By implementing these reforms, Kenya can significantly improve the quality of public service delivery, ensure better utilization of resources, and foster a more coherent and efficient governance structure, ultimately benefiting its citizens and enhancing overall national development.

⁹⁰ Ibid

References

Alfred Ong'era & Beverly Muthoki Musili 'Public Sector Reforms in Kenya: Challenges and Opportunities' *Kenya Institute for Public Policy Research and Analysis (KIPPRA) Working Paper No. 29 2019*

Allan Odhiambo (2023) 'PSC rejects proposal to cut out non-practice allowance' *Nation* available at https://nation.africa/kenya/business/psc-rejects-proposal-to-cut-out-non-practice-allowance-4150036#google_vignette

Anti-Counterfeit Act

Chen vs. R Criminal Appeal E183 of 2023

Consolidating and Reforming Government Act, 2012

Constitution of Kenya, 2010

Daud, Y. M. (2024). A Review of Effectiveness of Anti-Corruption Strategies and Institutions in Kenya. *African Journal of Commercial Studies*, 4(4), 303-318.

Ethics and Anti-Corruption Commission Act

Guidelines for the Management of State Corporations, 2024

Independent Policing Oversight Authority Act

Kenya Revenue Authority Act

KMPDU v. SRC, PSC, CoG, and 47 Counties ELRC Petition No. E006/2023

Law Society of Kenya (LSK) press statement on the establishment of a Presidential Taskforce on Forensic Audit of Public Debt, as outlined in Gazette Notice No. 8261 of 2024.

Medical Laboratory Technicians and Technologists Act

National Police Service Act

Omondi, M. (2021). *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi).

Ondago v Natembeya & 15 others [2023] KEHC 22268 (19 September 2023)

Onyango, G. (2019). Organizational trust and accountability reforms in public management: Analysis of inter-agency implementation relations in Kenya. *International Journal of Public Administration*.

Onyango, G. (2022). Understanding dis-functionalities in multi-agency policy collaborations for public accountability in Kenya. *Qeios*.

Onyango, G. (2024). Social Processes of Public Sector Collaborations in Kenya: Unpacking Challenges of Realising Joint Actions in Public Administration. *Journal of the Knowledge Economy*, 1-31.

Pharmacy and Poisons Act

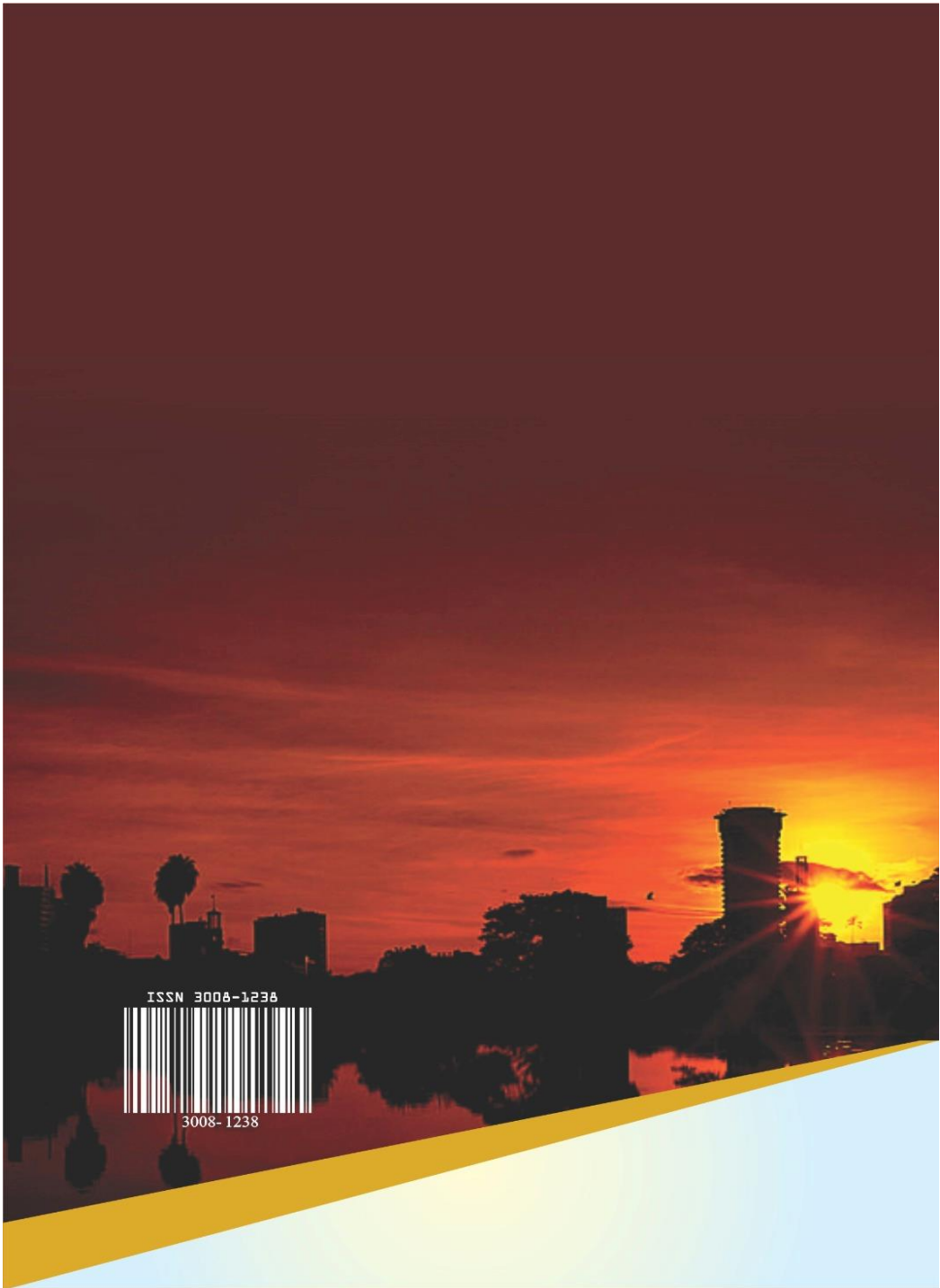
Pharmacy and Poisons Board v. Wanjala & 7 Others [2021] KECA 348 (KLR) Civil Appeal No. 211 of 2017

Republic vs. Zhou Wu Alias William T/A Zonken Medical Supplies Limited Criminal Case No. 1457 of 2020

Standards Act

The Commonwealth (2016), *Key Principles of Public Sector Reforms; Case Studies and Frameworks*.

The Security Services Laws (Amendment) Bill, 2023



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